Parliamentary Committees

Mineral and Other Legislation Amendment Bill 2016

Report No. 26, 55th Parliament
Infrastructure, Planning and Natural Resources Committee
May 2016

Infrastructure, Planning and Natural Resources Committee

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Acknowledgements

The committee thanks all those who briefed the committee, provided submissions and participated in its inquiry. In particular, the committee acknowledges the assistance provided by the Department of Natural Resources and Mines in Brisbane and Rockhampton, the landholders whose properties the committee visited, the Anglo American Callide Mine and the New Hope Group New Acland Mine, the Technical Scrutiny of Legislation Secretariat and the Queensland Parliamentary Library.

Contents

Chair's foreword

This report presents a summary of the Infrastructure, Planning and Natural Resources Committee's examination of the Mineral and Other Legislation Amendment Bill 2016.

The committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles, including whether it has sufficient regard to rights and liberties of individuals and to the institution of Parliament.

The committee has considered all the issues raised by stakeholders and the advice received from the Department of Natural Resources and Mines. It is clear to the committee that the key issues for stakeholders were the reinstatement of public notification and community objection rights and the restricted land framework.

The committee heard evidence from the mining industry and landholder and environmental groups regarding the bill's reinstatement of public notification and community objection rights to proposed mining projects. Given the impact that mining projects may have on local landholders, as well as the broader community, the committee is pleased that the bill will reinstate these rights for every member of society.

During its consideration of these matters, however, the committee did find that the Department of Natural Resources and Mines could provide further clarity for the community regarding the public participation opportunities during the Environmental Impact Statement, Environmental Authority and Mining Lease approval processes. The committee has made a recommendation to improve the information available to the community.

The committee also heard evidence from some stakeholders that the prescribed distances of 50 metres and 200 metres under the restricted land framework were inadequate. The committee has requested clarification on the rationale behind these prescribed distances, as well as the exclusion of some agriculture assets from the framework.

On behalf of the committee, I thank those organisations and individuals who lodged written submissions on the Bill and appeared before the committee at its public hearings.

I also express my gratitude to the landholders whose properties the committee visited during its inquiry. The committee also appreciated the site visits to the Callide Mine and New Acland Mine.

In addition, I would like to thank the departmental officials in Brisbane and Rockhampton who briefed the committee; the committee's secretariat; the Technical Scrutiny of Legislation Secretariat; and the Queensland Parliamentary Library.

I commend the report to the House.

Jim Pearce MP
Chair

May 2016

Acronyms

AMEC	Association of Mining and Exploration Companies
CCA	conduct and compensation agreement
CSG	coal seam gas
DDEC	Darling Downs Environment Council Inc
DEHP	Department of Environment and Heritage Protection
DNRM	Department of Natural Resources and Mines
EA	Environmental Authority
EDO Qld	Environmental Defenders Office (Queensland)
EIS	Environmental Impact Statement
EPA / EP Act	*Environmental Protection Act 1994*
FLP	fundamental legislative principle
GE Act	*Geothermal Energy Act 2010*
LAIC	Land Access Implementation Committee
MDL	Mineral Development Licence
MERCP Bill	Mineral and Energy Resources (Common Provisions) Bill 2014
MERCP Act / Common Provisions Act	*Mineral and Energy Resources (Common Provisions) Act 2014*
ML	Mining Lease
MRA / MR Act	*Mineral Resources Act 1989*
MOLA Bill / bill	Mineral and Other Legislation Amendment Bill 2016
MQRA Program	Modernising Queensland's Resources Acts Program
PAG Act	*Petroleum & Gas (Production & Safety) Act 2004*
QFF	Queensland Farmers' Federation
QRC	Queensland Resources Council
SDPWO Act	*State Development and Public Works Organisation Act 1971*
SLC	former Scrutiny of Legislation Committee
WRAD	Whitsunday Residents Against Dumping

Recommendations

Recommendation 1 **2**

The committee recommends the Mineral and Other Legislation Amendment Bill 2016 be passed.

Recommendation 2 **8**

The committee recommends clause 89 of the bill (specifically, proposed new 252A(7) of the *Mineral Resources Act 1989*) be amended to include 'an owner of adjoining land' in the definition of 'affected person'.

Recommendation 3 **9**

The committee recommends the bill be amended to require that a notice be placed on the subject land, similar to that required under section 297 of the *Sustainable Planning Act 2009* and section 16 of the Sustainable Planning Regulation 2009, at the time that the notice is placed in the newspaper and other notification occurs.

Recommendation 4 **9**

The committee recommends the bill be amended to require an applicant to give notice of a mining lease application to entities that provide infrastructure wholly or partially on the subject land.

Recommendation 5 **15**

The committee recommends the Department of Natural Resources and Mines (DNRM) develops a brochure that:

- sets out in plain English the processes relating to the Environmental Impact Statement, the Environmental Authority and the Mining Lease
- outlines at which points and how public participation/objection opportunities in the mining and CSG project approval process can be undertaken
- is easily available on the DNRM website
- is provided to all affected landholders and neighbouring landholders as part of the notification process.

Recommendation 6 **23**

The committee recommends that the Department of Natural Resources and Mines reports to the committee on the outcomes of its investigation into potential amendments to clarify the definition of residence with respect to accommodation and infrastructure for non-resident workers.

Recommendation 7 **35**

The committee recommends that the prescribed requirements for opt-out agreements include:

- a requirement that the information provided to the landholder be concise and in plain English
- an acknowledgment from the landholder that the landholder had an opportunity to seek legal advice about the proposed opt-out agreement.

Points for clarification

Point for Clarification 1: **22**

The committee seeks clarification from the Minister during his second reading speech as to the evidential rationale for the prescribed distances under the restricted land framework and assurances that these distances are not the result of a legislative legacy.

Point for Clarification 2: **23**

The committee seeks clarification from the Minister during his second reading speech on why certain agricultural assets, such as irrigation channels and drainage, on-farm management infrastructure for controlling surface water flows and land that has been subject to laser levelling, are not included in the definition of restricted land for the purpose of the prescribed 50 metre rule.

Point for Clarification 3: **40**

The committee seeks assurance that the term 'permanent building' within the definition of restricted land is adequate to achieve the policy aims of the bill.

1 Introduction

1.1 Role of the committee

The Infrastructure, Planning and Natural Resources Committee (the committee) was established by the Legislative Assembly on 27 March 2015 and consists of three government and three non-government members.

The committee's areas of portfolio responsibility are:

- Infrastructure, Local Government, Planning and Trade and Investment
- State Development, Natural Resources and Mines
- Housing and Public Works.[1]

1.2 The referral

Section 93 of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for considering:

- the policy to be given effect by the Bill
- the application of the fundamental legislative principles to the Bill.

On 23 February 2016, the Mineral and Other Legislation Amendment Bill 2016 was referred to the committee for examination and report. In accordance with Standing Order 136(1), the committee is required to report by 10 May 2016.

1.3 The committee's inquiry process

On 26 February 2016, the committee called for written submissions by placing notification of the inquiry on its website, notifying its email subscribers and sending letters to a range of stakeholders. The closing date for submissions was 8 April 2016. The committee received 21 submissions (see Appendix A).

On 16 March 2016, the committee held a public briefing with the Department of Natural Resources and Mines. The committee held public hearings in Toowoomba on 12 April 2016, Rockhampton on 14 April 2016 and Brisbane on 18 and 20 April 2016 (see Appendix B).

The committee conducted site visits to two farming properties near Toowoomba, the old township of Acland and the New Acland Mine on 11 April 2016, and to the Callide Mine and two farming properties near Rockhampton on 13 April 2016.

Copies of the submissions, transcripts of the briefing and hearings, papers tabled at the hearings, and responses to questions taken on notice at the briefings and hearings are available from the committee's webpage.[2]

1.4 Policy objectives of the Bill

The objectives of the bill are to amend the *Mineral and Energy Resources (Common Provisions) Act 2014* (MERCP Act) to implement government election commitments and to clarify the intended operation of some provisions.

The election commitments included:

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1 Schedule 6 of the *Standing Rules and Orders of the Legislative Assembly*, effective from 31 August 2004 (amended 18 February 2016).

2 See www.parliament.qld.gov.au/ipnrc.

- reinstating public notification and community objection rights to proposed mining projects
- protecting key agricultural infrastructure under the restricted land framework
- enshrining the distances for restricted land in the primary legislation
- repealing changes that allowed the Minister to grant a mining lease over restricted land prior to compensation being agreed with the landholder
- repealing changes that allowed the Minister to extinguish restricted land where the Minister considers that the activities carried out on the restricted land cannot coexist with authorised activities under the proposed mining lease.

The bill proposes to clarify matters including:

- the new overlapping tenure framework for coal and coal seam gas
- transitional arrangements for restricted land
- the requirements for entry to land to identify proposed mine boundaries
- other minor amendments.[3]

1.5 Departmental consultation on the Bill

The department undertook 'targeted' consultation with key stakeholders on certain elements of the bill.[4] There were mixed views of the consultation. Some submitters, such as the Environmental Defenders Office (Qld) and Lock the Gate Alliance, were satisfied with the consultation.[5] Queensland Resources Council was pleased with the consultation regarding overlapping tenures but was disappointed that the exposure draft of the bill was only available for a short period.[6] The Association of Mining and Exploration Companies stated that there had been 'very little [consultation] with the mineral exploration and mining industry'.[7]

1.6 Should the Bill be passed?

Standing Order 132(1)(a) requires the committee to determine whether to recommend the Bill be passed. The committee recommends the Bill be passed.

Recommendation 1

The committee recommends the Mineral and Other Legislation Amendment Bill 2016 be passed.

[3] Mineral and Other Legislation Amendment Bill 2016, explanatory notes, pp 1-2.
[4] Mineral and Other Legislation Amendment Bill 2016, explanatory notes, p 6.
[5] Public hearing transcript, Brisbane, 18 April 2016, pp 7, 21.
[6] Public hearing transcript, Brisbane, 18 April 2016, p 8.
[7] Public hearing transcript, Brisbane, 18 April 2016, p 25.

2 Examination of the Bill

2.1 Background to the Bill

The Mineral and Other Legislation Amendment Bill 2016 amends the *Mineral and Energy Resources (Common Provisions) Act 2014* (MERCP Act). Under the previous government, the MERCP Act was the first step in the Modernising Queensland's Resources Acts Program, referred to as the MQRA Program. The MERCP Act primarily served to establish a common act for resources tenures that are currently covered under four separate pieces of legislation.

The MERCP Act was passed by parliament on 9 September 2014. It received royal assent on 26 September 2014. A small number of provisions of the MERCP Act commenced, but the majority of provisions have not yet commenced. Statutorily the uncommenced provisions would automatically commence on 27 September 2016.[8]

In this section of the report, the committee will examine the following issues, which were raised during its consultation on the bill:

- public notification requirements and community objection rights
- the restricted land framework
- repeal of the Minister's power to extinguish restricted land
- opt-out agreements.

2.2 Notification requirements and objection rights

The bill proposes to amend uncommenced provisions in the MERCP Act that limit public notification requirements and objection rights.[9] The department advised that these elements of the MERCP Act 'were not widely supported by landholders, environment and agricultural groups, and … were opposed by the current government while in opposition'.[10] The bill does not propose to amend provisions in the MERCP Act that 'reduce the duplication that exists in the public notification requirements of the Coordinator-General's process and the assessment of environmental authority applications under the *Environmental Protection Act 1994* (EP Act) and an amendment to expand the jurisdiction of the Land Court to strike out any objection that is outside the jurisdiction of the court, vexatious or frivolous, or an abuse of the court's process'.[11]

Notification

The bill proposes to repeal yet to commence provisions within the MERCP Act which limit notification rights for mining projects. Repeal of the provisions would mean that existing public notification requirements for standard or variation applications for environmental authorities relating to mining leases under the EP Act would be retained and that mining lease applications under the *Mineral Resources Act 1989* (MRA) would be required to be publicly notified by a notice in a newspaper.[12]

The bill does not propose to amend uncommenced section 260 of the MERCP Act which amends section 150 of the EP Act (Notification stage does not apply if EIS process complete) so that it applies to EISs completed under the *State Development and Public Works Organisation Act 1971* (SDPWO

8 Public briefing transcript, Brisbane, 16 March 2016, p 1.
9 Mineral and Other Legislation Amendment Bill 2016, explanatory notes, pp 1-2.
10 Public briefing transcript, Brisbane, 16 March 2016, p 2.
11 Queensland Parliament, Record of Proceedings, 23 February 2016, p 399.
12 Mineral and Other Legislation Amendment Bill 2016, explanatory notes, pp 1-2.

Act) as well as under the EP Act.[13] The bill also does not propose to amend the provisions in the MERCP Act relating to the regime for boundary identification.

Ms Fiona Hayward, a landholder, submitted that the proposed reinstatement of public notification and objection rights for EAs relating to mining leases 'allows community members to be informed of due processes and to have input on matters that may concern or affect them, which is a positive step'.[14] She further stated that the reintroduction in clause 89 of broader notification of mining lease applications 'is positive as a publicly advertised mining lease allows members of the community where the mining lease is proposed to be informed of developments that may affect them, and that they may wish to have input into'.[15] She recommended that the notice be placed in more than one newspaper 'to ensure a wide group of the local public is exposed'.[16] With respect to proposed new section 252A(5), which enables the chief executive to decide an additional or substituted way of giving or publishing documents, Ms Hayward contended:

> From a landholder perspective, it would be hoped that if a "substituted way" of publishing the mining lease notice was decided upon, it would be a method of publication that would reach a wide range of local inhabitants. In many regional areas of Qld, landholders do not have access to quality internet services, so if the internet was chosen as a "substituted way" of publishing a mining lease notice many local landholders may miss the notification. Perhaps it would be better to specify that substituted ways of publishing mining lease notices would include at least three different types of communication media e.g. internet, radio, local council newsletter. Additionally, if the chief executive does decide on a substituted way of publication, how will inhabitants of the subject area know to look for the mining lease notice somewhere other than their local paper?[17]

Another landholder, Mrs Rhonda Selmanovic, stated:

> We are … concerned about the lack of mining lease application notification requirements. We feel that more avenues for notification leads to more transparency and keeps the broader community informed. Notification using datum posts should be retained to help make community members aware of any application in their area. Community members may not read the right newspapers or have adequate access to other technology.[18]

Lock the Gate expressed concerns about the changes to public notification and their likely impact. In response, the department advised:

> The MOLA Bill implements the Government's commitment to restore public notification and community objection rights by repealing yet to commence sections of the *Mineral and Energy Resources (Common Provisions) Act 2014*.
>
> It is important to note, that reinstating the publication period of 15 business days before the last objection day or a shorter period if approved by the chief executive restores the status quo of the pre-amended MRA s252B(5).[19]
>
> …
>
> Section 260 of the MERCP Act will, when commenced, amend section 150 of the *Environmental Protection Act 1994* (EP Act) to remove the requirement for the public notification of an EA where an Environmental Impact Statement (EIS) under the *State Development and Public Works Organisation Act 1971* (SDPWO Act) has been completed, subject to certain circumstances. This amendment is consistent with the current notification arrangements where an EIS is prepared under the EP Act. It is

[13] See also, Mineral and Energy Resources (Common Provisions) Bill 2014, explanatory notes, p 119.
[14] GL Campbell & Co, submission 9, p 2.
[15] Ibid.
[16] Ibid.
[17] Ibid.
[18] Public hearing transcript, Rockhampton, 14 April 2016, p 11.
[19] Department of Natural Resources and Mines, correspondence dated 21 April 2016, p 22.

> also important to note that section 115 of the *Environmental Protection and Other Legislation Act 2014* (EPOL Act) will, once commenced, make further amendments to section 150 of the EP Act. This amendment will commence immediately after the amendments contained in section 260 of the MERCP Act commence, replacing the amendments made by section 260.[20]

The Darling Downs Environment Council (DDEC) supported the amendments requiring mining lease applications under the MRA to be publicly notified via a newspaper.[21]

Boundary identification framework

The explanatory notes to the Mineral and Energy Resources (Common Provisions) Bill 2014 described the boundary identification regime to be put in place by the MERCP Act:

> Currently, the boundaries of a proposed mining lease are identified by physically pegging out the proposed tenure area. While a mandatory application requirement, the pegs have also historically acted as an indicator to alert other parties such as landowners and other potential miners that a mining application is being made.
>
> Contemporary identification methods mean that physically marking the area may not be necessary in all cases. Innovations and improvements in geospatial and mapping systems enable accurate identification of an area of land remotely and Global Positioning System (GPS) tools can also be used to easily identify boundaries on site, if needed. The Bill accommodates these technological advancements and allows for future innovations that may affect the way resource authority boundaries are defined.
>
> The removal of these prescriptive pegging requirements enables the framework to be more outcomes focussed, affording greater flexibility for the department and operators to determine the most effective method of defining a resource authority boundary—in terms of clarity and delineation—based on the location, resource activities and concentration of resource authorities in the locale. Once implemented, the changes are expected to provide substantial savings for mining lease and mining claim applicants.[22]

It was not within the scope of the bill, but Mr George Houen of Landholder Services Pty Ltd sought to have the current requirements in the MRA for marking out reinstated. He contended:

> The traditional reasons for requiring marking out using clearly visible posts at each corner of an application area remain valid notwithstanding the ready availability of GPS coordinates and other related innovations.
>
> Landholders would rightly ask why we now have to pander to the miners, allowing them to qualify with less onerous but also less effective methods. Only marking by clearly visible posts will pass the ground truthing test for affected people such as the land's owner. And what justification is there for giving miners the added privilege of revisiting the marking if their first effort is unacceptable to the chief executive.
>
> The department displays its lack of practical understanding of what happens on the ground by sponsoring these changes.
>
> From the day a claim or lease application begins everyone going on the land, including not just the owner but the owner's family or staff and any visitor, contactor or adviser such as a valuer or engineer or land improvement contractor etc. - or another miner - needs to be able to see the application boundaries right there on the ground by visual markers which are compliant with the Act.
>
> Such people will generally not have the coordinates or the like with them - the only source of that data for the landholder is likely to be a certificate of application, but that is being abolished. Even if they did have access to the coordinates and a GPS they would probably only be useful as the basis

[20] Department of Natural Resources and Mines, correspondence dated 21 April 2016, pp 22, 23.
[21] Darling Downs Environment Council Inc, submission 12, p 2.
[22] Mineral and Energy Resources (Common Provisions) Bill 2014, explanatory notes, pp 8-9.

> for landholders locating corner positions and placing their own markers. The need for them to do that is an imposition on the landholders and a waste of their valuable time.[23]

The department advised:

> The provision for alternatives to the marking of the boundaries of a mining lease and claim mining contained in MERCP Act will ensure that the proposed tenement is clear and unambiguous and capable of being realised on the ground. The MOLA Bill also provides discretionary power for the chief executive to require physical monuments in individual circumstances or to apply generally across areas of land.[24]

Concurrent notification

While it was not within the scope of the bill, some submitters sought to remove the coordination of public notification periods for the mining lease, EA and EIS processes because of the impact on public involvement.[25] EDO Qld explained:

> We do not support the efforts to coordinate public notification into one period for the mining lease, environmental authority and EIS. This means that submitters have only one specific timeframe in which to provide their comment – removing any back up that they might otherwise have had should they not be able to provide a submission in time during the public notification on either the application for the mining lease, the EIS or the draft environmental authority, as was previously available. Many community members are used to mining leases being notified after the EIS has been finalised. Resource projects frequently pose significant impact, it is appropriate that there be multiple public objection opportunities for resource project applications.
>
> The Common Provisions Bill extends section 150 EP Act by allowing public notification held on an EIS under the *State Development And Public Works Organisation Act 1971* (Qld) (SDPWO Act) to be considered sufficient public notification on the environmental authority. This coordination exacerbates changes made through the 'greentape reduction' agenda, notably whereby applicants are not required to publicly notify draft EA's if notification was undertaken on the EIS (section 150 *Environmental Protection Act 1994* (Qld) (EP Act). The conditions of an environmental authority determine how the assessment authority intends on managing the impacts of the project; it is essential that the public should have the right to provide commentary on the draft EA to help ensure the conditions are appropriate and strong, as a check and balance. Public notification is therefore also wholly undertaken prior to any supplementary EIS, in which proponents often respond to issues raised by the assessors or objectors and may provide further impact studies.
>
> Further, and as previously raised in the parliamentary committee inquiry into the Common Provisions Bill, the EIS process for coordinated projects under the SDPWO Act is significantly different from the EP Act EIS process. The Coordinator General can impose any conditions he sees fit - rather than be guided by environmental criteria and purposes - and his decisions cannot be challenged by statutory judicial review under the legislation. Further:
>
> - Unlike an EIS under the EP Act, although the Coordinator General must advise the proponent an EIS is required, he is under no obligation to notify the public that an EIS will be required for a coordinated project. This means that the community may have no idea that an EIS is required for a project under a final draft is advertised for submissions some 18 months later.

[23] Landholder Services Pty Ltd, submission 1, pp 4-5.

[24] Department of Natural Resources and Mines, correspondence dated 21 April 2016, p 1.

[25] See for example, Oakey Coal Action Alliance Inc, submission 6, p 2; Environmental Defenders' Office Qld, submission 21, pp 3-4; Darling Downs Environment Council Inc, submission 12, p 2; Mackay Conservation Group, submission 14; Whitsunday Residents Against Dumping, submission 7. See also, section 260 of the *Mineral and Energy Resources (Common Provisions) Act 2014* (MERCP Act) and section 150 of the *Environmental Protection Act 1994* (EP Act).

- There is no requirement for the Coordinator General to publicly notify the draft Terms of Reference for the project. In the past, there used to be a requirement to publicly notify, however this was changed through the *Economic Development Act 2012* (Qld). This means the community could be left without the ability to comment on what they think is necessary for an EIS to cover; their submissions are limited to only what is in the draft EIS. Contrastingly, under the EP Act the EIS terms of reference must be publicly advertised.
- Statutory judicial review rights are not available for the EIS process for coordinated projects, as they are under the EP Act. This removes a key check and balance in our democratic system. There are no opportunities to statutorily review the Coordinator General's decisions throughout the EIS process, even if he acts improperly, or illegally, or otherwise outside of his power.
- There is no set period for submissions for an EIS for coordinated projects.The period for making submissions is at the discretion of the Coordinator General. There is no requirement for this to be a 'reasonable period' and there is no minimum period set. Contrast this with the EP Act EIS process which must be at least 30 business days.[26]

EDO Qld recommended that section 260 of the MERCP Act and section 150 of the EP Act be repealed and that the committee considers staged and separate public notification of the mining lease, environmental authority and associated EISs 'to allow sufficient time for submissions and consideration of each application, along with a safety net should an interested stakeholder miss one public notification period'.[27]

DDEC asserted that consolidating public notification into one period for the mining lease, environmental authority and EIS 'does not recognise that objections are often lodged in the first instance by community members with no previous exposure to the planning, environment and mining legal regimes'.[28] DDEC further stated:

> Such community objectors and regional Environment groups do need time to formulate and frame objections that are properly made. They usually need to source advice and discuss the merits, prospects of success and formal requirements to lodge a properly made objection. It will be difficult if not impossible, in our experience for such individuals and legitimately interested organisations to simultaneously research, collate and properly make ML and EA applications. It will disadvantage all parties and the State if all issues are not properly explored.[29]

In response to submitter concerns regarding concurrent notification for mining lease and environmental authority applications,[30] the department advised:

> Section 260 of the MERCP Act will, when commenced, amend section 150 of the *Environmental Protection Act 1994* (EP Act) to remove the requirement for the public notification of an EA where an EIS under the *State Development and Public Works Organisation Act 1971* (SDPWO Act) has been completed, subject to certain circumstances. This amendment is consistent with the current notification arrangement where an EIS is prepared under the EP Act.
>
> It is also important to note that section 115 of the *Environmental Protection and Other Legislation Act 2014* (EPOL Act) will, once commenced, make further amendments to section 150 of the EP Act. This amendment will commence immediately after the amendments contained in section 260 of the MERCP Act commence, replacing the amendments made by section 260.
>
> The provisions that relate to the notification of a ML application and an EA application are being amended to restore the status quo meaning that standard and variation applications for EAs under the EP Act that relate to mining leases will require notification (unless the subject of an EIS).

[26] Environmental Defenders Office Qld, submission 21, pp 3-4.
[27] Environmental Defenders Office Qld, submission 21, p 4.
[28] Darling Downs Environment Council Inc, submission 12, p 2.
[29] Ibid.
[30] See for example, Darling Downs Environment Council Inc, submission 12, p 2.

> Section 150 of the EP Act requires that the notification periods of the EA application and the MLA occur simultaneously. This is an existing requirement and not a new requirement introduced by the MOLA Bill or the MERCP Act.[31]

Provision of documents to entities that provide infrastructure

Ergon Energy and Powerlink expressed concern that section 436 of the MERCP Act is proposed to be omitted.[32] Section 252A(2)(d) of the MRA, one of the provisions that would be omitted by the bill, requires an applicant to give notice of an application for a mining lease to an entity that provides infrastructure on the subject land. The change would mean that there is no requirement to notify such entities.[33]

In response to the energy companies' concerns, the department advised:

> The Government's commitment to restore notification requirements has resulted in the removal of the amendment contained in the *Mineral and Energy Resources (Common Provisions) Act 2014* (MERCP Act) which required an applicant for a mining lease to give documents to an entity that provides infrastructure within the area of the mining lease.
>
> This is because in ensuring that the status quo for notification is retained, the MERCP Act is proposed to be amended to reinstate the intent of the existing provisions in the *Mineral Resources Act 1989*. These provisions do not provide for infrastructure holders to be directly notified by the mining lease applicant.
>
> The Department will discuss this matter further with Powerlink and the Department of Energy and Water Supply.[34]

Committee comment

The committee is pleased that the bill reinstates existing public notification requirements for standard or variation applications for environmental authorities relating to mining leases under the EP Act and public notification in a newspaper of mining lease applications under the MRA. Nevertheless, we retain some concerns about the adequacy of notification for people living in the area near a mining lease, especially when combined with the changes to the marking of the boundaries of mining leases and concurrent notification of mining lease applications, environmental authorities and EISs.

We recommend that clause 89 of the bill (specifically, proposed new 252A(7) of the MRA) be amended to include 'an owner of adjoining land' in the definition of 'affected person'. We note that section 252A(2) of the MERCP Act requires owners of adjoining land to be notified.

Recommendation 2

The committee recommends clause 89 of the bill (specifically, proposed new 252A(7) of the *Mineral Resources Act 1989*) be amended to include 'an owner of adjoining land' in the definition of 'affected person'.

[31] Department of Natural Resources and Mines, correspondence dated 21 April 2016, pp 11-12.

[32] Section 436 of the MERCP Act inserts section 252A(2)(d) in the *Mineral Resources Act 1989*.

[33] Ergon Energy, submission 4; Powerlink, submission 17.

[34] Department of Natural Resources and Mines, correspondence dated 21 April 2016, p 16. See also, Department of Natural Resources and Mines, correspondence dated 21 April 2016, p 2 where the reference is to Ergon Energy rather than Powerlink.

We also recommend that a notice be placed on the subject land, similar to that required under section 297 of the *Sustainable Planning Act 2009* and section 16 of the Sustainable Planning Regulation 2009. This would increase awareness within the local area.

Recommendation 3

The committee recommends the bill be amended to require that a notice be placed on the subject land, similar to that required under section 297 of the *Sustainable Planning Act 2009* and section 16 of the Sustainable Planning Regulation 2009, at the time that the notice is placed in the newspaper and other notification occurs.

The committee considers it is important that infrastructure providers are made aware of mining lease applications. Therefore, we recommend that the bill be amended to require an applicant to give notice of the application to entities that provide infrastructure wholly or partially on the subject land.

Recommendation 4

The committee recommends the bill be amended to require an applicant to give notice of a mining lease application to entities that provide infrastructure wholly or partially on the subject land.

Community objection rights

The MERCP Act provisions in relation to the grant of a mining lease restrict the ability to object to the grant of a mining lease 'to just the immediately affected landholders which were the landholders within the footprint or those who were immediately contiguous to that'.[35] The bill proposes to amend the MERCP Act 'to allow anyone with a relevant ground for objection to make a submission and then to have that considered by the Land Court in relation to the grant of a mining lease'.[36]

EDO Qld supported the broadening of objection rights because of the broader socio-economic effects that follow mining activities and the long-term impacts 'on the provision of social services and recreational activities, housing, community safety, crime, lifestyle and overall community wellbeing.'[37] EDO Qld further stated:

> There is no logic or benefit in limiting objection rights to the mining lease to those landholders on or adjacent to the mining lease footprint when decision makers are considering such a broad array of issues that may impact the community in deciding whether to grant, or recommend the granting of the mining lease. The only benefit is to resource proponents in that they do not have to consider the concerns of other members of the broader community in which they operate.[38]

Mining stakeholders contended that they supported objection rights for local landholders but not for entities opposed to mining.[39] AMEC, for example, asserted that the reinstatement of broader

35 Public briefing transcript, Brisbane, 16 March 2016, p 6.

36 Ibid.

37 Environmental Defenders Office Qld, correspondence dated 28 April 2016.

38 Ibid.

39 See for example, GVK Hancock Coal Pty Ltd, submission 3, p 2; Association of Mining and Exploration Companies, public hearing transcript, Brisbane, 18 April 2016, p 25.

objection rights is of 'great concern' to developing miners.[40] It favoured the 'more targeted objection rights under the MERCP Act': that is that only the directly affected landholders should have a right to object.[41] The organisation was of the view that the objection of parties other than the affected landholders and the adjoining landholders should be considered under the environmental authority, not in relation to the mining lease.[42] AMEC stated:

> … the unintended consequence of the more expanded rights is that it allows the Land Court to be used as a stalling tactic for any antidevelopment campaigners. AMEC recommends that the government should not allow a vocal minority to affect the broader economic development in Queensland and stop those providers of regional jobs from developing projects. The granting of a mining lease is only possible after exhaustive and thoroughly rigorous assessment processes, including the obtaining of an environmental authority, where objections based on the effects of those proposed projects on the surrounding community is best considered in our opinion.[43]

QRC explained the basis of its position regarding the amendments to limit notification and objection rights:

> These MERCP Act amendments sought to remove a duplicate appeal right which currently exists under the *Mineral Resources Act 1989* (MRA). … All of the issues that are considered by the Department of Natural Resources and Mines ('DNRM') when granting a mining tenement are within the professional expertise and experience of DNRM to assess, not objectors, for example, whether a resource applicant is best placed to extract the resource by having the best technical and financial capacity to undertake those resource activities.
>
> There does not appear to be any logical reason why members of the public (such as Non-Government Organisations) should have a general right to have their objections to a mining tenement considered by the Land Court at all, given that members of the public do not have a corresponding right of appeal in relation to a wide range of other types of tenure decisions by the Queensland Government. QRC suggests that the more appropriate focus for such appeals is under the *Environmental Protection Act 1994* ('EP Act'). The right to lodge an objection against a mining tenement application and have it considered by the Land Court is currently completely unrestricted by the *Mineral Resources Act 1989* in relation to both the content of the objection and the standing of objectors, leaving the process open to strategic misuse.[44]

Lock the Gate identified reasons it considers objection rights to be important:

> … Queensland has a quite permissive mining approvals process, which generally leads to approvals for almost 100 per cent of projects, and has relatively weak processes, which are driven by and based almost solely on the information provided by the proponent. Land Court hearings lead to a degree of rigour in relation to the factual aspects of the mining project, which would not otherwise be exposed through standard approval processes. Lastly, the exposure of new and important facts and information through the Land Court provides a more factual and rigorous basis on which the Queensland government can then make a decision that properly weighs up the costs and benefits of a project.

Ms Hayward described proposed restoration of broader community objection rights by clauses 90 and 91 as 'excellent'.[45]

Ergon Energy and Powerlink supported the repeal of provisions that would have removed objection rights.[46]

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40 Public hearing transcript, Brisbane, 18 April 2016, p 25.
41 Public hearing transcript, Brisbane, 18 April 2016, p 26.
42 Ibid.
43 Public hearing transcript, Brisbane, 18 April 2016, p 25.
44 Queensland Resources Council, submission 18, p 6.
45 GL Campbell & Co, submission 9, p 2.
46 Ergon Energy, submission 4, p 2.

Environmental stakeholders were in favour of the reinstatement of the broader standing provisions. The Darling Downs Environment Council Inc, for example, expressed support for the amendments that 'will allow the broadest number of interested parties to object in the public interest by giving them standing before the Court'.[47]

The Whitsunday Residents Against Dumping (WRAD) submitted:

> … WRAD knows how vitally important it is for groups to have the right to speak up for our environment, as without community groups our environment has no voice. We want to ensure that all concerned communities retain objection rights for all mining proposals, as all mining poses very real threats of substantial environment harm not only to our land, water, farms, oceans and reefs, but also to human health and wellbeing. All people concerned with the impacts of mining have a right to have their concerns heard by an independent court, free of political pressures, to ensure the best environmental, economic and social outcomes from mining projects. It is important to remember that mining resources are the property of all Queenslanders, so these projects should be assessed with regard to the concerns of all Queenslanders who wish to have their concerns heard.[48]

EDO Qld submitted:

> The decision by the previous government to limit who could object to mines, which have a large impact on communities and the environment at a broad and localised level, was ill-considered and highly unjust. We support all amendments which provide for adequate and meaningful public objection rights on mining related activities, and protections for landholders rights, including repeal of sections 71, 259 and 261 of the Common Provisions Act.[49]

Oakey Coal Action Alliance Inc asserted:

> Mining projects can have significant and wide ranging economic, social and environmental impacts on far more than just the neighbouring landholders, for example:
>
> - those members of the local community of the New Hope Stage 3 may lose sectors of their local economy to employment by the mine;
> - the question of appropriate land use for our scarce high value agricultural land is relevant to all of Queensland; and
> - the impact of climate change from the burning of coal produced from these mines is of global concern.
>
> Community objection rights are crucially important in the public interest so the costs and benefits of projects with huge impacts can be debated and tested in the independent Land Court.
>
> This ensures the best environmental, economic and social outcomes from such projects. We must remember that mining resources are the public property of all Queenslanders, so these projects should be assessed with regards to the concerns of all Queenslanders who wish to have their concerns heard.[50]

Clarification of the process for public participation

Evidence on the reinstatement of community objection rights highlighted that the processes to approve and provide public participation and objection opportunities to a mining project were technically complex and that limited public information was available.

QRC submitted that:

> The application processes for resource tenure have a long and complex history and it is important for the Committee to understand that the application for resource tenure is not a standalone process.

[47] Darling Downs Environment Council Inc, submission 12, p 2.
[48] Whitsunday Residents Against Dumping, submission 7, p 1.
[49] Environmental Defenders Office Qld, submission 21, p 1.
[50] Oakey Coal Action Alliance Inc, submission 6, p 2.

> Once granted, to conduct any activities on the tenure, also requires an Environmental Authority (EA), which is subject to a separate assessment process under a different Act.
>
> Much of the assessment of impacts of resource projects (particularly social and environmental) occur under the *Environmental Protection Act 1994* process that govern the process of assessing an Environmental Authority (EA); rather than under the resource legislation, which governs the process of applying for tenure.[51]

QRC noted in its submission that there are multiple streams in which approval must be granted prior to the commencement of a mining project. A diagram mapping the approval process for a mining project was provided by QRC and is at Appendix C.

The Department of Natural Resources and Mines provided an overview as to how the approval of mining leases had evolved over time and in relation to various legislative requirements:

> The transfer of the environmental regulation of the mining industry from the then Department of Mines and Energy (DME) (now the Department of Natural Resources and Mines) and the then newly created Environmental Protection Agency (EPA) (now the Department of Environment and Heritage Protection) was facilitated by the *Environmental Protection and Other Legislation Amendment Act 2000* (EPOLA), which commenced on 1 January 2001.
>
> The EPOLA amended the *Environmental Protection Act 1994* (EP Act) to provide a new process for the granting of environmental authorities for mining activities by the EPA. It did this by transferring the environmental management measures contained in the *Mineral Resources Act 1989* (MRA) into the EP Act, whilst also strengthening the environmental authority provisions. At the same time, the requirement for an Environmental Management Overview Strategy[52] (EMOS) was removed from the MRA, so that only the assessment and administration of the mining tenure itself remained.
>
> The EPOLA also introduced Chapter 3 (Environmental Impact Statements) into the EP Act, defining when the EIS process applies to projects, including mining projects. Under the EP Act major mining projects can be required to undergo an EIS process prior to the environmental authority stage.
>
> There have been no 'major' changes to the EIS processes under the EP Act since this time. There were procedural amendments to streamline and reduce duplication in the EA process in the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*. For example amendments were made to the EP Act to streamline application and notification stages for projects that have completed an EIS process. Changes were made to:
>
> - Recognise documentation submitted as part of the EIS process as automatically forming part of the EA application documents; and
> - Remove requirement to undergo the EA information and notification stages where mining and petroleum activities have already undertaken an EIS and the assessment of environmental risks is the same for the EA; and
> - Give standing to a properly made submission on the EIS to be taken to be a submission on the EA application.
>
> These changes only applied to EP Act EIS processes. They did not affect the requirement for the public notification and objection rights relating to a mining lease application under the MRA as while linked, the structure and associated process of a mining lease is for a different purpose to the EIS/EA process under the EP Act.

[51] Queensland Resource Council, submission 18, p 1.

[52] Prior to the commencement of the *Environmental Protection and Other Legislation Amendment Act 2000*, mining lease applicants were required to provide an Environmental Management Overview Strategy (EMOS) as part of their application. This EMOS would then form the basis of the environmental conditions attached to the mining lease if granted.

> Alternatively, the Coordinator-General (CG) may declare a project a 'coordinated project' under the *State Development and Public Works Organisation Act 1971* (SDPWOA) requiring an EIS. The framework for an EIS facilitated by the CG was introduced in 1999 under the State Development and Public Works Organisation Amendment Bill to ensure that proper account was taken of the environment effects associated with that development, through the preparation of an EIS. This was an elaboration of the CG's existing whole-of-government coordination powers for impact assessment and, in effect, formalised in legislation an administrative process for impact assessment that had been used by the CG for more than 20 years.[53]

Currently the EIS, EA and Mining Lease (ML) have mechanisms which allow for public participation opportunities in the mining project approval process. Flowcharts from EDO Qld summarise these and are provided at Appendix D and Appendix E. DNRM also provided a table which outlined the major objection/appeal points that may affect a mine's approval process. This table is provided at Appendix F. Some legislative mechanisms provide the broader community objection rights on specified grounds, whilst others require resource authority holders and particular parties to negotiate an agreement and may then provide for appeal or review rights. These objection and appeal rights may arise at different times to objections on the mining lease and environmental authority .[54]

An EIS occurs under the *Environmental Protection Act 1994* (EP Act): 'Prior to obtaining any approval, companies undertake an EIS which outlines the social, economic and environmental impacts of the mine or CSG project'.[55]

Additionally, an EA needs to be granted by the Department of Environment and Heritage Protection (DEHP) under the EP Act. The EA application processes 'usually happens after the EIS process is complete as the EIS will often form part of the application documents for the EA'.[56] The EA contains the operating conditions a company must comply with when carrying out mining activities.

The Mining Lease objection criteria are set out under the MRA.

Public participation occurs under the EIS which allows public submissions to be made on specific terms of reference. During this process, only public submissions that address the environmental, social and economic impacts from mining activities are considered. EDO Qld notes:

> An EIS will provide an important opportunity for landholders and the community to be involved in assessing impacts of the activities … you should take the time to make a submission. Otherwise, you may lose any later appeal rights in respect to the project.[57]

Public participation is also allowed during the application for an EA and an ML via the Land Court. Ms Haywood outlined this process:

> We objected to the environmental authority application and also to the mining lease application for that particular project. Because of those objections, the mining company was very happy to enter into negotiations with our group to make sure that we all had make-good agreements that were covering the issues that we felt were dealt with.
>
> At that time, we found that the Land Court was very good to deal with. The objections process was very specific. You had to object in the correct manner, otherwise the Land Court would not consider your objections. We had an adviser who helped us to prepare our objections so that they were done correctly. They had to be submitted within a time limit. We proceeded with all of this. The objections were accepted. We did proceed to a directions hearing with the Land Court, which again was very

[53] Department of Natural Resources and Mines, Answers to Questions on Notice, dated 3 May 2016, pp 3-4.
[54] Department of Natural Resources and Mines, Answers to Questions on Notice, dated 3 May 2016, p 1.
[55] Environmental Defenders Office Qld, *Mining and Coal Seam Gas Law in Queensland: A guide for the community*, 2013, p 16.
[56] Ibid, p 64.
[57] Ibid, p 44.

> straightforward. It provided us with time lines. We had to conclude our negotiations with the mining company within a certain time frame, otherwise we would be actually going to court for a hearing.
>
> The process is very strict. It is very clear-cut. Landholders have to understand how the process works. We did. I think anybody who is objecting should understand the process, otherwise the Land Court possibly will throw their objections out.[58]

The duration of the process, for some landholders, was viewed as positive:

> It seems to drag out. We submitted on the EIS, and I was pleased that EHP got back to us after the mine had looked through it and done things, and then we got to submit more. I did not expect to get a second and a third chance to submit on the responses from the mine, what they had done and stuff like that. Even though it has dragged it out, I was pleased that we did get that, because I thought it was one shot and you were good to go. I was pleased that that happened. I am happy for it to take a longer time rather than cut all the red tape and make it quicker and easier, because at least you are covering all the bases. You are making sure you are getting it right, rather than 10 years down the track saying, 'No, I shouldn't have done that.' You have more of a chance of getting it right.[59]

QRC raised concerns that the multiple opportunities for public appeal rights to resource projects had a detrimental impact on the industry and was unnecessary:

> The amendments proposed in the MERCP Act were to streamline resource project processes but still ensuring genuine concerns on environmental matters have a pathway for comment and consideration.
>
> These MERCP Act amendments sought to remove a duplicate appeal right which currently exists under the Mineral Resources Act 1989 (MRA). The reason this duplication exists for members of the public against mining projects seems to be an anomaly of history, ie, environmental conditions used to be included in mining tenements before 2001 so it used to be appropriate for objections (and appeals) to environmental issues to be considered under the MRA.[60]

However, EDO Qld was of the view that:

> Under the MR Act, with only a few narrow exceptions, minerals are the property of the Crown. As property of the Crown, minerals are a public resource to be managed on behalf of the people. Therefore, there should be broad public consultation, by anyone who is interested in providing an opinion, as to whether, and if so, how, particular resources should be mined.[61]

Committee comment

The committee acknowledges that there are several processes and points within a mining project approval where there is opportunity for public participation. The committee has formed the view that these processes are technically complex and lengthy. Mrs Selmanovic told the committee:

> Fiona [Ms Hayward] has dealt with it because they have a larger property with coalmines on a couple of sides, and the gas and that. She has been more involved in it over the years than we have been, so we are quite lucky in that we can go, 'Fiona?' That has helped us. Without that, I really do not know where we would be as an everyday person who has had this plonked in their lap.[62]

Many landholders who are engaged full time in their business operations and who do not have the necessary legal training are unable to participate effectively during the EIS, EA or ML processes. The need to engage legal representatives to negotiate this process is both expensive and time consuming. The complexity of this process often leads to unsupported expectation in the outcomes

[58] Public hearing transcript, Rockhampton, 14 April 2016, p 12.
[59] Public hearing transcript, Rockhampton, 14 April 2016, p 13.
[60] Queensland Resource Council, submission 18, p 5.
[61] Environmental Defenders Office Qld, correspondence dated 28 April 2016, p 9.
[62] Public hearing transcript, Rockhampton, 14 April 2016, p 13.

of each process. The committee acknowledges that this places a great deal of emotional strain on these landholders, their families and their neighbours.

The committee notes that EDO Qld has produced a publication *Mining and Coal Seam Gas Law in Queensland: A guide for the community*[63] that assists in understanding the legislation and process for approval of mining activities in Queensland. The committee highly commends this publication.

The committee believes that the Department of Natural Resources and Mines has a significant role to play in developing greater community awareness around the public participation in the EIS, EA and ML processes.

Recommendation 5

The committee recommends the Department of Natural Resources and Mines (DNRM) develops a brochure that:

- sets out in plain English the processes relating to the Environmental Impact Statement, the Environmental Authority and the Mining Lease
- outlines at which points and how public participation/objection opportunities in the mining and CSG project approval process can be undertaken
- is easily available on the DNRM website
- is provided to all affected landholders and neighbouring landholders as part of the notification process.

Section 269(4) criteria

Uncommenced section 442 of the MERCP Act amends section 269 of the MRA to omit, amongst other things, the following matters that the Land Court, when making a recommendation to the Minister that an application for a mining lease be granted, shall take into account and consider:

- (4)(j) whether there will be any adverse environmental impact caused by those operations, and, if so, the extent thereof, and
- (4)(f) whether the applicant has the necessary financial and technical capabilities to carry on mining operations under the proposed mining lease.

Some stakeholders expressed support for reinstating the existing criteria in section 269(4) for consideration for the grant of mining leases.[64]

Frivolous and vexatious appeals

The issue of frivolous and vexatious appeals arose a number of times during the committee's inquiry. EDO Qld told the committee that:

> The term 'frivolous or vexatious' is a well-established legal term that is relevant across all court jurisdictions, it is in no way unique to the Land Court in objections hearings. There is therefore a myriad of case law and legislation which one can turn to in defining this term and applying it to a particular matter.

[63] Environmental Defenders Office Qld, *Mining and Coal Seam Gas Law in Queensland: A guide for the community*, 2013.

[64] See for example, Oakey Coal Action Alliance, submission 6; Whitsunday Residents Against Dumping, submission 7; GL Campbell & Co, submission 9, p 2; Juanita Halden, submission 11, p 2; Mackay Conservation Group, submission 14, p 1; Environmental Defenders Office Qld, submission 21, p 2.

…

The Land Court of Queensland has held that the term 'frivolous or vexatious' should be given its ordinary meaning, being the case is 'of little weight', 'carried on without sufficient grounds, serving only to cause annoyance', or 'unmeritous'. …

The *Vexatious Proceedings Act 2005* (Qld) allows the Attorney General or a person against whom another person has already instituted a vexatious proceeding (e.g. a mining company) to apply to the Court for a vexatious proceedings order to stop them from ever litigating again. This Act defines 'vexatious proceedings' to include:

(a) a proceeding that is an abuse of the process of a court or tribunal; and

(b) a proceeding instituted to harass or annoy, to cause delay or detriment, or for another wrongful purpose; and

(c) a proceeding instituted or pursued without reasonable ground; and

(d) a proceeding conducted in a way so as to harass or annoy, cause delay or detriment, or achieve another wrongful purpose.

There is therefore no lack of certainty as to the meaning of the term 'frivolous or vexatious' at law. The term most certainly allows the Land Court to consider whether a proceeding was brought simply to delay a project, or for purposes such as simply trying to strengthen a negotiating position …[65]

The EDO Qld further stated:

… contrary to claims made by representatives or stakeholders in the resource industry, there is no evidence that these objection rights have been used to commence frivolous or vexatious proceedings in the Land Court. In particular, EDO Queensland has never represented any clients or assisted any community members with objections which were considered to be frivolous or vexatious. The Australian Productivity Commission reported in 2013 that there was in fact no evidence of frivolous or vexatious litigation in relation to major projects and that the courts already have sufficient powers to deal with the litigants bringing such actions if they did arise.[66]

In response, the QRC stated:

… the previous committee that heard the MERCP Bill heard evidence research from both the Parliamentary Library and the Land Court to say, 'We've had a look. We can't find any evidence of vexatious claims.' That is right, but it is really important to notice that there is a little asterisk next to 'vexatious claims' and when you go down to the footnote it says vexatious claims according to the court, so 'vexatious' meant not did I bring this objection in to slow a project or to try to strengthen my negotiating position but, no, did the court deem it to be vexatious under a very specific and narrow set of legal criteria that sit in another bill? We have stopped talking about vexatious claims because it leads you down that dry gully of asking, 'Is it vexatious under that bill?' What we are saying is the objection rights to a mining lease have created an ability to object to slow the project. I know that EDO talked about misinformation being distributed by the resources companies, so rather than perhaps repeat that offence in our submission we quote from the decision regulatory impact statement that the department of mines made at the time the MERCP Bill was introduced. I think that is a really good example of how mischievous or unproductive objections are made in the mining lease project, so not globally but just for mining leases. It states—

Under the MRA [Mineral Resources Act 1989]—

which is the legislation that grants mining leases—

it is possible for objections to the Land Court to be heard where only one party brings evidence before the Court. This results in the Land Court providing an administrative function in assessing the application rather

[65] Environmental Defenders Office Qld, correspondence dated 28 April 2016, pp 6-7.

[66] Public hearing transcript, Brisbane, 18 April 2016, p 2. See also, Environmental Defenders Office Qld, submission 21, pp 1-2.

> than settling legitimate questions of law or arguments about the appropriateness of the proposed mine and its management.
>
> It continues—
>
> ... often the objector provides no evidence to support their objection ... This can be attributed to the highly technical or confidential nature of the issue or alternatively the objection is speculative, made on the basis that the matter raised is one of the Court's considerations rather than there being any identified ground on which the objection has been based.
>
> In some instances applications have been delayed for a number of years where no evidence is ever brought to the Court by the objector ...
>
> I think that is the answer to the question that the committee put to EDO earlier to say, 'Why were the objection rights to a mining lease removed in the previous bill?' It was to deal with this process where you had unproductive processes where speculative objections were put in generating delays for the court but there is no evidence provided. So it is not a discussion and it is not a negotiation; it is a stalling tactic.
>
> The QRC and the resources industry completely understand where the MOLA Bill has come from in undoing those changes. We understand that there has been enormous community outcry. Our point is that that community outcry was misplaced because it was informed by people saying, 'You've lost your ability to object to mining. You've got no ability to negotiate with mining.' That is not the case. It was not the case with MERCP. It is not the case that MOLA is restoring those. I guess the request that we would make of the committee is that when you are hearing evidence or reading submissions you are very clear about what MOLA is doing and the very limited scope of the changes to the MERCP that it is undoing, because it is not the very broadbrush change that has been presented in some of the submissions and it would be a real shame to see the public debate get ahead of the facts around MOLA in the same way that it did with MERCP.[67]

AMEC asserted that it is possible for a case before the Land Court to be used as 'a slowing technique' and this 'takes up time and money'.[68] Further:

> For a mining company which has limited resources, the object is to outlast them. It is a tactic that has been written. We have seen it from the Greenpeace document, which I am sure the QRC has put in front of you already. We understand that. Absolutely it is our members who say that they face this on a regular basis. I cannot tell you, 'Here is a vexatious case. This one has been thrown out.' We all know that. That has never been proven.[69]

Committee comment

The majority of the committee notes that only a small number of appeals against mining leases are lodged in the Land Court each year by environmental groups,[70] and the Minister is not bound by a recommendation of the Court.

Despite mining stakeholders' claims that frivolous or vexatious cases are extensively used by landholders and other groups, the majority of the committee was unable to find evidence to support this view. The majority of the committee notes the information provided by EDO Qld in this regard:

> The fact that there has never been a successful application to the Land Court claiming an objection was frivolous or vexatious by being brought merely to delay a proceeding therefore speaks for itself in disproving the claims of the Queensland Resource Council. One would think that if the members of

[67] Public hearing transcript, Brisbane, 18 April 2016, pp 9-10.

[68] Public hearing transcript, Brisbane, 18 April 2016, p 28.

[69] Ibid.

[70] EDO Qld advised that they have represented clients taking action in the Land Court with respect to a mining lease approximately five times over the past six or seven years: Public hearing transcript, Brisbane, 18 April 2016, p 3. See also, Environmental Defenders Office Qld, correspondence dated 28 April 2016, p 2.

> the Queensland Resources Council genuinely held the view that objections had been frivolous or vexatious, then they would make such an allegation in a court of law - none have.[71]

In this regard, the majority of the committee notes that community objection rights have not been abused through the Land Court. The committee strongly supports the reinstatement of broader objection rights for mining projects.

2.3 Restricted land framework

The restricted land framework under the MERCP Act proposes that restricted land apply to all resources tenures including those related to petroleum and gas and to be universally applicable across four pieces of resource legislation. In standardising the restricted land framework farm infrastructure, primary stockyards and water facilities such as bores, dams, troughs and tanks were excluded. A primary objective of the MOLA Bill is to expand the definition of restricted land to specifically include for all of those tenures the farm infrastructure that was omitted from the MERCP Act.[72]

The bill makes changes to the restricted land framework to provide landholders with the right to veto resource activities within 200 metres[73] of homes, places of worship, businesses, childcare centres and hospitals. The bill also amends the MERCP Act to extend the restricted land framework to include principal stockyards, bores, artesian wells, dams and artificial water storages connected to a water supply with a protection zone of 50 metres.[74] Under the bill, these distances will be prescribed in the Act itself. This is in contrast to the MERCP Act where distances would have been prescribed by regulation.[75] The restricted land framework under the MERCP Act is uncommenced.

Additionally, under the bill the protections under a restricted land framework extend to landholders off tenure. This will provide owners or occupiers of neighbouring properties with the right to say no to a resource activity holder who is seeking to undertake activities within the area of restricted land even though that land is not covered by the resources authority.[76]

The majority of submitters supported changes to the restricted land framework under the bill. In principle, landholder groups supported the changes proposed in clause 7 of the bill to define prescribed distances.[77] However, a number of provisions contained in the bill were thought to be inadequate and amendments in the following areas were suggested by the Lock the Gate Alliance:

- The buffer on residences is at least 600m, and preferably 1km, given the body of recent scientific evidence from the US revealing the health impacts and risks of unconventional gas mining.
- Restricted land should cover all irrigated cropping land and other significant improvements.
- The list of infrastructure should also include all infrastructure for irrigation purposes.
- The 50m on water storages etc is too limited. The buffer should be at least 200m on bores, stockyards and cemeteries, and should apply to water pipelines.

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71 Environmental Defenders Office Qld, correspondence dated 28 April 2016.
72 Public briefing transcript, Brisbane, 16 March 2016, p 5.
73 Public briefing transcript, Brisbane, 16 March 2016, p 4.
74 Queensland Parliament, Record of Proceedings, 23 February 2016, p 394.
75 Public briefing transcript, Brisbane, 16 March 2016, p 10.
76 Public hearing transcript, Brisbane, 20 March 2016, p 13.
77 GL Campbell & Co, submission 9; Ms Juanita Halden, submission 11; Oakey Coal Action Alliance Inc, submission 6, p. 2.

- The definition of infrastructure should be broadened to include all significant improvements.[78]

Prescribed 200 metres from a permanent building

The QRC, while noting the specific characteristics of different tenure types, supported changes in the definition of restricted land and the new 200 metre circumference from permanent buildings as set out in s68(1)a. In particular, QRC noted the industry agreed to the change to a single consistent set of rules because of the simplicity that the new approach offered for dealing with landholders and other stakeholders.[79]

However, the majority of landholder groups argued that the 200 metre restriction was inadequate to protect homes and the quality of life of individuals and families living next to mining activity. A number of submitters highlighted the difficulty in living and running businesses in close proximity to mining activity.

> Our family has lived on this property for 36 years and next to the coalmine for 34 years, which has been the life span of this mine to date. Up until December 2012 we did not have a lot of issues with the coalmine, but in December 2012 they started mining a section of their lease which is approximately two kilometres from our residence and 500 metres from our boundary… The impacts on us are from dust, noise, vibration, hum, blasts and also impacts to our creek and creek flats. Dealing with these impacts is emotionally draining and causes a lot of stress.[80]

Submitters argued that the 600 metre rule under the *Petroleum & Gas (Production & Safety) Act 2004* (PAG Act) afforded a balance between the rights of resource companies and the privacy and amenity of landholders and their private property. It was noted that landholders currently under the PAG Act would have their level of protection significantly reduced under the bill.

> Reduction from 600 metres to 200 metres will involve a considerable loss in amenity and quality of life for families who have to live with this within 200 metres rather than 600 metres of their home. We all know that much of the equipment is noisy, dusty and unsafe. People have children, pets and farm animals, and they should not have to have them within 200 metres of their residence. It affects their health, their quality of life and their safety and wellbeing.[81]

The reduction of protections for landholders was highlighted in a number of submissions:

> Relating this back to the MOLA Bill, this is why there is concern over the removal of the 600m rule for landholders in CSG (Coal Seam Gas) areas; they now face the prospect of resource companies being able to drill gas wells within 200m of their homes under the Restricted Land definitions. This is also a problem because generally in CSG projects there are multiple wells, access tracks, pipes etc, and the landholder involved will potentially have to deal with these being dotted all over their property (unlike with opencut mining where you generally just get one large operation in one distinct area). So at least with the former 600m rule, landholders with CSG developments could know that they had an area of 600m radius around their homes where they wouldn't have to worry about gas wells, but now that has shrunk to 200m this is going to add to the stress already being experienced by those landholders with multiple wells on their properties.[82]

Submitters also raised concerns that under the 200 metre determination landholders were not entitled to conduct and compensation agreement (CCA) as was the case under the PAG Act:

> Restricted land provides only a 200m buffer around a permanent residence. To access restricted land, the resource authority holder only needs the landholder's written consent, which may be

[78] Lock the Gate Alliance, submission 20, p 2.
[79] Queensland Resources Council, submission 18, p 5.
[80] Public hearing transcript, Rockhampton, 14 April 2016, p 10.
[81] Public hearing transcript, Rockhampton, 14 April 2016, p 1.
[82] GL Campbell & Co, supplementary submission 9, p.1.

> subject to conditions, rather than a CCA. Under the new laws, preliminary activities can be undertaken up to 200 metres from a residence without the need for consent or a CCA. This is a significant diminishment in the already few protections for landholders and works only in favour of resource companies. We urge the committee to seriously consider the practical effects and consequences on landholders if this is not changed via the Bill. It is our strong recommendation that the committee amend the Bill to omit section 571(3) of the Common Provisions Act so that the 600m rule can continue, and maintain the requirement of a CCA should resource authority holders wish to access land within 600m of a residence.[83]

In response to this concern, the department noted that the restricted land framework under MOLA provides:

> a more substantive right than existed under the 600 metre rule which required that the owner and occupier enter into a conduct and compensation agreement (CCA) with the resource authority regarding this access. A CCA is still required for any advance activities.[84]

The Queensland Farmers' Federation (QFF) argued the need to retain the 600 metre rule as set out in MERCP but with the right to veto as currently proposed under the 200 metre determination.

> It is also worth noting that the 600-metre rule under the *Mineral and Energy Resources (Common Provisions) Act* specified 600 metres where a conduct and compensation agreement or similar agreement had to be entered into. That 600 metres was never a right of veto. The new 200-metre and 50-metre determination is a right of veto, but obviously we would support having a 600-metre right of veto where possible.[85]

The opinion that prescribed distances were inadequate led a number of submitters to question the rationale or 'science' for the prescribed distances.

> We regard the proposed definition of 'restricted land' as totally inadequate. The proposed 50 metre buffer to house yards and land under cultivation; cemeteries or burial grounds; water supply points; and substantial improvements on land are ludicrous when they could abut an open cut mine void hundreds of metres deep. We believe that the Bill has proposed these buffer distances in an arbitrary fashion with no scientific basis.[86]

Advice from the Department of Natural Resources and Mines noted that 'the distances for the new restricted land framework are based on the existing restricted land distances under the MRA and *Geothermal Energy Act 2010* (GE Act).

> Currently, under the Mineral Resources Act, restricted land is defined as land within 100 metres of a permanent building used for particular purposes, such as a residence or building, and land within 50 metres of infrastructure, such as a principal stockyard, bore or artesian well.[87]

Prescribed 50 metre distances for restricted land

The bill amends the definition of restricted land within the MERCP Act to include land within 50 metres of a principal stockyard, dam, bore or artesian well and artificial water storage connected to a water supply.[88]

The QRC noted that the inclusion of key agricultural infrastructure within the definition of restricted land and prescribed distances within the primary legislation was supported by QRC members.[89]

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83 p&e Law, submission 19, pp 4-5.
84 Department of Natural Resources and Mines, correspondence dated 21 April 2016, p 21.
85 Public hearing transcript, Toowoomba, 12 April 2016, p 12.
86 Environmental Defenders Office of Northern Queensland, submission 12, p. 2
87 Public hearing transcript, Brisbane, 20 March 2016, p 13.
88 Mineral and Other Legislation Amendment Bill 2016, explanatory notes, p 2.
89 Queensland Resources Council, submission 18, p 5.

Similarly, the majority of landholder groups supported the inclusion of key agricultural infrastructure within the definition of restricted land but argued that the prescribed distances for restricted land should be increased. There was significant concern that 50 metres from critical infrastructure was not adequate.[90]

> … QFF would like to address concerns relating to the distances prescribed in the restricted land framework. QFF welcomes the provisions and policy intent in section 68(1)(a) which essentially provides a right of veto and provides landholders with a no-go area around their restricted land uses where they have not provided written consent. However, QFF notes that the 50-metre restricted land determination, particularly for some of our critical water assets, such as our wells, our bores and our dams, is insufficient to provide physical protection for these assets in some cases and significantly lower than those protections that are newly specified within the petroleum exploration standard conditions which are now utilised by the Department of Environment and Heritage Protection under their environmental approves.[91]

In evidence, landholder groups argued the need to increase the prescribed distances as had been done in other jurisdictions:

> It is also excellent that artesian wells, bores, dams, water storage facilities, principal stockyards and cemeteries/burial places have been reinstated as Restricted Land. I would like to draw attention to the fact that in Western Australia, principal stockyards are granted a 100m lateral exclusion zone; this would certainly make it easier for landholders to continue utilising their stockyards in the event of resource developments on their property.[92]

While a direct comparison between restricted land frameworks across Australia is difficult to undertake, an analysis of restricted land frameworks across jurisdictions is provided at Appendix G.

Some submitters argued the need to set a restricted distance of 200m for key agricultural infrastructure. QFF highlighted the value in increasing the prescribed distance to align it with other protections standards.

> Two hundred metres is now the requirement within the Department of Environment and Heritage Protection's standard conditions for water assets such as dams and springs. To lift that MOLA Bill requirement from 50 metres to 200 metres would make it the same requirement as under the environmental authority.[93]

Committee comment

The committee acknowledges that the restricted land distances under MOLA 'are designed to provide the owner and occupier of restricted land certainty and the right to refuse to consent to a resource authority holder entering into restricted land areas'.[94] Additionally, 'the framework, including the distances, has been the subject of assessment and consultation through a regulatory impact statement that was performed as part of the *Mineral and Energy Resources (Common Provisions) Act 2014*'.[95]

However, after visiting properties impacted by mining activity, the committee has formed the view that there is a need to provide greater clarification on the basis of prescribed distances of 50 metres and 200 metres. In some cases, these distances are clearly inadequate. The committee seeks to be reassured that prescribed distances under the restricted land framework are set on a current, 'best practice' evidential basis and not the result of a legislative legacy.

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90 Public hearing transcript, Toowoomba, 12 April 2016, p 8.
91 Public hearing transcript, Toowoomba, 12 April 2016, p 7.
92 GL Campbell & Co, submission 9.
93 Public hearing transcript, Toowoomba, 12 April 2016, p 8.
94 Department of Natural Resources and Mines, correspondence dated 21 April 2016, p 8.
95 Public hearing transcript, Brisbane, 20 March 2016, p 13.

Point for Clarification 1:

The committee seeks clarification from the Minister during his second reading speech as to the evidential rationale for the prescribed distances under the restricted land framework and assurances that these distances are not the result of a legislative legacy.

The committee is satisfied with the department's assurance that additional tools are also at the disposal of landholders to manage the impact of mining.

> … the restricted land areas or distances are not intended to be the only tools to manage the impact of resource activities on landholders, and that the restricted land distances do not mean that authorised activities will necessarily occur up to 50 metres from a stockyard or 200 metres from a permanent residence.
>
> All resource activities are regulated under the Environmental Protection Act 1994, which imposes conditions on resource authority holders to mitigate environmental impacts, such as noise, light and dust. Under the conditions of an Environmental Authority, activities authorised by a resource authority may require authorised activities take place at greater distances from buildings, infrastructure and areas which attract restricted land protections than the prescribed restricted land distances.[96]

Omitted critical agricultural infrastructure

The peak bodies which represent agricultural operators raised a number of concerns regarding the omission of critical agricultural infrastructure and assets within the definition of restricted land. QFF highlighted the following omitted areas:

- critical water infrastructure, including irrigation channels and drainage
- on-farm management infrastructure for controlling surface water flows such as contour banks, levee banks and even land that has been subject to laser levelling
- accommodation for non-resident workers
- infrastructure which perhaps does not meet the definition of permanent building but nonetheless is not temporary and represents a significant capex investment … such as intensive horticultural and production nurseries.[97]

In response to QFF's concerns, the department noted that the type of agricultural infrastructure and associated protection zone is consistent with that presently provided for under the MRA and that 'the conduct and compensation agreement framework provides a mechanism to manage potential impacts on these infrastructure types'.[98]

In particular, a number of submitters highlighted the need to protect critical water infrastructure and argued that 'while the amendments to the definition of 'restricted land' in the bill is an improvement compared to the definition currently provided in the Common Provisions Act, it in fact diminishes the rights of a landholder in comparison to the current standard in the Mineral Resources Act 1989 (MRA) in relation to water pipelines'.[99]

> … what is the point in preserving water storage improvements if a landholder cannot transport water in these locations? It certainly diminishes existing rights of landholders in relation to restricted land

[96] Department of Natural Resources and Mines, correspondence dated 21 April 2016, p 5.
[97] Public hearing transcript, Toowoomba, 12 April 2016, p 7.
[98] Department of Natural Resources and Mines, correspondence dated 21 April 2016, p 14.
[99] p&e Law, submission 18, p 5.

> and limits their ability to continue to utilise land for agricultural purposes while mining activities occur on other parts of the land.[100]

The department explained why interconnecting water pipelines were excluded from the MOLA bill:

> The rationale for excluding interconnecting water pipelines is that large areas of land around pipelines, which can extend for several hundred metres or kilometres, could be made inaccessible to surface resource activities and could therefore impact on the feasibility of projects… Pipelines in the immediate vicinity around bores, troughs and tanks will be protected by the 50 metres of restricted land that will apply to those.[101]

Committee comment

The committee acknowledges the significant investment made by landholders in agriculture infrastructure and assets. The committee also notes that under section 68(1)(b) some of this investment is not included in the definition of restricted land. However, the committee is satisfied with the department's assurance that:

> [t]he conduct and compensation agreement framework provides a mechanism to manage potential impacts on these infrastructure types and land improvements as a range of potential solutions exist to ensure appropriate conduct and compensation.[102]

The committee seeks clarification, however, on why certain agricultural assets, such as irrigation channels and drainage, on-farm management infrastructure for controlling surface water flows and land that has been subject to laser levelling, are not included in the definition of restricted land for the purpose of the prescribed 50 metre rule.

Point for Clarification 2:

The committee seeks clarification from the Minister during his second reading speech on why certain agricultural assets, such as irrigation channels and drainage, on-farm management infrastructure for controlling surface water flows and land that has been subject to laser levelling, are not included in the definition of restricted land for the purpose of the prescribed 50 metre rule.

The committee notes that farmers and farm enterprises that rely on non-resident workers have invested in accommodation buildings which meet the requirements of the various Industry Awards and, in many cases, exceed the minimum specified requirements to attract and retain skilled personnel.[103] The committee supports QFF position that accommodation and infrastructure for non-resident workers must have the same protections as those for resident workers and that the legislation should clarify this protection. The committee is satisfied with the department's undertaking to 'investigate potential amendments to clarify this matter'.[104]

Recommendation 6

The committee recommends that the Department of Natural Resources and Mines reports to the committee on the outcomes of its investigation into potential amendments to clarify the definition of residence with respect to accommodation and infrastructure for non-resident workers.

[100] p&e Law, submission 18, p 6.
[101] Department of Natural Resources and Mines, correspondence dated 21 April 2016, pp 7-8
[102] Department of Natural Resources and Mines, correspondence dated 21 April 2016, p 5.
[103] Public hearing transcript, Toowoomba, 12 April 2016, p 8.
[104] Department of Natural Resources and Mines, correspondence dated 21 April 2016, p 15.

2.4 Minister's power to extinguish restricted land

One of the primary objectives of the bill is to amend the MERCP Act to remove the Minister's power to extinguish restricted land for mining lease applications where coexistence is not possible on proposed mining sites.[105] Some stakeholders had previously expressed concern about this ministerial power during the consideration of the MERCP Bill in 2014 and the impact it would have on landholder rights with the Minister being able to grant a mining lease over restricted land prior to a compensation agreement being reached with the landholder.[106]

There was general support from landholder and environmental groups for the bill amendment to repeal the ministerial power.[107] As one landholder advised, repealing this provision, as well as restoring the requirement for a landholder to consent in writing to grant a mining lease over restricted land were 'very important positive amendments that would give landholders back rights that they would have lost under the pre-amended MERCP'.[108]

Several stakeholders, however, were opposed to the amendment and the removal of the Minister's power to grant a mining lease over restricted land in cases where agreement could not be reached between stakeholders.[109] QRC focussed its objection on the 'political rationale' behind the amendment. QRC stated that the repeal of this ministerial power was 'almost inevitable' given the strong objection to the provision in the MERCP Act. QRC contended that the objections were based on stakeholders not understanding the reforms the MERCP Bill proposed and the benefits of them, which was a direct result of the lack of departmental consultation on the MERCP Bill.[110] QRC advised:

> The MERCP Act was intended to provide the backbone of the first in a series of reforms to establish the common resources Act. However, in introducing the Act, the Newman Government also made a number of further amendments to respond to concerns which had been raised by the resource industry about further opportunities to streamline the approval process. Unfortunately, many of these further reforms were not well explained to stakeholders. Many of these stakeholders, in the absence of information to the contrary, assumed the worse and strenuously opposed any change.
>
> Similarly, QRC suggests that the need for many of the amendments made in the MOLA Bill relate to major deficiencies in the consultation around the development of the MERCP Act, which were very rushed and poorly explained to stakeholders. The result was that many stakeholders raised what they saw as grave objections to the changes proposed in the MERCP Act based on their incomplete understanding of the broader context.
>
> In both cases, there is a risk that when Departments are placed under extreme time pressure that they rely too much on the public scrutiny of the Parliamentary Committee process as a substitute for a genuine process of engagement ***before*** the Bill is tabled in Parliament.[111]

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[105] Explanatory notes, p 1. Clause 7 of the bill will amend the definition of restricted land to include key agricultural infrastructure: explanatory notes, p 2. Clauses 92 and 93 of the MOLA Bill propose to restore sections 269 and 271 of the MRA to their original intent in line with Government commitments to reinstate landholder rights: Department of Natural Resources and Mines, correspondence dated 20 April 2016, p 3.

[106] See for example, Environmental Defenders Office Qld, submission 5, Agriculture, Resources and Environment Committee inquiry into the Mineral and Energy Resources (Common Provisions) Bill 2014; Public briefing transcript, Brisbane, 16 March 2016, p 1.

[107] Rosewood District Protection Organisation, submission 5; Environmental Defenders Office Qld, submission 21, p 2; GL Campbell and Co, submission 9; Environmental Defenders Office of Northern Queensland, submission 13.

[108] GL Campbell and Co, submission 9, p 3.

[109] Queensland Resources Council, submission 18, p 5; Association of Mining Exploration Companies, public hearing transcript, Brisbane, 18 April 2016, p 27.

[110] Queensland Resources Council, submission 18, pp 4-5.

[111] Queensland Resources Council, submission 18, pp 3-4.

In response to QRC's objection to the bill amendment, the department noted that one purpose of the bill is to implement the government's commitments to repeal the Minister's power to extinguish restricted land. As such, this provision would implement that government policy.[112]

The department also provided the following details regarding consultation on both the MERCP Act and the bill:

> It is important to note that throughout the development of the *Mineral and Energy Resources (Common Provisions) Act 2014* (MERCP Act) there has been extensive consultation with stakeholders through the Regulatory Impact Statement assessment process for:
>
> - dealings, caveats and associated agreements;
> - small-scale alluvial mining;
> - restricted land;
> - mining lease notification and objections; and
> - access to public land.
>
> …
>
> Targeted stakeholder consultation on the proposed changes to the MERCP Act by the MOLA Bill was initially held on 30 June 2015. Stakeholders included the peak bodies for agriculture and the resources sectors, environmental groups and native title bodies. At this presentation, a detailed overview of the proposed amendments and the drivers for change were provided to the stakeholders. They were also given a fact sheet outlining the changes as well as a copy of the presentation.
>
> On 3 February 2016, the Department held a second stakeholder forum with key stakeholder groups. A draft reprint of the MERCP Act was provided to each stakeholder that had been updated to reflect the changes proposed by the Bill. Officers from the Department talked stakeholders through the proposed amendments, providing stakeholders with the opportunity to raise questions and discuss issues with any of the proposed amendments.
>
> Stakeholders were then provided with the opportunity to provide written feedback on the Bill.
> The Department also held individual meetings with key stakeholder groups. This includes meetings with representatives from the Queensland Farmers Federation, AgForce, the Queensland Resources Council (QRC), the Australian Petroleum Production and Exploration Association (APPEA), the Association of Mining and Exploration Companies, and the Environmental Defenders Office (EDO).
>
> There has also been ongoing consultation with industry over several years in developing the overlapping tenure framework, in particular with key industry stakeholders, such as QRC and APPEA. On 22 January 2016, a copy of a consultation draft of the overlapping tenure legislation was provided to QRC and APPEA, along with targeted organisation. Departmental officers also met with these industry stakeholders on 27 January 2016 to discuss the draft overlapping legislation. Feedback received was considered by the Department, and amendments refined as necessary to ensure that the framework will operate effectively on commencement.[113]

Committee comment

The committee notes that the mining industry and landholder groups have expressed opposing views regarding the proposed amendment to repeal the Minister's power to extinguish restricted land. Landholders are generally supportive of the amendment that would restore their 'landholder rights' while QRC is opposed to the amendment.

The committee notes QRC's comments regarding how the lack of consultation on the MERCP Act resulted in stakeholders not understanding some of the benefits of the technical reforms that the Act

[112] Department of Natural Resources and Mines, correspondence dated 21 April 2016, pp 17, 18.

[113] Department of Natural Resources and Mines, correspondence dated 21 April 2016, p 17.

implemented, which led to significant stakeholder objection to parts of the MERCP Act, including the ministerial power to extinguish restricted land.

Based on the department's advice, the committee is satisfied with the departmental consultation on the bill, as well as its consultation with stakeholders through the Regulatory Impact Statement assessment process during the development of the MERCP Act.

The committee also notes that the repeal of the Minister's power to extinguish restricted land was a government commitment and is a key purpose of the bill.

2.5 Opt-out agreements

Section 45 of the MERCP Act provides for an owner or occupier of land to 'opt out' of entering into a CCA agreement or a deferral agreement with a resource authority holder.[114] While the bill does not make any amendments to this section of the Act, opt-out agreements were an area of considerable discussion and concern amongst submitters to the inquiry. The Lock the Gate Alliance described opt-out agreements as the source of the organisation's 'greatest concerns' about the legislation and an 'erosion of landholder rights',[115] with the Environmental Defenders Office Qld and p&e Law similarly submitting respectively that the provisions are 'irresponsible' and 'an example of where the Common Provisions Act has diminished landholder protections in favour of resource companies'.[116]

The department advised that the establishment of opt-out agreements was included in the Act on the 2013 recommendation of the Land Access Implementation Committee (LAIC), following an independent land review by a panel of experts, which included members of the agricultural sector and the resources industry.[117] Consultation with stakeholders throughout the review process indicated a desire for more flexible arrangements in certain cases – for example, for properties that are extremely large and sparse, when the resource activities have no impact on the landholder, or when the parties have a longstanding, positive relationship.[118] As Queensland Resources Council (QRC) explained:

> … we had landholders, particularly out west in Mount Isa in the hard rock areas out in the Cooper Basin, saying, 'Look, I run a grazing property that is a third of the size of France. They have this tiny little bit of country that they have pegged that they want to explore. Unless they want to dig it all up, I am really not too worried about what they are up to. I am happy for them to come on and peg it, take some sampling and I do not need a compensation agreement, but I am required to negotiate one. That is really difficult and messy. Is there some way I can put it off?' It was really an attempt to go back to what we had perhaps 10 years ago where there would be handshake agreements: 'I am going to come on your place for a week, and when we leave I will grade your driveway for you.' It was much more of a handshake agreement for low-impact, dispersed initial exploration activity. It is just to deal with the situation where the landholder really is not concerned about the consequences of the initial activities, which might just be pegging some tenure, and to not force them into that negotiation process….[119]

As with a CCA agreement, if the parties enter into an opt-out agreement then the agreement is to be recorded on the register of title for the land. However, in contrast to deferral or CCA agreements, the

[114] MERCP Act, s 45.

[115] Lock the Gate Alliance, submission 20, p 3.

[116] Environmental Defenders Office Qld, Public hearing transcript, Brisbane, 18 April 2016, p 6; p&e Law, submission 19, p 3; Environmental Defenders Office Qld, submission 21, pp 4-5.

[117] Department of Natural Resources and Mines, correspondence dated 21 April 2016.

[118] Mineral and Energy Resources (Common Provisions) Bill 2014, explanatory notes, p 5; Queensland Government, Department of Natural Resources and Mines, *Draft regulations – restricted land and land access (closed)*, downloaded 22 April 2016.

[119] Queensland Resources Council, public hearing transcript, Brisbane, 18 April 2016, p 12.

Land Court has no ability to consider an opt-out agreement, as an opt-out agreement is entirely a matter for negotiation by the parties.[120]

In keeping with LAIC recommendations, section 45 provides that an opt-out agreement must include a minimum cooling off period of 10 business days, and clarifies that an opt-out agreement ends:

- if it is terminated within the cooling off period by any party
- if it is terminated by agreement of all parties
- according to the terms of the agreement
- if the resource authority ends
- if the parties enter into any of a deferral agreement, a CCA, or another opt-out agreement for the land.[121]

Section 45 also includes a note that clarifies that 'an opt-out agreement does not negate a resource authority holder's liability to compensate an eligible claimant'.[122]

Issues raised by stakeholders

Submitters widely expressed concern that the bill does not seek to amend section 45, arguing that the provisions for opt-out agreements should be repealed because they put landholders at risk of giving up their rights to obtain a CCA in the face of bullying or pressuring behaviour, or without a full understanding of the implications, with potentially significant adverse consequences.[123]

In relation to opt-out agreements, Property Rights Australia stated:

> It basically says that you opt out of having a contract with a mining or coal seam gas company or any of the other resource elements. It may save people time in the beginning. However, you give up all of your rights when you sign an opt-out. You have no rights: you have no ability to revisit it unless the mining company is feeling very generous. How mining companies behave towards people changes within one mining company and from mining company to mining company or coal seam gas company to coal seam gas company all the time. Their ownership changes all the time. If you have no contract, you have no contract. They can basically do whatever they like. If they are breaking the law, instead of you being able to go to the Land Court to have your dispute resolved, you have to go to a court of law, which is going to cost you lots and lots of money. It basically takes away every safety net that you have when you have a contract...
>
> I think they sign away all their protection, and I do not think when there are two players of such disparate size that it should ever have been introduced. A small player, in particular, is able to be walked over by someone who does not want to spend the time to put together a conduct and compensation agreement. They are a huge impost on your time. They are difficult. Often people are bullied, their time is wasted and they just get sick of it. And they probably believe if they have had no previous experience that there will be another safety net. There is no other safety net.[124]

The Lock the Gate Alliance and p&e Law stated that currently, in spite of certain statutory protections being in place in relation to CCA agreements, 'we have still been made aware of

[120] Queensland Government, Response to the Report of the Land Access Review Panel, December 2012, p 10. Downloaded 22 April 2016.

[121] MERCP Act, s 45.

[122] Ibid.

[123] See for example, Oakey Coal Action Alliance Inc, submission 6, p 2; Whitsunday Residents Against Dumping, submission 7, p 2; Property Rights Australia, submission 10, p 2; p&e Law, submission 19, p 3; Lock the Gate Alliance, submission 20, p 3; Environmental Defenders Office Qld, submission 21, p 2, etc. See also, Lock the Gate Alliance, correspondence dated 29 April 2016.

[124] Property Rights Australia, public hearing transcript, Rockhampton, 14 April 2016, pp 2, 4.

instances where resources companies have, in our opinion, engaged in deceptive and misleading conduct ... in their dealing with landholders'.[125] The Lock the Gate Alliance submitted:

> ... [Some people are facing] intense pressure. It is constant phone calls at night, at home, people at your door and threats of legal action when you know that you are in a difficult position, because you do not have the same money or legal resources behind you to be able to ward off those pressures....[126]

EDO North Queensland stated that landholders in Chinchilla had recounted actions as involving not so much 'browbeating' or 'bullying' but rather:

> ... continual coercion and offering of deals and this and that. One landholder speaking at an anti-coal seam gas rally in Mareeba said, 'Don't let them in your kitchen. Once you let them in they will sweet talk you. They will smooth talk you. They will bring PR people in. They will bring anyone in that they think will get you to sign on the dotted line. Once you have signed on the dotted line that is it. They will do whatever they want anyway.' That was that landholder's experience of it and it is not an uncommon experience either.[127]

Similarly, Property Rights Australia stated:

> … [People are] probably pressured by their own situation as much as anything else... I cannot say whether a resources company ever pressures them to sign an opt-out. They just make signing a CCA a very difficult job.[128]

Stakeholders considered that the introduction of opt-out agreements would likely lead to an increase in the use of pressuring tactics and inducements to entice landholders to sign an opt-out agreement which may disadvantage them, as this would negate the need for resource companies to comply with the statutory requirements of CCAs.[129] The Lock the Gate Alliance's submission argued that 'the opt-out agreement framework, as far as we can see, broadens that dramatically',[130] highlighting comments to this effect made by Shine Lawyers when opt-out agreements were first proposed as part of the MERCP Act in 2014:

> … We have had numerous experiences where a Land Access Representative of the resource authority holder company will use tactics, tricks and pressure to get Landholder's to sign documents which are not in their best interests. The "opt-out" framework has the potential to increase such incidents and provides little rights of recourse to a Landholder who signs one...
>
> The full extent of protection contained in the bill is the need to sign and lodge a form wherein the landholder confirms they are wanting to opt out and that they are acting independently. There is no specific obligation of the companies to behave themselves in such dealings, no code of conduct, nor any ability to address sharp practices.[131]

It was also highlighted that a lack of statutory safeguards means, particularly where immediate financial incentives may be offered by resource companies,[132] that some landholders may be led to

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[125] p&e Law, submission 19, pp 3-4.

[126] Lock the Gate Alliance, public hearing transcript, Brisbane, 18 April 2016, p 17.

[127] Environmental Defenders Office of Northern Queensland, Public hearing transcript, Brisbane, 18 April 2016, p 7.

[128] Property Rights Australia, public hearing transcript, Rockhampton, 14 April 2016, p 5.

[129] p&e Law, submission 19, pp 3-4.

[130] Ms Carmel Flint, public hearing transcript, Brisbane, 18 April 2016, p 17.

[131] Lock the Gate Alliance, submission 20, p 4.

[132] Ms Melanie Findlay, Partner, Rees R & Sydney Jones Solicitors stated that 'There are incentives paid at the moment for CCAs – "If you don't go to see a lawyer, we'll give you an additional $4,000." That occurs'. See: Public hearing transcript, Rockhampton, 14 April 2016, p 27.

sign without a full understanding of the consequences or of the 'future impacts or devaluation of their property that [could occur]'.[133] One landholder stated:

> If you are in a situation where you might be faced with coal seam gas companies wanting to come onto your property, they might say to you, 'We are only going to do a little bit of work. It is nothing major. Just sign this opt-out agreement, because we are really not going to be disturbing you guys very much.' To the landholder, that might seem valid. It might seem a quick and easy way to not have to deal with all of the negotiations that go with such things. They might sign the opt-out agreement and then, down the track, the gas company might say, 'We are now changing the infrastructure; we have found out we have to put in a mainline value, so now we are going to have to put this great big noisy piece of infrastructure on your property.
>
> ...In one situation we had a gas company that said, 'We are putting a gas pipe through,' and then six months down the track they actually changed their tune and said, 'We now have to add a mainline valve.' We had not signed an opt-out agreement because we had conduct and compensation agreements and so on with them, so they actually had to talk to us…If we had signed an opt-out agreement, none of that would have been able to occur; it would have just gone ahead...[134]

Further:

> I do not know if you know what the paperwork is like that the landowners receive when they get the bundles of paperwork from the companies, but it is easy to miss things. For example, that strategic cropping land application that occurred, because the people are within a gas tenement they receive bundles of documents every six months and they are approached by land access fellows whom they have been friends with for the last few years and they will just throw these documents in the back of the ute because they think it is just another bundle of notice documents. I think opt-out is dangerous in that they are already confused by the amount of paperwork they get.[135]

AMEC stated:

> I really dislike the term 'bullied' into an opt out agreement. We are one of the major proponents of an opt-out agreement. We think they are very beneficial where there is a well-informed landowner and an explorer—it would be an explorer who would be in an opt-out agreement—who has a longstanding relationship with them and has proven to be a good performer. AMEC and our membership would never support somebody being bullied into anything. That is why we think there should be a framework sitting there—the land access framework—that ensures they have the opportunity to have an opt-out agreement should they feel that they can make that commercial relationship work with an explorer. However, there should be a default situation that the landowner can rely upon to give them a floor of confidence to say that these are the types of issues you should be considering before land access and the conduct you should expect of that resources, exploration or mining company.[136]

AMEC further stated that a well-informed landowner may be a landowner with an 'eight-year-old or a 10-year-old relationship' with the exploration agent. However, '[a] brand-new one is a different story. That is where we said there needs to be that default for somebody to depend upon'.[137]

Additionally, QRC explained:

> There is almost a hierarchy of processes. The opt-out is designed for very early initial exploration where you might be taking some water samples or rock samples... Essentially it works as a deferral. It is not, 'I will never have a compensation agreement.' It is way of saying, 'Given that you want to do these activities over the next 18 months, I am happy not to have a compensation agreement'...

[133] Ms Melanie Findlay, Partner, Rees R & Sydney Jones Solicitors, public hearing transcript, Rockhampton, 14 April 2016, p 25.

[134] Ms Fiona Hayward, public hearing transcript, Rockhampton, 14 April 2016, p 12.

[135] Ibid.

[136] Association of Mining and Exploration Companies, public hearing transcript, Brisbane, 18 April 2016, p 30.

[137] Ibid.

> ... The conduct and compensation agreement is for when I want to dig some trenches or I need to build some roads. That is an engagement process around how that might impact the landholder, making sure they have an ability to design that process so that it works for them.[138]

While acknowledging these comments, representatives from the Lock the Gate Alliance and Property Rights Australia noted that whether or not the provisions were designed for use by a specific subset of landowners, or in specific circumstances, the effect of the legislation is that the opt-out agreements apply across the board, and without any substantial 'default requirements' or other cited safeguards. Lock the Gate Alliance stated:

> I heard the Queensland Resources Council say that it is only for low-impact, early exploration, but, in fact, that is not what the MERCP Act does, as far as I can see. It seems to offer a broad opt-out agreement to be used at any time in the process.[139]

Property Rights Australia stated:

> Anyone who came up with, voted on or in any other way supported an opt-out agreement I am sure would have at some stage in their life had legal advice for a contract. They would have often been simple contracts to buy a house, a bank loan or huge businesses-and yet the legislation has allowed people to opt out. We are told that this legislation is because some of the big farmers want to opt out. I find that very difficult to believe because all they have to do is turn most of the processes over to the lawyers. It is the small producers who will be severely damaged by this.
>
> Not only is it an opt-out agreement; there are very few ways to get back into an agreement. It goes on your title. You lose the protection of appealing to the Land Court. … There is no consumer advice where the access officer has to say to you, 'We are obliged to tell you that you should get legal advice before you agree to this.' It is the smallest, most vulnerable farmers and people who have had the least to do with mining and coal seam gas companies who will be caught up in this who will think there is a safety net somewhere and there is not. There is no safety net at all. I would like to know how many large producers have signed up for an opt-out agreement because I find it unbelievable that they are the ones who have asked, which is what we are told. I also wonder why their preferences should become part of legislation which covers everybody.
>
> …. As I have said before, nobody enters into a significant contract of any sort much less one that goes on their title deed forever and ever without legal advice. I find it amazing that that has ever made it into law.[140]

On balance, EDO Qld, Mackay Conservation Group, landholders and the Oakey Coal Action Alliance concluded consistently that there is 'little benefit provided to landholders through this provision, and substantial risk', as once an opt-out agreement is signed, there is limited incentive for resource companies to seek to establish a CCA, and the landholder is left with 'no recourse to the Land Court if there is a material change to the activity'.[141]

Safeguards and protections

While submitters critical of opt-out agreements generally suggested that their preference would be for the section 45 provisions to be repealed, they also discussed a broad range of possible safeguards or other measures that would ensure better information and protections for landowners who seek to establish such an agreement. These include:

[138] Queensland Resources Council, public hearing transcript, Brisbane, 18 April 2016, pp 12-13.

[139] Lock the Gate Alliance , public hearing transcript, Brisbane, 18 April 2016, p 17.

[140] Property Rights Australia, public hearing transcript, Rockhampton, 14 April 2016, pp 1-2.

[141] Environmental Defenders Office Qld, submission 21, p 4; Mackay Conservation Group, submission 14, p 2; Juanita Halden, submission 11, p 3; Oakey Coal Action Alliance Inc, submission 6, p 2.

- an amendment to allow landholders who sign an opt-out agreement to retain the right to enter into a CCA
- an extension of the statutory cooling off period and a requirement that legal advice be obtained, and
- the use of template agreements.

It was widely considered, as the EDO submitted, that while 'landholders need strong laws which support their right in negotiating with resources operators', 'the opt-out agreement provisions as provided in the MERCP Act are vague as to what is to be contained in an opt-out agreement, further exposing landholders to misuse of this section by mining proponents'.[142] Cotton Australia similarly stated that 'legislation is required to provide protections' in the event that landowners choose to opt out, arguing that the MERCP Act did not 'go far enough to provide these protections for landholders'.[143]

Retention of the right to enter into a CCA

In calling for greater protections for landowners who sign an opt-out agreement, Cotton Australia referred to comments in its 2014 submission to the then Agriculture, Resources and Environment Committee's parliamentary inquiry into the MERCP Act's enabling bill:

> Cotton Australia is concerned that s. 45 allows landholders to opt-out of a conduct and compensation agreement (CCA) with no limits as to the circumstances under which an opt-out agreement can be made. This unlimited ability for opt-out encourages poor conduct on the part of resource authority holders.
>
> An amendment should be made to allow a purchaser of land where an opt-out agreement is in place to have the right to enter into a CCA.[144]

The EDO also called for a number of related amendments to be made, as follows:

> (c) Require that a Notice of Intention to Negotiate (NIN) must first be provided by the resource authority holder, following which the landholder may elect to enter into an opt-out agreement;
>
> (d) Require that the opt-out agreement will only apply to the activities provided for in the NIN and to the extent identified on the map;
>
> (e) Enable the landholder to call upon the resource authority holder to enter into a CCA for the activities provided for in the opt-out agreement;
>
> (f) Enable the landholder to unilaterally terminate the opt-out agreement where they have a reasonable excuse;
>
> (g) Insert a provision, rather than a note, providing that the resource authority holder still has a compensation liability under section 80.[145]

Legal advice and cooling off periods

Stakeholders were in broad agreement as to the importance of landholders obtaining independent legal advice prior to signing any opt-out agreement, and of a sufficient 'cooling off' period being in place.

Cotton Australia, for example, referred to previous comments that supported a range of suggestions made by Shine Lawyers in 2014, 'including the requirement that independent legal advice be

[142] Environmental Defenders Office Qld, submission 21, p 4.
[143] Cotton Australia, submission 8, p 2.
[144] Cotton Australia, submission 6 to the Agriculture, Resources and Environment Committee's *Inquiry into the Mineral and Energy Resources (Common Provisions) Bill 2014,* 2014, p 2.
[145] Environmental Defenders Office Qld, submission 21, pp 4-5.

afforded to the landholder'.[146] Rosewood District Protection Organisation Inc. similarly highlighted concerns about a lack of safeguards 'such as information and warning statements to ensure landowners are aware of the risks and implications of [opt-out] agreements' – issues which 'are important' and 'need to be addressed'.[147]

In relation to the need for such safeguards, Property Rights Australia stated:

> The process basically is that the resources company has to start the process, but somewhere along, when people start complaining about it, they can say, 'Well, you can opt out of this.' I think they should be required to say, 'Before you do that you must obtain independent legal advice from a specialist in the area' - because there is so much involved in every aspect of the law these days, you need specialists - and there be ... longer cooling-off periods.[148]

PRA suggested that more appropriate requirements might call for both a cooling off period of 'at least 21 days and consumer style advice that you must get legal advice on this'.[149] EDO Qld similarly concluded that a period of 'at least 20 business days' would be more appropriate and also recommended further both that the landholder 'be provided with the opportunity to receive professional advice before entering the agreement',[150] and that the resource authority be required 'to compensate the landholder for the reasonable and necessary legal, accounting and valuation fees incurred by the landholder in negotiating the opt-out agreement'.[151]

A rural property lawyer suggested that a cooling off certificate might take the form of 'a guarantor's certificate like you get for a bank advice or something like that', which must be countersigned by a solicitor or equivalent:

> It could even be a prescribed form that they have to go to somewhere and they just have to read it out and say, 'I understand that this will bind my title. I understand that there might be impacts to my business. I understand that there might be a reduction of income during the period.' Even if it is a specified form...[152]

Template agreements

Stakeholders also discussed the use of template CCAs, and whether they might serve to simplify the negotiation of a CCA, reducing the need for opt-out agreements and thereby some of the issues associated with them.

Property Rights Australia submitted that, '… if people want to do it very quickly there could be a very basic CCA, but with the ability to come back into it if it proves to be not satisfactory, and everyone should have access to the Land Court'.[153]

However, it was also emphasised by stakeholders both that existing templates may be inadequate,[154] and that due to the complicated nature of land agreements and differing individual scenarios, templates will necessarily require legal scrutiny to ensure they are appropriately tailored to the circumstances of the parties involved.

Property Rights Australia stated, for example:

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[146] Cotton Australia, submission 6 to the Agriculture, Resources and Environment Committee's *Inquiry into the Mineral and Energy Resources (Common Provisions) Bill 2014,* 2014, p 2.

[147] Shane Knuth MP, quoted in Rosewood District Protection Organisation Inc, submission 5, p 2.

[148] Property Rights Australia, public hearing transcript*,* Rockhampton, 14 April 2016, p 4.

[149] Property Rights Australia, public hearing transcript*,* Rockhampton, 14 April 2016, p 6.

[150] Environmental Defenders Office Qld, submission 21, p 5.

[151] Ibid.

[152] Ms Melanie Findlay, Partner, Rees R & Sydney Jones Solicitors, public hearing transcript*,* Rockhampton, 14 April 2016, p 25.

[153] Property Rights Australia, public hearing transcript*,* Rockhampton, 14 April 2016, p 3.

[154] Property Rights Australia, public hearing transcript*,* Rockhampton, 14 April 2016, p 7.

> You might think you are covered when you sign a template agreement and it just is not the case. There are huge problems people have with biosecurity, including weeds which need to be taken care of. As cattle producers, for every single consignment of cattle that we sell we sign an agreement called a livestock production assurance which basically says that these animals are free of any sort of contamination, yet I do not know how we can actually declare that when we do not know what mining contamination or resources contamination there may be in those cattle. Legal advice was obtained by the Cattle Council which they will not release and we can only imagine that that is because we are liable. Some of the early notes on LPA suggested that in some places and in some circumstances landholders rather than the resources companies might be responsible for contamination clean-ups, and that has apparently again come up in the chain of custody bill. There are a lot of things that need to be covered and I have heard some access officers say that some of the legal firms overbuild these contracts. I am sorry, but when they are to last for 30 to 50 years and they go on your title-you have to sell that contract along with your place, your inheritors will inherit that contract-I just cannot see that there is any such thing as overbuilding the contract and I think a template would prove to be highly inadequate...It could be better than an opt-out agreement, but there has to be a definite ability to revisit and do a proper CCA when people have had a bit of experience and realise they are not very protected.[155]

One witness highlighted that when template agreements were trialled in New South Wales, it was found that companies had started establishing their own company template agreements and adding in extra conditions and with altered general terms to the extent that the Farmers' Federation no longer encouraged them.[156]

The witness also stated that she was aware of one company that uses a master agreement to which they add new pages to cover new activities, and 'the only thing a landowner is allowed to negotiate on is the money. They cannot negotiate on the conduct, or the access terms or anything like that...'.[157] The witness stated further that 'the act has 10 points that say what has to be in one, but what the companies usually forward goes well beyond that'.[158]

Response to submissions

In response to submissions, the department emphasised that opt-out agreements were recommended by the LAIC in 2013 on the basis of consultation from across the resources and agricultural sectors.

The department further advised:

> Section 45 of the Mineral and Energy Resources (Common Provisions) Act 2014 is designed to implement a right which would enable a land owner or occupier, at their complete discretion, to elect [to] enter into an opt-out agreement with a resource authority holder. A landholder cannot be forced to enter an agreement against their will.
>
> If a landholder does not believe that an opt-out agreement is suitable in their circumstances, they are under no obligation to sign an opt-out agreement and have the right to instead negotiate a conduct and compensation agreement or a deferral agreement.[159]

In addition, the department noted that the approach is consistent with the LAIC recommendation that provision of the option to opt-out of a conduct and compensation agreement includes a minimum cooling off period of 10 business days.

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[155] Property Rights Australia, public hearing transcript, Rockhampton, 14 April 2016, p 7.

[156] Ms Melanie Findlay, Partner, Rees R & Sydney Jones Solicitors, public hearing transcript, Rockhampton, 14 April 2016, p 25.

[157] Ibid.

[158] Ms Melanie Findlay, Partner, Rees R & Sydney Jones Solicitors, public hearing transcript, Rockhampton, 14 April 2016, p 26.

[159] Department of Natural Resources and Mines, correspondence dated 21 April 2016, p 3.

Committee comment

The committee acknowledges that there is significant concern among stakeholder groups as to the risks for landholders associated with opt-out agreements. While the committee notes the expressed preference of some groups and individuals that section 45 be repealed, the committee also notes that the inclusion of the section was intended to meet an expressed desire for more flexible arrangements in some circumstances, as per the recommendations of the LAIC.

The committee agrees with stakeholders that it is essential if opt-out agreements are to be used as intended that they are accompanied by adequate protective safeguards beyond the 10 day statutory cooling off period that is currently provided for in the Act.

The committee notes that a range of corollary protective measures were also recommended by the LAIC, and that it is the Government's intention that a number of additional legislative safeguards will be introduced through regulation, as signalled in the draft regulation released for consultation in 2015, which specified:

> *Before executing an opt-out agreement, the resource authority holder must:*
>
> - *provide the landholder with a copy of the Land Access Code and a government fact sheet that will provide information on when opting out might be appropriate and the significance and implications of opting out*
> - *inform the landholder that they have the right to negotiate a conduct and compensation agreement and are not obliged to sign an opt-out agreement.*
>
> *The agreement itself must also include:*
>
> - *an acknowledgement from the landholder that they have received the Land Access Code and the fact sheet, and that the option to opt-out of the requirement for a conduct and compensation agreement is at their discretion*
> - *an acknowledgement from the resource authority holder that they are not absolved of any compensation liability*
> - *a statement that the resource authority holder must comply with the Land Access Code*
> - *a 10 business day cooling-off period for both parties.*[160]

In addition, the committee notes the government's advice that it is in the process of developing an opt-out agreement template, which will be available before the commencement of the MERCP Act.[161]

The committee appreciates the concerns of some stakeholders regarding the opt-out agreements provided under section 45 of the MERCP Act, in particular the complexity of opt-out agreements and the potential impact this may have on landowners in understanding the process and their options. In this regard, the committee supports the government's development of an opt-out agreement template that will help to facilitate the process should landowners choose this option.

[160] Mineral and Energy Resources (Common Provisions) Bill 2014, explanatory notes, p 5; Queensland Government, Department of Natural Resources and Mines, *Draft regulations – restricted land and land access (closed)*, downloaded 22 April 2016.

[161] Ibid.

We are aware that there are protections for landowners, including a 10-day cooling off period and additional legislative safeguards that will be introduced through regulation to provide further information to landowners who are considering opt-out agreements, nevertheless, we are of the view that the protections could be enhanced by requiring that the prescribed requirements include:

- a requirement that the information provided to the landholder be concise and in plain English
- an acknowledgment from the landholder that the landholder had an opportunity to seek legal advice about the proposed opt-out agreement.

Recommendation 7

The committee recommends that the prescribed requirements for opt-out agreements include:

- a requirement that the information provided to the landholder be concise and in plain English
- an acknowledgment from the landholder that the landholder had an opportunity to seek legal advice about the proposed opt-out agreement.

3 Compliance with the *Legislative Standards Act 1992*

3.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* states that 'fundamental legislative principles' (FLPs) 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 examined the application of FLPs to the bill.

3.2 Potential FLP issues

Clauses 7, 101 & general comment

Potential FLP issue: Rights and liberties of individuals - Section 4(2)(a) *Legislative Standards Act 1992*. Does the Bill have sufficient regard to the rights and liberties of individuals?

Summary of provisions

Clause 7 amends the definition of 'restricted land'. Many submissions support the amendment in part. However, the submitters claim the definition remains too restricted and leads to a reduction in rights and liberties of land owners. Many submissions also claim that matters not addressed in the bill allow the MERCP Act to continue in a manner that would impact adversely on land owners' rights and liberties. Some submitters suggest that rights and liberties are affected in the following ways:

- notice to affected landowners
- marking out claim and lease applications
- conduct and compensation agreements.[162]

Notice to Affected Landowners

The *Mineral Resources Act 1989* (MRA) as it currently stands continues long-standing provisions designed to give owners of affected land timely notice that someone has marked out and lodged a mining lease application on their land.

Certificate of Application

> The current mechanism for giving that timely notice – certificate of application – is wholly repealed by the MERCP Act (section 436) and not reinstated by the Bill … It is obviously vital – and an obligatory part of due process – that the owner be the first to learn that the land is affected by a lease application, thereby having the opportunity to inform the mortgagee …[163]

Restricted land

> A landholder could be intending to, or be in the process of constructing major and costly improvements such as water facilities, fencing, yards or buildings on the land the subject of the application. By section 238 of the MR Act, land carrying a certain class of improvement (such as residence, artificial water facility etc) is only restricted land if the improvements were in place at the time the lease application was lodged. A landholder who has not been notified of a lease application

[162] See generally, submission numbers: 1, 6-15, 19 & 20 each raising issues about rights and liberties.

[163] Landholder Services Pty Ltd, submission 1, p 2.

> could spend money and time building improvements which will not be covered by compensation in the event the lease is granted.[164]

(This also raises FLP issues around adequate compensation if the definition inadvertently restricts what a land owner may be compensated for. Similarly, the restriction in notification may result in a landholder failing to be compensated in these circumstances.)

Marking out Claim and Lease Applications

> The Bill leaves the MERCP Act sections 445, 452, 459, 460 in place. And the Bill, clause 101 combines with the above sections to introduce very complicated new provisions concerning entry to private land for supplementary or enhanced marking out, as directed by the chief executive.
>
> …
>
> The traditional reasons for requiring marking out using clearly visible posts at each corner of an application area remain valid notwithstanding the ready availability of GPS coordinates and other related innovations.
>
> …
>
> From the day a claim or lease application begins everyone going on the land….needs to be able to see the application boundaries right there on the ground by visual markers which are compliant with the Act….Such people will generally not have the coordinates or the like with them – the only source of that data for the landholder is likely to be a certificate of application, but that is being abolished.[165]

Conduct and Compensation Agreements

Submission 19 highlights a potential issue in relation to Conduct and Compensation Agreements (CCAs). The submitter asks why the entry regime under the MERCP Act, particularly in relation to requiring a CCA, specifically excludes prospecting permits, mining claims and mining leases granted under the MRA.[166]

If compensation claims are excluded without sufficient justification, this may be a potential FLP breach.

Committee comment

The committee discusses mining leases in more detail under section 2 of this report. The committee is satisfied that the clauses are adequate to achieve the policy aims of the Bill and do not intentionally restrict the rights of landholders.

Clause 107

Potential FLP issue: Power to enter premises – Section 4(3)(e) *Legislative Standards Act 1992*. Does the Bill confer power to enter premises … only with a warrant issued by a judge or other judicial officer?

Summary of provision

Clause 107 places conditions upon a person entering land under section 386V of the MRA for boundary definition purposes. Schedule 1, subsection 3 *Consent for entry of occupied land at night* states that a person may 'enter occupied land under section 386V at night only with the written consent of the owner of the land or the chief executive'.

[164] Landholder Services Pty Ltd, submission 1, p 3.
[165] Landholder Services Pty Ltd, submission 1, pp 2-4.
[166] p&e Law, submission 19, p 2.

Potential FLP issues

A submitter questioned why the chief executive is able to give written permission for entry to occupied land at night, when for every other type of entry under Schedule 1, the written permission of the owner and/or occupier of the land is required. The submission stated:

> Surely night entry should require the written consent of BOTH the owner of the land AND the chief executive. No landowner would wish for persons to be roaming their property at night without written consent. Many rural properties are accessed at night time by pig and kangaroo hunters (with the owner's permission) so it is in the best interests of both safety and accessibility that the owner provides written consent for night entry under section 386V.[167]

The department advised that the new boundary identification framework 'was drafted to reflect the current requirements of a prospecting permit granted for pegging purposes'.[168]

Committee comment

The committee notes the inconsistency that exists between notice for entry at night with notice for entry at other times but considers that the potential breach of FLP is justified in the circumstances.

Clause 55

Potential FLP issue: Immunity from proceedings – Section 4(3)(h) *Legislative Standards Act 1992*. Does the Bill confer immunity from proceeding or prosecution without adequate justification?

Summary of provision

Clause 55 amends section 177 of the MERCP Act to include protections from civil monetary liability for prescribed arbitration institutes. To facilitate overlapping resource authority holders to come to an agreement on co-development of coal and coal seam gas in an overlapping area, disputes on a limited number of matters may be referred to arbitration. Matters which may be referred to arbitration are set out under section 175 of the MERCP Act.

Clause 55 provides that a prescribed arbitration institute does not incur any civil monetary liability through carrying out its obligation to nominate an arbitrator under section 177(2). The immunity does not apply if the prescribed arbitration institute has performed in a manner that is in bad faith or negligent.

Potential FLP issues

Legislation should not confer immunity from proceeding or prosecution without adequate justification.[169] The OQPC Notebook states 'a person who commits a wrong when acting without authority should not be granted immunity. Generally a provision attempting to protect an entity from liability should not extend to liability for dishonesty or negligence. The entity should remain liable for damage caused by the dishonesty or negligence of itself, its officers and employees. The preferred provision provides immunity for action done honestly and without negligence … and if liability is removed it is usually shifted to the State'.[170]

The former Scrutiny of Legislation Committee (SLC) stated that one of the fundamental principles of law is that everyone is equal before the law, and each person should therefore be fully liable for their

[167] GL Campbell & Co, submission 9, p 3.

[168] Department of Natural Resources and Mines, correspondence dated 21 April 2016, p 7.

[169] *Legislative Standards Act 1992*, section 4(3)(h).

[170] Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 64.

acts or omissions. Notwithstanding that position, the SLC also recognised that conferral of immunity was appropriate in certain situations.[171]

The explanatory notes stated:

> Whilst the Bill confers immunity from a prosecution, there is adequate justification for this immunity … The Bill provides that if a prescribed arbitration institute, acting in good faith, nominates an arbitrator to an arbitration process allowed under chapter 4, part 6, division 4, the prescribed arbitration institute is not liable, civil monetarily, for nominating the arbitrator.
>
> Normally, to avoid liability, an arbitration institute would need to establish that the parties to arbitration had agreed to the exclusion of liability, for example, by agreeing to the arbitration institute's rules in the course of appointing the arbitration institute to select an arbitrator.
>
> The provision is considered justified because the duty to appoint an arbitrator is imposed on the arbitration institute by the MERCP Act, and the prescribed arbitration institute may not have an opportunity to agree to contractual terms with the resource authority holders on the exclusion of liability.
>
> It should be noted that nomination of an arbitrator under section 177 does not equal appointment of an arbitrator. In addition, resource authority holders can access sections 12 and 13 of the *Commercial Arbitration Act 2013* (CAA) if they find issue with the nomination of a certain arbitrator and more than one nomination by a prescribed arbitration institute may be required. These sections in the CAA set out grounds on which appointment of an arbitrator may be challenged and a default procedure for challenging the appointment or continued appointment of an arbitrator in the absence of agreement on a procedure.
>
> In providing immunity to the prescribed arbitration institute, the liability does not transfer to the State. Further, the Government will not be involved in the dispute resolution process for overlapping tenure for coal and coal seam gas in any capacity.[172]

Committee comment

The committee considers that the potential breach of FLP is justified in the circumstances.

Clause 7

Potential FLP issue: Clear and precise – Section 4(3)(k) *Legislative Standards Act 1992*. Is the Bill unambiguous and drafted in a sufficiently clear and precise way?

Summary of provision

Clause 7 provides for a definition of 'restricted land'. The definition refers to a 'permanent building'.

Potential FLP issues

Section 68(1)(a)(iii) states that a permanent building is a building used for a business or other purpose if it is reasonably considered that:

- a building that cannot be easily relocated, and
- the building cannot co-exist with authorised activities carried out under resource authorities.

Section 68(3) states that 'residence' does not include accommodation for non-resident workers, with the example provided being 'accommodation for shearers or seasonal fruit pickers'.

[171] Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 64; Alert Digest 1998/1, p 5.

[172] Mineral and Other Legislation Amendment Bill 2016, explanatory notes, pp 5-6.

The Queensland Farmers' Federation (QFF) asked the committee to seek clarification around the definition of 'permanent building' with regards to the definition of 'restricted land' within the MERCP Act. The QFF submitted:

> QFF brings to the attention of the Committee the various Industry Awards pertaining to the employment of seasonal and non-resident workers. In all cases, these Awards specify minimum requirements for accommodation to include 'good' and 'suitable' accommodation (for example, the Pastoral Award). This includes appropriate levels of lighting, bathroom facilities through to provision of dining rooms or kitchen facilities, with some Awards specifying accommodation which includes the services of a full-time cook with 'properly served meals, five times a day'.
>
> …
>
> QFF requests the deletion of the definition for 'residence' (under s.68, MERCP Act – specifically the exclusion for non-resident workers) as this section adds uncertainty and is unnecessary, given the use of the term 'permanent building' as a criteria of a 'residence'.[173]

The peak national body for upstream oil and gas exploration - Australian Petroleum Production and Exploration Association - also requested clarification on what defines a permanent building that triggers restricted land under section 68 of the MERCP Act.[174]

Committee comment

The committee considers that the term 'permanent building' ostensibly appears to have internal logic with no obvious ambiguities such as would readily point to a FLP breach. However, given the criticisms of the definition raised in submissions, both from those generally for, as well as those against the bill, industry participants, and persons with extensive experience in this area, the committee seeks further assurance from the department that the definition is adequate to achieve the policy aims of the bill.

Point for Clarification 3:

The committee seeks assurance that the term 'permanent building' within the definition of restricted land is adequate to achieve the policy aims of the bill.

Clause 101

Potential FLP issue: Scrutiny of the Legislative Assembly – Section 4(4)(b) *Legislative Standards Act 1992*. Does the Bill sufficiently subject the exercise of a proposed delegated legislative power (instrument) to the scrutiny of the Legislative Assembly?

Summary of provision

Clause 101 introduces a new section 386Y to establish a process and provide for a penalty where a person entering land to mark the boundary of a mining tenement under section 386V contravenes a condition of their authority to enter land or contravenes the MRA.

Section 386Y allows the chief executive to override the application of the section and withdraw the authority for a person to carry out activities under the section.

Potential FLP issues

It could be argued that this may be inconsistent with the FLP that legislation has sufficient regard to the institution of Parliament.

[173] Queensland Farmers' Federation, submission 15, pp 5-6.

[174] Australian Petroleum Production and Exploration Association Limited, submission 16, p 3.

This clause also allows the chief executive to impose a penalty that may be inconsistent with the FLP that legislation has sufficient regard to the rights and liberties of individuals.

The explanatory notes stated:

> To mitigate against these potential breaches a show cause process has been introduced. This process allows the person who the chief executive reasonably believes to have breached a condition of their authority to enter land or a provision in the MRA, to give reasons to the chief executive as to why their authority to enter the land should not end and why a penalty should not be imposed.
>
> This clause also provides for a person to appeal the chief executive's decision to the Land Court if they are given notice that their authority to enter the land under section 386V has been withdrawn and/or if a penalty has been imposed.[175]

Committee comment

The committee considers that the potential breach of FLP is justified in the circumstances.

3.3 Explanatory notes

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

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

[175] Mineral and Other Legislation Amendment Bill 2016, explanatory notes, pp 4-5.

Appendices

Appendix A – List of submitters

Sub #	Name
1	George Houen
2	Peter and Rhonda Selmanovic
3	GVK Hancock Coal Pty Ltd
4	Ergon Energy
5	Rosewood District Protection Organisation Inc
6	Oakey Coal Action Alliance
7	Whitsunday Residents Against Dumping
8	Cotton Australia
9	GL Campbell & Co
10	Property Rights Australia
11	Juanita Halden
12	Darling Downs Environment Council Inc.
13	Environmental Defenders Office of North Queensland
14	Mackay Conservation Group
15	Queensland Farmers' Federation
16	Australian Petroleum Production & Exploration Association Limited (APPEA)
17	Powerlink
18	Queensland Resources Council
19	p&e Law
20	Lock the Gate Alliance
21	Environmental Defenders Office Qld

Appendix B – List of witnesses at the public briefing and public hearings

Public briefing – 16 March 2016 – Brisbane

1	Mr Lyall Hinrichsen, Executive Director, Land and Mines Policy, Department of Natural Resources and Mines
2	Mr Marcus Rees, Director, Resources Policy and Projects, Land and Mines Policy, Department of Natural Resources and Mines
3	Ms Melissa Hallam, Manager, Resources Policy and Projects, Land and Mines Policy, Department of Natural Resources and Mines
4	Mrs Anita Bellamy-McCourt, Manager, Resources Policy and Projects, Land and Mines Policy, Department of Natural Resources and Mines
5	Ms Linda Woo, Executive Director, Policy and Projects, Office of Regulatory Policy, Department of Justice and Attorney-General
6	Ms Karen Jackson, Senior Policy and Research Officer, Office of Regulatory Policy, Department of Justice and Attorney-General
7	Mr Michael Sarquis, Executive Director, Office of Liquor and Gaming Regulation, Department of Justice and Attorney-General
8	Mr Craig Turner, General Manager - Licensing, Office of Liquor and Gaming Regulation, Department of Justice and Attorney-General
9	Mr Matthew Lawson, Project Director, Queen's Wharf Brisbane, Department of State Development
10	Ms Hannah Jorgensen, Principal Project Officer, Special Projects Unit, Department of State Development
11	Mr Simon Banfield, Director, Economic Development Queensland Planning, Economic Development Queensland, Department of Infrastructure, Local Government and Planning
12	Mr Tom Leach, Manager, Economic Development Queensland Planning, Department of Infrastructure, Local Government and Planning
13	Ms Jayne Griffiths, Principal Planner, Economic Development Queensland Planning, Department of Infrastructure, Local Government and Planning

Public hearing – 12 April 2016 – Toowoomba

1	Mr Lee Mason, Secretary, Darling Downs Environmental Council Inc.
2	Dr Georgina Davis, Policy Officer, Resources, Queensland Farmers' Federation
3	Mr Michael Murray, General Manager, Toowoomba Regional Office, Cotton Australia
4	Mr Frank Ashman, President, Oakey Coal Action Alliance Inc.
5	Mr George Houen, Principal, Landholder Services Pty Ltd

Public hearing – 14 April 2016 – Rockhampton

1	Ms Joanne Rea, Treasurer, Property Rights Australia
2	Ms Fiona Hayward, Private capacity
3	Mr Peter Selmanovic, Private capacity
4	Mrs Rhonda Selmanovic, Private capacity
5	Ms Melanie Findlay, Partner, Rees R & Sydney Jones Solicitors

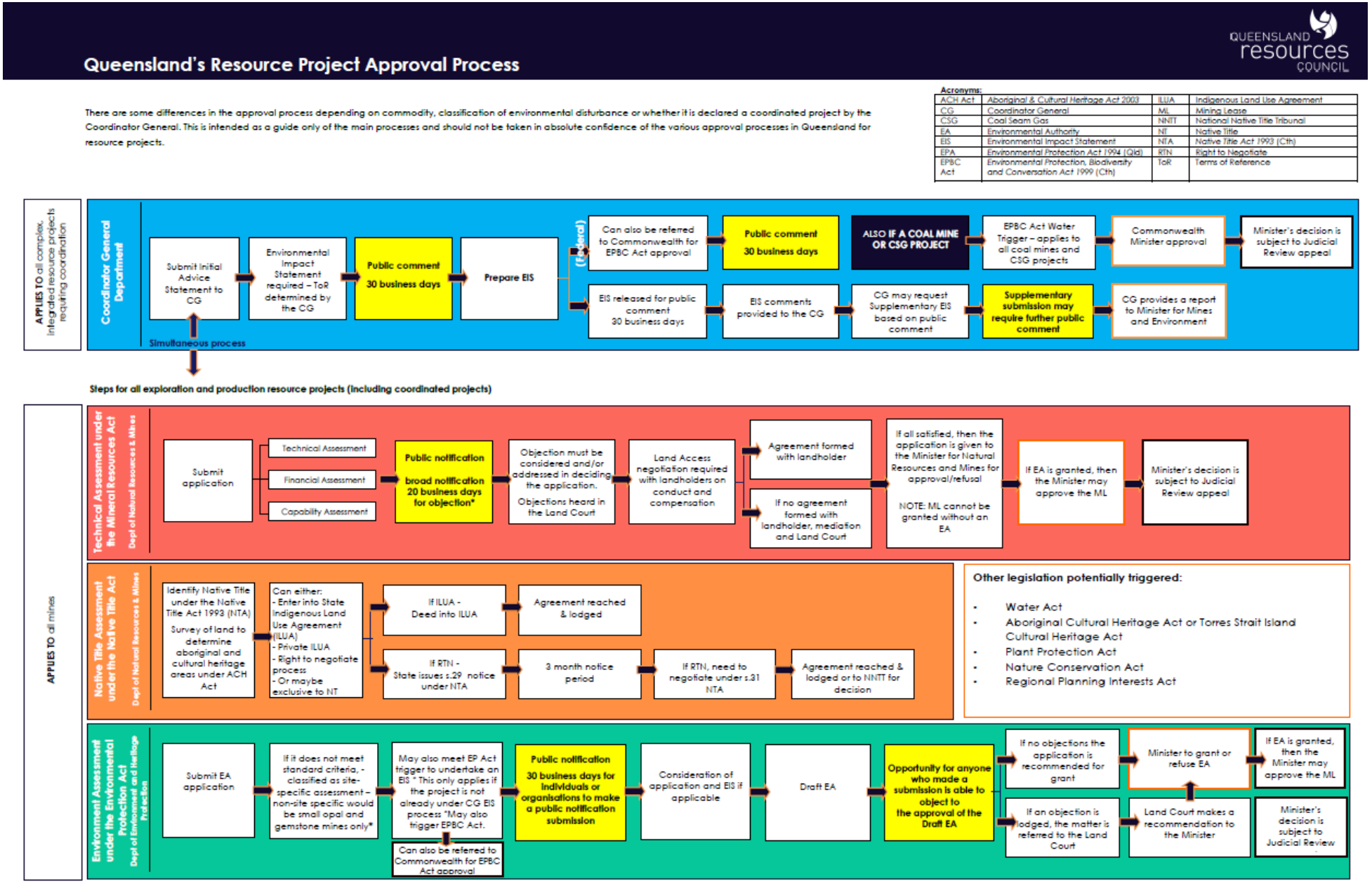
Public hearing – 18 April 2016 – Brisbane

1	Mr Brynn Mathews, Management Committee Member, Environmental Defenders Office of Northern Queensland *(via teleconference)*
2	Ms Revel Pointon, Solicitor, Environmental Defenders Office (Qld)
3	Mr Andrew Barger, Director – Infrastructure & Economics, Queensland Resources Council
4	Ms Katie-Anne Mulder, Manager – Resources Policy, Queensland Resources Council
5	Mr Jim Oliver, Expert Consultant – Overlapping Tenures, Queensland Resources Council
6	Ms Carmel Flint, Campaign Coordinator, Lock the Gate Alliance
7	Mr Tim Stork, Legal Counsel, Planning Environment and Property, Ergon Energy
8	Mr Bernie Hogan, Regional Manager – Eastern States & NT, Association of Mining and Exploration Companies

Public hearing – 20 April 2016 – Brisbane

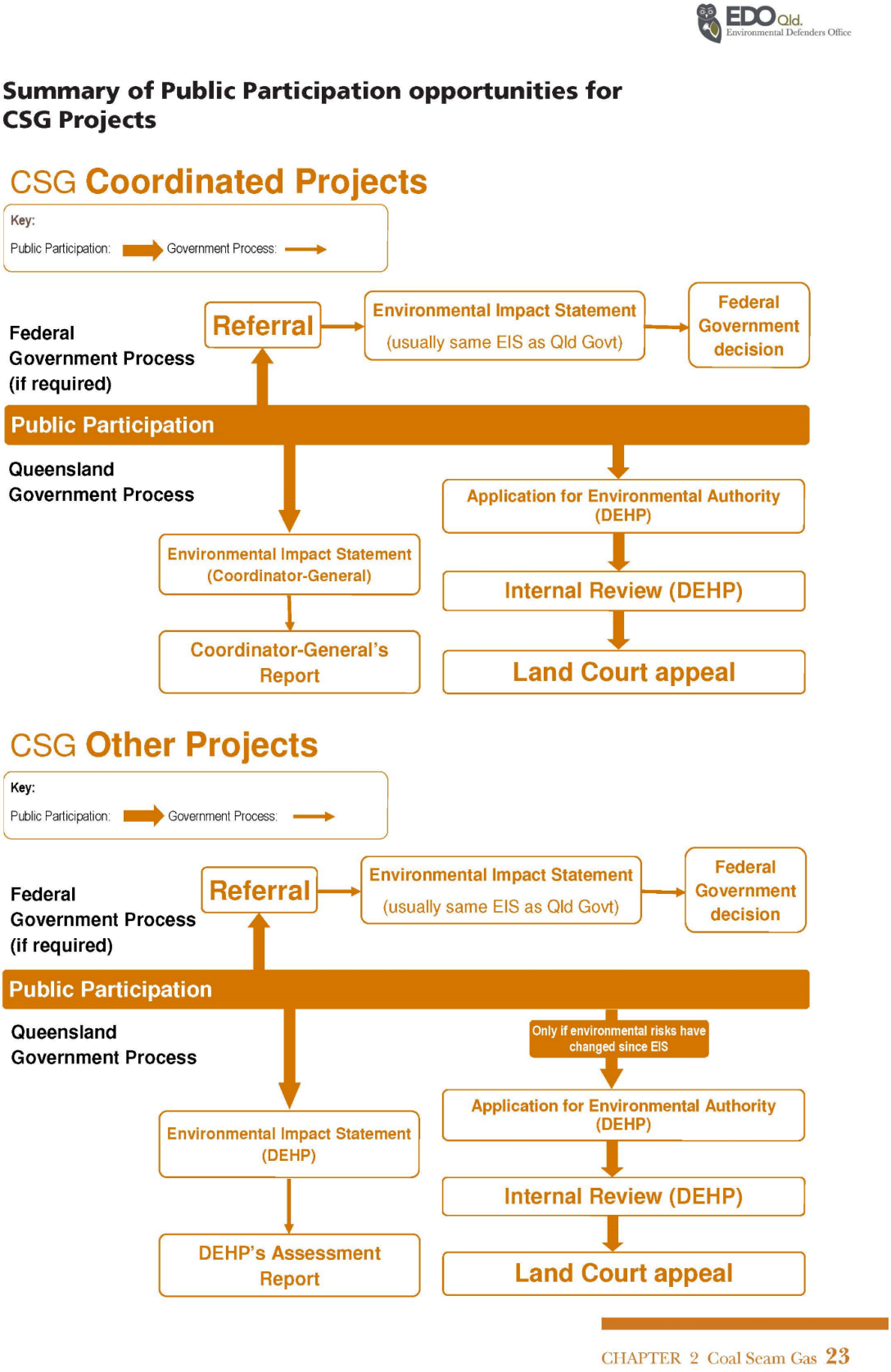
1	Dr Greg Leach, Senior Policy Adviser, AgForce
2	Ms Julia Connelly, Policy Solicitor, Queensland Law Society
3	Mr Gavin Scott, Acting Chair, Mining and Resources Law Committee, Queensland Law Society
4	Mr Lyall Hinrichsen, Executive Director, Land and Mines Policy, Department of Natural Resources and Mines
5	Mr Marcus Rees, Director, Land and Mines Policy, Department of Natural Resources and Mines

Appendix C - Queensland's Resource Project Approval Process



*Depicts a proposed legislative change made under the Minerals and Energy Resources (Common Provisions) Bill 2014. The proposed amendments to the Minerals Resources Act 1989 provided for limitations on who would be notified, and therefore given standing to make an objection, about a ML application. The Bill provided that for such technical assessments outlined in the ML application that only directly and adjacent affected landholders and local governments would be required to be notified of a ML application. The notification, and therefore standing for objections, to a mining project under other statutory instruments remain largely unchanged (i.e. notification under the Environmental Protection Act 1994). The proposed amendments to the Environmental Protection Act 1994 were to only provide administrative review/objections to medium/high risk mining projects. This proposed amendment meant that small opal and gemstone mining leases, that are subject to standard conditions (non-site specific) if they meet the Regulators criteria, do not provide for an objection right.

Appendix D – Summary of Public Participation opportunities for CSG Projects

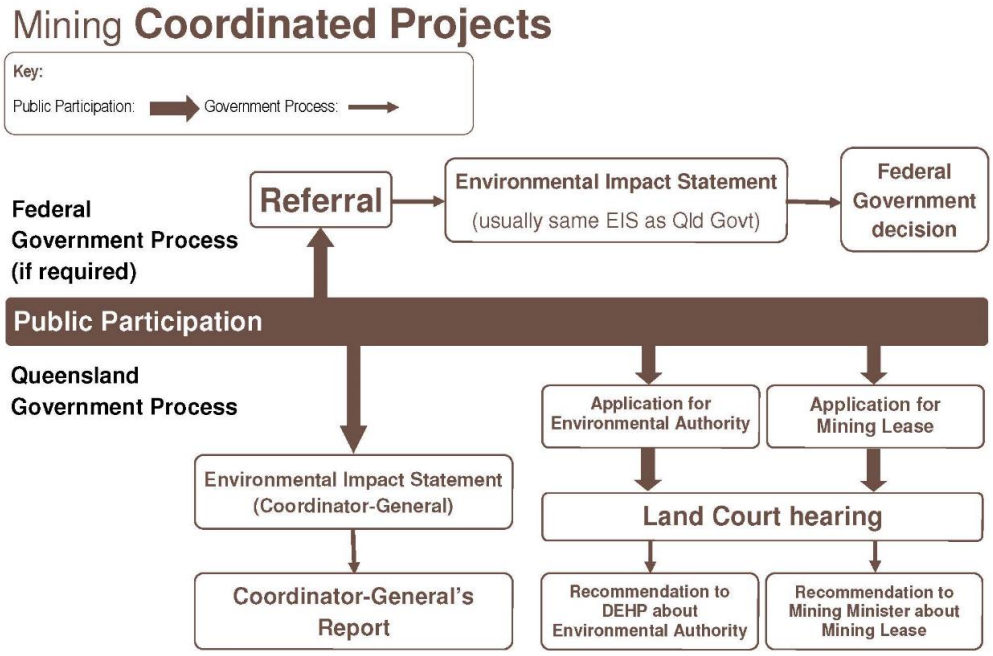


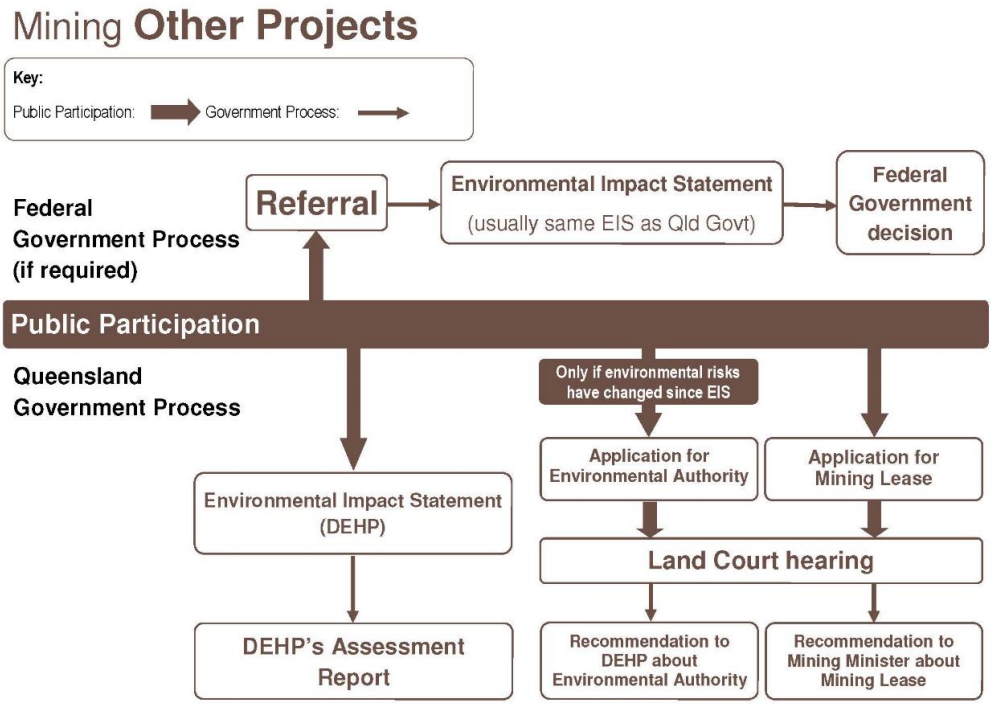
Source: Environmental Defenders Office (Qld), *Mining and Coal Seam Gas Law in Queensland – A guide for the community*, 2013, p 23

Appendix E – Summary of Public Participation opportunities for Mining Projects

EDO Qld. Environmental Defenders Office

Summary of Public Participation opportunities for Mining Projects





CHAPTER 3 Mining 43

Source: Environmental Defenders Office (Qld), *Mining and Coal Seam Gas Law in Queensland – A guide for the community*, 2013, p 43

Appendix F – Major objection/appeal legislative points

Department of Natural Resources and Mines – Response to Questions on Notice - 20 April 2016

Objection/Appeal	Enabling Act	Jurisdiction	Nature
Mining lease	*Mineral Resources Act 1989*	Queensland Land Court	• Objection to the application for the grant of a mining lease may be made by an entity (refer section 260 and section 269 of the *Mineral Resources Act 1989*).
Environmental Authority	*Environmental Protection Act 1994*	Queensland Land Court	• Objection to the grant of an environmental authority may be made by a submitter to the approval of the application for an environmental authority (refer section 182 *Environmental Protection Act 1994*).
Native title	*Native Title Act 1993*	National Native Title Tribunal Federal Court	• Establishes a requirement to negotiate with native title parties to reach and register an agreement. • This may be reached through a right to negotiate process (RTN) or an Indigenous Land Use Agreement (ILUA). • If unable to reach agreement through the RTN process, can be referred to the National Native Title Tribunal. • A party to the RTN may appeal to the Federal Court on a question of law, from any decision or determination of the Tribunal in that proceeding.
Regional Planning Interests Decision (e.g. prime agricultural and strategic cropping land)	*Regional Planning Interests Act 2014*	Queensland Planning and Environment Court	• An applicant, land owner, or a landholder affected by the proximity or impact of the resource activity may appeal against a regional interests decision to the Planning and Environment Court.

Appendix G – Jurisdictional Comparison – Restricted Land Framework

Department of Natural Resources and Mines - Response to Questions on Notice - 16 March 2016

Jurisdictional Comparison - Restricted Land Framework[1]

State	Legislation and Overview
Queensland[2]	**Legislation** • *Mineral and Energy Resources (Common Provisions) Act 2014* as amended by the Mineral and Other Legislation Amendment Bill 2016 **Overview** For a production or exploration resource authority, restricted land means land within 200 metres of: • a permanent building used for the purpose of a residence, business, childcare centre, hospital, library or place of worship; • a permanent building used for community, sporting or recreational purpose; • an area used for a school or for environmentally relevant activities that are aquaculture, intensive animal feedlotting, pig keeping or poultry farming as within the meaning of the Environmental Protection Regulation 2008, schedule 2, part 1; and land within 50 metres of: • a principal stockyard, dam, bore, artesian well, water storage facility, cemetery or burial place. For all other resource authority types (i.e. water monitoring authority, survey licence or data monitoring authority), restricted land applies to land within 50 metres of: • a permanent building used for the purpose of a residence, business, childcare centre, hospital, library or place of worship; • a permanent building used for community, sporting or recreational purpose; • an area used for a school or for environmentally relevant activities that are aquaculture, intensive animal feedlotting, pig keeping or poultry farming as within the meaning of the Environmental Protection Regulation 2008, schedule 2, part 1. Land occupied by an interconnecting water pipeline providing water to a principal stockyard, dam, bore, artesian well, water storage facility is not restricted land. Written landholder consent must be obtained where the holder of a resource authority wishes to enter restricted land.

[1] It is difficult to directly compare the restricted land frameworks across Australian jurisdictions as the approaches can differ significantly. This table provides a comparative table of the provisions most analogous to Queensland's restricted land framework.

[2] Existing restricted land frameworks included in the *Mineral Resources Act 1989*, and *Geothermal Energy Act 2010* are amended to fall under the *Mineral and Energy Resources (Common Provisions) Act 2014*.

State	Legislation and Overview
	Exemptions to restricted land • the installation of an underground pipeline or cable if the installation, including the placing of backfill, is completed within 30 days after the start of the installation ; or • the operation, maintenance or decommissioning of an underground pipeline or cable; or • an activity that may be carried out on land by a member of the public without requiring specific approval of an entity; • crossing land in order to enter the resource authority area, if the only entry to the area is through the land and— o each owner and occupier of the land has agreed in writing; or o if an owner or occupier of the land has refused to agree—the refusal is unreasonable; or • an activity prescribed by regulation.
New South Wales	**Legislation** • *Mining Act 1992* • *Petroleum (Onshore) Act 1991* **Overview – *Mining Act 1992* (NSW)** New South Wales prescribes distances from homes, gardens or 'significant improvements' over which exploration licence, assessment lease, mining lease, mineral claim or permit for entry in other circumstances holders may not exercise the rights conferred by their lease or licence. There are slight variations in what areas are protected, depending on the type of lease or licence held. Without written consent from the owner (and in some cases, occupier), the holder of the licence or lease cannot carry out activities permitted by the licence or lease: • within 200 metres (or, if a greater distance is prescribed by the regulations, the greater distance) of a dwelling-house which is the principal place of residence for its occupier; • within 50 metres (or, if a greater distance is prescribed by the regulations, the greater distance) of a garden; or • over any 'significant improvement' (other than one constructed or used for mining purposes only). The consent is irrevocable. *Mining leases* In relation to mining leases, the restricted land distances only apply to dwelling-houses, gardens or significant improvements in existence at the relevant date.

State	Legislation and Overview
	Woolsheds and shearing sheds A mineral claim or permit for entry in other circumstances may not be granted over the surface of any land on which (or within the prescribed distance of which) there is a woolshed or shearing shed which is being used as such. *What is a 'significant improvement'?* For an exploration licence, assessment lease, mineral claim or a permit holder for entry in other circumstances, a 'significant improvement' is: any substantial building, dam, reservoir, contour bank, graded bank, levee, water disposal area, soil conservation work or other valuable work or structure. A significant improvement is not an improvement constructed or used only for mining purposes. For a mining lease, a significant improvement is as defined in section 23A of Schedule 1. It includes land over which the landholder has made a claim to the Minister to have defined as a significant improvement. ***Petroleum (Onshore) Act 1991* (NSW)** The holder of a petroleum title must not, without consent of the owner or occupier, undertake any prospecting or mining operations (or erect any works) on the surface of any land : • on which, or within 200 metres of which, there is a dwelling-house that is a principal place of residence of the occupier; or • on which, or within 50 metres of which, there is any garden, vineyard or orchard; or • on which there is any improvement (being a substantial building, dam, reservoir, contour bank, graded bank, levee, water disposal area, soil conservation work, or other valuable work or structure) other than an improvement constructed or used for mining or prospecting operations. Consent is irrevocable. These restricted land provisions do not apply to the holder of a petroleum title who carries out a seismic survey on a road within the meaning of the *Road Transport Act 2013*, provided the holder has given 21 days of written notice.
South Australia	**Legislation** • *Mining Act 1971* • *Opal Mining Act 1995* • *Petroleum and Geothermal Energy Act 2000* **Overview – *Mining Act 1971* (SA)** South Australia refers to restricted land as 'exempt land'. Exempt land cannot be entered by resource authority unless landholder waives

State	Legislation and Overview

	the exemption.
	
	Exempt land categories
	• Land that is lawfully and genuinely used:
	  ○ as a yard, garden, cultivated field, plantation, orchard or vineyard
	  ○ as an airfield, railway or tramway
	  ○ as the grounds of a church, chapel, school, hospital or institution; or
	  ○ Land that constitutes any parklands or recreational grounds under the control of a council.
	• Land that is:
	  ○ dedicated or reserved, pursuant to statute, for the purpose or waterworks; or
	  ○ vested in the Minister for Public Works for the purpose of waterworks; or
	  ○ comprised within an easement in favour of the Minister of Public Works; or
	• Land that constitutes a forest reserve under the *Forestry Act 1950*; or
	• Any separate parcel of land of less than 2000m2 within any city, town or township; or
	• Unless it is an improvement made for the purpose of mining operations, land that is situated:
	  ○ within 400 metres of a building or structure used as a place of residence; or
	  ○ within 150 metres of:
	  ▪ a building or structure, with a value of $200 or more, used for an industrial or commercial purpose;
	or a spring, well or dam, Consent to access to these exempt land areas is provided with a 5 business day cooling-off period. The above categories do not prevent the pegging out of a claim.
	
	Opal Mining Act 1995
	If the land is outside a precious stones field, the following land is exempt from mining operations under the *Opal Mining Act 1995*:
	• land that is situated—
	  ○ within 400 metres of a building or structure used as a place of residence (except if it is excluded by regulation); or
	  ○ within 150 metres of—
	  ▪ a building or structure, with a value of $200 or more, used for an industrial or commercial purpose; or
	  ▪ a spring, well, reservoir or dam;
	  ▪ (but not if it is an improvement made for the purposes of mining operations);
	• land that:
	  ○ constitutes a distinct allotment of less than 2,000 square metres in a city, town or township;

State	Legislation and Overview
	○ is genuinely used as a yard, garden, plantation, orchard or vineyard; ○ is under crop; ○ is genuinely used as an airfield, railway, tramway or busway; ○ is dedicated or reserved by or under a prescribed Act, or by or under an Act for a prescribed purpose; or ▪ that is vested in a Minister for a prescribed purpose; or ▪ that is comprised within an easement in favour of a Minister; ○ is constituted as a forest reserve under the Forestry Act 1950; • the grounds of a church, chapel, school, hospital or institution; • parklands or recreation grounds under the control of a council. Precious stones tenements may still be pegged out on exempt land, except: • within 400 metres of a building or structure used as a place of residence (except if excluded by regulation); or • within 150 metres of— ○ a building or structure, with a value of $200 or more, used for an industrial or commercial purpose; or ○ a spring, well, reservoir or dam. The above does not apply if it is an improvement made for the purpose of a mining operation. ***Petroleum and Geothermal Energy Act 2000*** There is no 'exempt land' framework under this Act.
Western Australia	**Legislation** • *Mining Act 1978* • *Petroleum and Geothermal Energy Resources Act 1967* **Overview – *Mining Act 1978* (WA)** Under Western Australia's *Mining Act 1978*, consent of the owner and the occupier of private land must be obtained before a mining tenement can be granted Without the consent of the landowner (or occupier, where applicable), a mining tenement cannot be granted over, or within 100 metres of: • Private land and which is in bona fide and regular use as a yard, stockyard, garden, orchard, vineyard, plant nursery or plantation or is land under cultivation; • Private land which is the site of a cemetery or burial ground;

State	Legislation and Overview
	• Private land which is the site of dam, bore, well or spring; • Private land on which there is a substantial improvement; A mining tenement cannot be granted without consent over separate parcels of land which are 2000m2 or less. The tenement may be granted only in respect of the above types of private land if it is more than 30 metres below the lowest part of the natural surface of that private land. Surface rights may then be negotiated. **Overview –** ***Petroleum and Geothermal Energy Resources Act 1967*** Under this Act, restrictions apply to permittees, holders of drilling reservations, access authorities, special prospection authorities, lessees or licensees wishing to explore or operate on certain classes of land. The aforementioned permit, authority or licence holders cannot enter the following land without prior consent: • private land not exceeding 2,000m2; or • land used as a cemetery or burial place; or • land 150 metres laterally from any cemetery or burial place, reservoir (including any natural or artificial storage or accumulation of water, spring, dam bore or artesian well) or 'substantial improvement'. The Minister is the sole judge of whether an improvement is substantial.
Victoria	**Legislation** • *Mineral Resources (Sustainable Development) Act 1990* • *Petroleum Act 1998* **Overview –** ***Mineral Resources (Sustainable Development) Act 1990*** A licensee (the holder of an exploration licence, a mining licence, a prospecting licence or a retention licence) must not carry out any work permitted under the licence within 100 metres laterally and below: • A dwelling-house (which existed prior to an approved work plan being registered in respect of the licence); ○ The distance is measured from the boundary allotment, if the allotment is 0·4 hectares or less. Otherwise, the distance is 25 metres from the outer edge of any eave which is part of the dwelling; • Land subject to an ongoing protection declaration under the *Aboriginal Heritage Act 2006* (Vic); • A place, recorded in the Victorian Aboriginal Heritage Register, which falls within the meaning under the *Aboriginal Heritage Act 2006* (Vic); • An archaeological site on the Heritage Inventory under the *Heritage Act 1995* (Vic);

State	Legislation and Overview
	• An archaeological place or object included in the Heritage Register under the *Heritage Act 1995* (Vic). The restriction does not extend to the carrying out of low impact exploration. The Minister has power to authorise work near a dwelling (after considering the advice of the Mining and Environment Advisory Committee or after consultation with the relevant municipal council). Consent to work under the licence must be given in writing. Consent cannot be withdrawn by the owner *or* by subsequent owners. ***Petroleum Act 1998*** There is no comparable restricted land framework under this Act.
Tasmania	**Legislation** • *Mineral Resources Development Act 1995* **Overview – *Mineral Resources Development Act 1995*** Without land owner and land occupier consent, exploration licence, special exploration licence, retention licence, production licence or mining lease holders cannot explore or carry out mining operations within 100 metres of: • The surface of any natural lake, dam, reservoir, water-producing well, or artificial pond, part or all of which is on the land; or • Any dwelling or substantial building on the land.
Northern Territory	**Legislation** • *Mineral Titles Act 2010* & *Mineral Titles Regulations* • *Petroleum Act* • *Geothermal Energy Act 2009* **Overview – *Mineral Titles Regulations*** The Regulations provide that those conducting preliminary exploration or mineral title authorised activities on pastoral land must not do so: • within 200 metres of a building that is not enclosed by a fence; or • within 50 metres of a fence that encloses a building (a fence encloses a building if it is within 150 metres of the building). To do is to commit an offence. Consent is required to fossick on land if the land is:

State	Legislation and Overview
	• clearly and actively being used for a particular pastoral activity; • is within 2 km of a homestead; or • is within 1km of a stockyard or artificial watering point. Consent to preliminary exploration and fossicking can be revoked. A person cannot interfere with infrastructure on the land or animals owned by or under the control of landholders. **Overview –** ***Petroleum Act*** Without written approval from the owner, native title body corporate or Board of Trustees (where applicable), no permittee or licensee may carry out operations otherwise permitted by the Act, on land that is: • Lawfully used as, or within 50 metres of land being used as, a residence, yard, garden, orchard or cultivated field; • used as, or within 200 metres of land being used as, a cemetery within the meaning of the Cemeteries Act; or • within a distance of 200 metres of any artificial accumulation of water or outlet from which water may be obtained. **Overview –** ***Geothermal Energy Act 2009*** A geothermal authority holder must obtain written consent of the owner (or Board of Trustees, in the case of a cemetery) to conduct activities in the following areas: : • land lawfully used as a residence, yard, garden, orchard or cultivated field (or within 50 metres of such land); • land within 200 metres of any artificial accumulation of water or outlet from which water may be obtained; • land used as a cemetery (or within 200 metres of such land).

Statement of Reservation

Michael Hart MP State Member for Burleigh

9 May 2016

Mr Jim Pearce
Chairperson
Infrastructure, Planning and Natural Resources Committee
Parliament House
George Street
Brisbane Qld 4000

Dear Mr Pearce

RE: - Mineral and Other Legislation Amendment Bill 2016

We the LNP members of the Infrastructure, Planning and Natural Resources Committee wish to lodge a Statement of Reservation in relation to the committee's recommendation that the *Mineral and Other Legislation Amendment Bill 2016* (MOLA) be passed in its present form.

The MOLA bill is another example of the Palaszczuk Government undoing the work of the previous LNP government, without giving any real thought to the policy intentions of the MERCP Bill, which sought to modernise Queensland's legislative framework in relation to the resources sector.

Below are our observations regarding the committee's inquiry into the MOLA Bill.

The Opposition intends to outline other reservations and concerns during the second reading debate on this bill and looks forward to scrutinising the government response to the committee recommendations.

Yours sincerely

Michael Hart
Member for Burleigh

Lachlan Millar
Member for Gregory

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1. Objection Rights

While we do not oppose notification and objection rights being extended, we do not think that people outside of Queensland should be able to bring court action that delays job growth in Queensland. We don't accept the committee's comments that vexatious actions are not delaying mining projects and their associated jobs from proceeding in a timely fashion.

For the benefit of the Parliament we point members to http://www.parliament.qld.gov.au/documents/committees/IPNRC/2016/MOLAB2016/submissions/003.pdf titled "Stopping the Australian Coal Export Boom of the committee's report. This submission clearly shows that there is intent to delay or kill off mining projects with court action that are purely idiotically driven.

The following are direct quotes from this submission:-

Funding proposal for the Australian anti-coal movement[1]

We urgently need to build the anti-coal movement and mobilise off the back of the community backlash to coal seam gas. If we fail to act decisively over the next two years, it will be too late to have any chance of stopping almost all of the key infrastructure projects and most of the mega-mines.

The Strategy:

Our strategy is to 'disrupt and delay' key projects and infrastructure while gradually eroding public and political support for the industry and continually building the power of the movement to win more.

Outcomes:

By prioritizing infrastructure campaigns, our aim is to delay the proposed increase in export capacity substantially (by several years). While it is not yet possible to quantify the long-term impact we might have, we aim to severely reduce the overall scale of the coal boom by some hundreds of millions of tonnes per annum from the proposed 800Mtpa increase.[2]

We cannot win by taking the industry head-on and there is no single point of intervention that we can rely upon. We need a strategy that uses multiple voices with multiple points of intervention. Our strategy is essentially to ' disrupt and delay' key projects and infrastructure while gradually eroding public and political support for the industry and continually building the power of the movement to win more.

There are 6 elements to this strategy:

1. Disrupt and delay key infrastructure

Challenge and delay key infrastructure developments (ports and rail) and 'mega mines·.

2. Constrain the space for mining

Build on the outrage created by coal seam gas to win federal and state based reforms to exclude mining from key areas, such as farmland, nature refuges, aquifers, and near homes. Landowners locking the gate.

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1 Submission 3, Attachment 1.
2 Submission 3, Attachment 1.

3. Increase investor risk

Create uncertainty and a heightened perception of risk over coal investments;

4. Increase costs

Increasing the cost of coal is fundamental to the long-term global strategy to phase out the industry. We can start to remove the massive subsidies to the coal industry, and to internalize the 'externalized' costs of coal;

5. Withdraw the social license of the coal industry

Change the story of coal from being the backbone of our economy, to being a destructive industry that destroys the landscape and communities, corrupts our democracy, and threatens the global climate.

6. Build a powerful movement

Create stronger networks and alliances and build the power necessary to win larger victories over time.[3]

4.1 Litigation

Legal challenges can stop projects outright, or can delay them in order to buy time to build a much stronger movement and powerful public campaigns. They can also expose the impacts, increase costs, raise investor uncertainty, and create a powerful platform for public campaigning.

Objectives:

1. Mount legal challenges to the approval of several key ports, mines and rail lines (Level 1);

2. Run legal challenges that delay, limit or stop all of the major infrastructure projects (mines, rail and ports) that have been identified as a high priority in the strategy (Level 2);

3. Create a platform for public campaigning around these projects and on the wider issue of coal regulation (Levels 1 and 2);

4. Push climate change law in Queensland and New South Wales so future climate change cases are more likely to succeed

What this looks like:

We will lodge legal challenges to the approval of all of the major new coal ports, as well as key rail links (where possible), the mega-mines and several other mines chosen for strategic campaign purposes.

Legal challenges will draw on a range of arguments relating to local impacts on wetlands, endangered species, aquifers and the World Heritage Listed Great Barrier Reef Marine Park, as well as global climate impacts. Only legitimate arguable cases will be run.[4]

2. Section 269(4) criteria- grounds of objection

It is clear to us that the intent of the MERCP Bill was to remove the overlap remaining when the Mineral Resources Act 1989 (MRA) was altered to require Environmental Impact Statements (EIS) and Environmental Approvals (EA) be carried out under separate Act of parliament.

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3 Submission 3, Attachment 1

4 Submission 3, Attachment 1

MOLA re-inserts S269 (4) (J) into the MRA 1989, thus restoring this overlap without any consideration of the intent of the MERCP Bill so far as streamlining approvals goes. It is important to remember that mining lease applications (covered by this bill) seek to provide Mining Lease tenure and the intent of that is to ensure the lease area is mineralised, the company has the financial capacity and technical expertise, resources etc, to operate the lease.

Separately, the environmental approval (EA) and associated EIS checks and conditions the impacts such mining might have over associated lands. We cannot see any justification for this overlap and therefore stress our reservations about the provisions of the MOLA Bill in this regard.

Evidence heard by the committee supporting this includes:-

The MOLA bill proposes to reinstate the grounds of objection that currently apply under section 269 of the MRA and remove the constraints applying to objectors with respect to the grounds on which they may object. Under MERCP Section 269 (4) of the Mineral Resources Act 1989 was streamlined to remove the duplication of grounds for objection. The section is as follows:

(4) The Land Court, when making a recommendation to the Minister that an application for a mining lease be granted in whole or in part, shall take into account and consider whether—(j) there will be any adverse environmental impact caused. MOLA reinstate this sub-section.

QRC noted: Part of your question that is very relevant is how long is the EIS prepared for and what information is that based on? The really good EISs are not silenced for two years and then a 28-day consultation process. There is a very detailed engagement with the community so the community has a sense of, 'These are the things we want you to look at. We're worried about traffic, noise, water,' or whatever they are. So the engagement with the community is absolutely essential, but whether that objection right to the mining lease is there does not affect that engagement process. We are saying you can remove that right to object to the mining lease and still have a really good detailed engagement whether you engage with the community, take them right through the process and they understand that their concerns have been heard and how the company is proposing to address them. That is the point where you have objections where you say, 'Actually, having seen how you're going to deal with traffic, I don't think that's adequate,' or, 'I'm still worried about water,' or, 'I'm not confident you're going to deal with my groundwater issues.' So it is getting the community to engage not around a legal process but designing a regulatory process where they are saying, 'This is how we want the operation to run in our backyard. These are the ways we want the operation to look for it to be acceptable to us.'[5]

QLS noted: I think the greatest impact that you will see objection raised on is the environmental side. For most applications for mining leases you will see—and this is just a generic statement—objections from neighbouring or overlapping landholders on things such as noise, sound, water. Then you will also, because of our open-standing rights in Queensland, have objections raised by other NGOs and non-landholder interest groups on the bigger issues of climate change and the impact on flora and fauna for the benefit of all people in the state. The environmental impact is the greatest source of objections. They are the matters that probably take the Land Court or other judicial officers the most time to consider because they are the things that people want to push.[6]

History of Mining Approvals

The transfer of the environmental regulation of the mining industry from the then Department of Mines and Energy (DME) (now the Department of Natural Resources and Mines) and the then newly created

5 Public hearing transcript, Brisbane, 18 April 2016, p 10
6 Public hearing transcript, Brisbane, 20 April 2016, p 9.

Environmental Protection Agency (EPA) (now the Department of Environment and Heritage Protection) was facilitated by the *Environmental Protection and Other Legislation Amendment Act 2000* (EPOLA), which commenced on 1 January 2001.

The EPOLA amended the *Environmental Protection Act 1994* (EP Act) to provide a new process for the granting of environmental authorities for mining activities by the EPA. It did this by transferring the environmental management measures contained in the *Mineral Resources Act 1989* (MRA) into the EP Act, whilst also strengthening the environmental authority provisions. At the same time, the requirement for an Environmental Management Overview Strategy[7] (EMOS) was removed from the MRA, so that only the assessment and administration of the mining tenure itself remained.

The EPOLA also introduced Chapter 3 (Environmental Impact Statements) into the EP Act, defining when the EIS process applies to projects, including mining projects. Under the EP Act major mining projects can be required to undergo an EIS process prior to the environmental authority stage.

There have been no 'major' changes to the EIS processes under the EP Act since this time. There were procedural amendments to streamline and reduce duplication in the EA process in the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*. For example amendments were made to the EP Act to streamline application and notification stages for projects that have completed an EIS process. Changes were made to:

- Recognise documentation submitted as part of the EIS process as automatically forming part of the EA application documents; and
- Remove requirement to undergo the EA information and notification stages where mining and petroleum activities have already undertaken an EIS and the assessment of environmental risks is the same for the EA; and
- Give standing to a properly made submission on the EIS to be taken to be a submission on the EA application.

These changes only applied to EP Act EIS processes. They did not affect the requirement for the public notification and objection rights relating to a mining lease application under the MRA as while linked, the structure and associated process of a mining lease is for a different purpose to the EIS/EA process under the EP Act.

Alternatively, the Coordinator-General (CG) may declare a project a 'coordinated project' under the *State Development and Public Works Organisation Act 1971* (SDPWOA) requiring an EIS. The framework for an EIS facilitated by the CG was introduced in 1999 under the State Development and Public Works Organisation Amendment Bill to ensure that proper account was taken of the environment effects associated with that development, through the preparation of an EIS. This was an elaboration of the CG's existing whole-of-government coordination powers for impact assessment and, in effect, formalised in legislation an administrative process for impact assessment that had been used by the CG for more than 20 years[8].

3. Added costs for landholders and outcomes from land court action.

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[7] Prior to the commencement of EPOLA, mining lease applicants were required to provide an EMOS as part of their application. This EMOS would then form the basis of the environmental conditions attached to the mining lease if granted.

[8] State Development and Public Works Organisation Amendment Bill 1999
https://www.legislation.qld.gov.au/Bills/49PDF/1999/StateDev_PubWksOrgAmdB99Exp.pdf

The result of maintaining the overlap mentioned in section 2 of this report is to increase the cost to landholders and mining companies of court objections to both the EA and Mining Lease applications on the same grounds with very little in the way of outcomes from the Land Court actually available as far as the Mining Lease is concerned.

Therefore we consider that the arrangements provided for under MERCP were sensible and delivered a far better outcome for landholders to concentrate on objecting under the EIS and EA process as far as environmental, noise, vibration, dust issues are concerned and on financial, mineralisation, mining capability issues under the Mining Lease application, thus avoiding overlap and duplication.

The committee heard as far as outcomes from the Land court process goes:-

Section 271 of the Mineral Resources Act 1989 provides that the Minister, when deciding a mining lease application, must consider any Land Court recommendation for the application.

The Mineral and Energy Resources (Common Provisions) Act 2014 and the Mineral and Other Legislation Amendment Bill 2016 did not change that requirement.

Advice from DNRM:

While the Minister must consider the Land Court's recommendations, in some instances it is not possible to implement some recommendations.

For example, in the GVK Hancock case [Hancock Coal Pty Ltd v Kelly & Ors and Department of Environment and Heritage Protection (No. 4) [2014] QLC 12], the Minister was unable to lawfully include the Land Court's recommendations in the conditions of the mining lease. Section 276(5) of the Mineral Resources Act 1989 prescribes that a condition on a mining lease must not be the same, or substantially the same, or inconsistent with a relevant environmental condition for the mining lease.

In the abovementioned case, the Land Court made recommendations that the same conditions in relation to the impacts on groundwater be included in both the mining lease and environmental authority. While the Minister did take the Land Court's recommendation into consideration when deciding the mining lease application, to lawfully achieve the intended outcome of the Land Court's recommendation, conditions in relation to groundwater impacts were included in the environmental authority and not the grant of the mining lease.[9]

The following additional information was provided by the Department:

In the last two years (March 2014 to March 2016), the Land Court has made recommendations on nine Mining Lease applications. From these nine applications, the Minister has granted three Mining Leases.

In the first case where a Mining Lease was granted, the recommendations of the Land Court were given effect by the Minister by including them as conditions of the Mining Lease.

In the second case, the objections were against the conditions of the draft environmental authority associated with a Mining Lease application. Through conditioning of the final environmental authority by the Chief Executive of the Department of Environment and Heritage Protection, the Land Court's recommendations were given effect.

In the third case, the Land Court gave a recommendation that the Minister grant the Mining Lease with a condition which required both parties to enter into a make good agreement either before the grant of the Mining Lease or within 12 months of the grant of the Mining Lease. As both parties subsequently

[9] Department of Natural Resources and Mines, Answers to Questions on Notice, dated 29 April 2016.

entered into a make good agreement prior to the Minister granting the Mining Lease, it was not necessary for the Minister to impose this as a condition of the tenure.

Of the remaining Mining Lease applications from this period, six are yet to be finalised. In each of these cases, there are other outstanding issues such as compensation agreements, which need to be resolved prior to grant.[10]

4. Vexatious action in the land court

We note the comments made in the committee report around vexatious court actions and consider that these comments are not accurate at all. The fact is there are vexatious objections being brought against resource projects through the court system. The problem is the term vexatious is not CLEARLY defined in any act of the Queensland Parliament and as such, the determining if something is vexatious is discretionary to the land court.

A clear definition of "vexatious" with clear parameters would go a long way to removing the chances of third parties without a direct interest interfering with important job creating projects that Queensland needs. We again point to "Stopping the Australian Coal Export Boom" by Greenpeace and others.

http://www.parliament.qld.gov.au/documents/committees/IPNRC/2016/MOLAB2016/submissions/003.pdf

The committee heard the following around vexatious claims:-

Oral evidence from QRC:

Again, there has been a lot of discussion both in this committee and in the committee hearings before it about vexatious claims and you heard EDO repeat the very strong statement they made in their submission that they have never seen a vexatious claim and they have never represented somebody who has made a vexatious claim. Again, the previous committee that heard the MERCP Bill heard evidence research from both the Parliamentary Library and the Land Court to say, 'We've had a look. We can't find any evidence of vexatious claims.' That is right, but it is really important to notice that there is a little asterisk next to 'vexatious claims' and when you go down to the footnote it says vexatious claims according to the court, so 'vexatious' meant not did I bring this objection in to slow a project or to try to strengthen my negotiating position but, no, did the court deem it to be vexatious under a very specific and narrow set of legal criteria that sit in another bill? We have stopped talking about vexatious claims because it leads you down that dry gully of asking, 'Is it vexatious under that bill?' What we are saying is the objection rights to a mining lease have created an ability to object to slow the project. I know that EDO talked about misinformation being distributed by the resources companies, so rather than perhaps repeat that offence in our submission we quote from the decision regulatory impact statement that the department of mines made at the time the MERCP Bill was introduced. I think that is a really good example of how mischievous or unproductive objections are made in the mining lease project, so not globally but just for mining leases. It states—

> Under the MRA [Mineral Resources Act 1989]—
>
> which is the legislation that grants mining leases—
>
> it is possible for objections to the Land Court to be heard where only one party brings evidence before the Court. This results in the Land Court providing an administrative function

10 Department of Natural Resources and Mines, Answers to Questions on Notice, dated 12 April 2016.

> in assessing the application rather than settling legitimate questions of law or arguments about the appropriateness of the proposed mine and its management.
>
> It continues—
>
> ... often the objector provides no evidence to support their objection ... This can be attributed to the highly technical or confidential nature of the issue or alternatively the objection is speculative, made on the basis that the matter raised is one of the Court's considerations rather than there being any identified ground on which the objection has been based. Definition of 'frivolous or vexatious litigation'
>
> In some instances applications have been delayed for a number of years where no evidence is ever brought to the Court by the objector ...

I think that is the answer to the question that the committee put to EDO earlier to say, 'Why were the objection rights to a mining lease removed in the previous bill?' It was to deal with this process where you had unproductive processes where speculative objections were put in generating delays for the court but there is no evidence provided. So it is not a discussion and it is not a negotiation; it is a stalling tactic.[11]

MOLA talks about the mining lease, which is different from the mining project. This is a terrible example, but the mining lease is a bit like running a car over the blocks to get a pink slip to say that you can register it. It does not necessarily mean that with that pink slip you can jump out on the road and drive it around. There is a separate driver's licence process. That dual regulation is very similar. Please do not interpret anything that I have said as the industry does not want to hear from communities, because you are right: if you try to ride roughshod over communities and if you do not listen to their concerns about how they want you to operate, what they want to do and what they are looking for, it is going to end in tears at some point. The most efficient way of engaging with communities is not encouraging objections over a very technical assessment process over the mining lease but to say, 'Look, I understand your concern. Don't waste your time running around in the Land Court on the mining lease.[12]

Part of your question that is very relevant is how long is the EIS prepared for and what information is that based on? The really good EISs are not silenced for two years and then a 28-day consultation process. There is a very detailed engagement with the community so the community has a sense of, 'These are the things we want you to look at. We're worried about traffic, noise, water,' or whatever they are. So the engagement with the community is absolutely essential, but whether that objection right to the mining lease is there does not affect that engagement process. We are saying you can remove that right to object to the mining lease and still have a really good detailed engagement whether you engage with the community, take them right through the process and they understand that their concerns have been heard and how the company is proposing to address them. That is the point where you have objections where you say, 'Actually, having seen how you're going to deal with traffic, I don't think that's adequate,' or, 'I'm still worried about water,' or, 'I'm not confident you're going to deal with my groundwater issues.' So it is getting the community to engage not around a legal process but designing a regulatory process where they are saying, 'This is how we want the operation to run in our backyard. These are the ways we want the operation to look for it to be acceptable to us.'

Evidence from EDO:

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11 Public hearing transcript, Brisbane, 18 April 2016, p 8.

12 Public hearing transcript, Brisbane, 18 April 2016, p 8.

The term 'frivolous or vexatious' is a well-established legal term that is relevant across all court jurisdictions, it is in no way unique to the Land Court in objections hearings. There is therefore a myriad of case law and legislation which one can turn to in defining this term and applying it to a particular matter.[13]

The Vexatious Proceedings Act 2005 (Qld) allows the Attorney General or a person against whom another person has already instituted a vexatious proceeding (e.g. a mining company) to apply to the Court for a vexatious proceedings order to stop them from ever litigating again.[14] This Act defines 'vexatious proceedings' to include:

(a) a proceeding that is an abuse of the process of a court or tribunal; and

(b) a proceeding instituted to harass or annoy, to cause delay or detriment, or for another wrongful purpose; and

(c) a proceeding instituted or pursued without reasonable ground; and

(d) a proceeding conducted in a way so as to harass or annoy, cause delay or detriment, or achieve another wrongful purpose.[15]

5. Removal of Ministerial Discretion

We see the need to maintain some ministerial discretion and will expand further on this in our second reading debate.

The committee heard:-

GVK Hancock submitted: The language in the MERCP Act sets out clearly defined purposes for responsible and productive management of Queensland's mineral resources, management of impacts on affected landholders, and the effective harmonisation of the way in which tenure is managed for the two largest extraction industries being resources and petroleum and gas. We consider the ability of the responsible Minister to ultimately decide on matters of restricted land a vital key in having an ability to thwart, where necessary, the ideological objectors to Queensland' s stated support of resource development for all Queenslanders not just a polarised minority.[16]

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13 EDO, Answer to Question on Notice. For example, the Uniform Civil Procedure Rules 1999 (Qld), applicable to the Supreme, District and Magistrates Courts, rule 15 provides that the registrar may refer an originating process to the court before issuing it if the registrar considers the process to be frivolous or vexatious; rule 162 provides the courts with the power to strike out particulars that are frivolous or vexatious; rule 171 provide the courts with the power to strike out pleadings if they are frivolous or vexatious; rule 389A restricts applications that are frivolous, vexatious or abuse of court's process.

14 Vexatious Proceedings Act 2005 (Qld), s5.

15 Vexatious Proceedings Act 2005 (Qld), s5.

16 Submission 3