Environmental Controls Over Mining: The Environmental Protection and Other Legislation Amendment Bill 2000

Nicolee Dixon

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ABSTRACT

This Bulletin examines those provisions of the Environmental Protection and Other Legislation Amendment Bill 2000 (Qld) (the Bill) that facilitate the transfer of the environmental regulation of the mining industry from the Department of Mines and Energy to the Environmental Protection Agency.

Under the Bill, the DME will continue to administer mining tenures under the Mineral Resources Act 1989 (Qld) and the EPA will regulate mining activities under the regime of the Environmental Protection Act 1994 (Qld). The removal of environmental compliance functions from the DME’s ambit leaves it to concentrate its efforts on supporting the mining industry’s potential to generate jobs and wealth for Queensland.

The Bill will amend the Environmental Protection Act to provide a new process for granting environmental authorities for mining activities; assimilate and improve environmental management measures taken from the Mineral Resources Act 1989 (Qld); and remove provisions concerning environmental management from the Mineral Resources Act leaving it to deal only with procedures for assessing and approving applications for, and dealings with, mining tenements themselves.
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1 INTRODUCTION

This Bulletin examines those provisions of the Environmental Protection and Other Legislation Amendment Bill 2000 (Qld) (the Bill) that facilitate the transfer of the environmental regulation of the mining industry from the Department of Mines and Energy to the Environmental Protection Agency. The Bill’s primary tasks are: to amend the Environmental Protection Act 1994 (Qld) to provide a new process for granting environmental authorities for mining activities; to assimilate and improve environmental management measures taken from the Mineral Resources Act 1989 (Qld); and to remove provisions concerning environmental management from the Mineral Resources Act so that it will deal only with procedures for assessing and approving applications for, and dealings with, mining tenements themselves.
2 BACKGROUND

A major feature of the Bill was to implement the Government’s decision, on 10 May 1999, to transfer environmental regulation of mining from the Department of Mines and Energy (the DME) to the Environmental Protection Agency (EPA). For some time, the DME was considered by conservation groups and farmers to be a captive of the mining industry. In particular, it was criticised for failing to make mining companies comply with environmental conditions in their mining tenements or to adequately rehabilitate mining sites. Indeed, before it closed down, the Connolly-Ryan Inquiry appeared set to investigate claims that the DME had not investigated environmental breaches satisfactorily. The Courier Mail claimed that most of the security deposits required to be lodged by mining companies to ensure performance of the conditions of their authorities were ‘worthless’, did not comply with the law, and that it had cost taxpayers $12 million since 1985 to clean up abandoned mining sites.

The transfer of responsibilities for environmental regulation over mining activities from the DME to the EPA was a key demand made by conservation groups prior to the 1998 State election. A commitment by the then Labor Opposition to carry out that shift was a reason for the Queensland Greens directing preferences to Labor.

On 10 May 1999, the Hon Peter Beattie, Queensland Premier, announced Cabinet’s approval, following extensive consultation with relevant stakeholders, to transfer environmental management of mining activities to the newly created EPA as soon as possible. The establishment of the EPA, to enforce and administer the EP Act had its genesis in the findings of a Criminal Justice Commission Report on the dumping of toxic waste into sewers and waterways in South-East Queensland.

The Inquiry, headed by Justice R H Matthews, heard evidence from a large number of witnesses about extensive toxic waste dumping in Queensland and of inadequate

2 Sanderson, 22 March 1997.
enforcement of the law by the Department of Environment (which was then the relevant enforcement agency for waste disposal). The Inquiry also heard evidence of the mining industry leaving a number of contaminated sites without proper rehabilitation and that the contamination sometimes leached into other areas. The Report, tabled in October 1994, recommended, among other things, the creation of a separate EPA to enforce environmental laws and to take over environmental compliance powers held by government agencies that also had a role in promoting the activity having the relevant environmental impact. In particular, it was noted that the DME’s regulation of the mining industry should be separated from its support and promotion functions and given to the EPA.6

Justice Matthews also recommended that a further investigation be conducted into the mining industry, particularly to examine site rehabilitation issues and the adequacy of security provided to the DME for repairing environmental damage caused by mining activities.

Soon after, the Government enacted the *Environmental Protection Act 1994* and tightened up a number of environmental control components of mining tenements in the *Mineral Resources Act 1989*.7 A draft Environmental Protection Policy for mining was drafted but was not finalised.

The decision, in May 1999, to separate environmental regulation functions from the DME’s other powers and to give them to the EPA was heralded as providing greater protection to the environment, greater security to miners, greater comfort to the community and greater confidence to conservationists. However, by August 1999, conservationists were expressing concern over delays in transferring experienced regional staff from the DME to the EPA and in November 1999, Queensland Greens spokesperson, Mr Drew Hutton, argued that the EPA had wound back public involvement in the processing of mining lease applications.8 Meanwhile, the Queensland Environment Minister, the Hon Rod Welford, announced a review of the EPA’s enforcement and investigation procedures under the EP Act in relation to the alleged dumping of sandblasting waste near waterways. Mr Welford stated that he had been unhappy with those procedures for some time.9

After being brought before Cabinet earlier this year, the Bill went through extensive consultation prior to its introduction into Parliament with input from stakeholders

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7 For example, the *Mineral Resources Amendment Act 1995* (Qld).
including the mining industry, conservation groups, indigenous groups and rural groups such as farmers. The Bill, as introduced, reflected those consultations and comments.  

Under the Bill, the DME will continue to administer mining tenures under the *Mineral Resources Act 1989* (Qld) (the MR Act) and the EPA will regulate mining activities under the regime of the *Environmental Protection Act 1994* (Qld) (the EP Act). The removal of environmental compliance functions from the DME’s ambit leaves it to concentrate its efforts on supporting the mining industry’s potential to generate jobs and wealth for Queensland.

### 3 PROBLEMS WITH THE CURRENT REGIME

Until relatively recently little thought or money was given to the need for rehabilitation of the mining site and its surrounding landscape once mining operations finished. However, both changing attitudes and legislative reform have made it necessary to consider rehabilitation from the inception of the mining project such that most mining companies now regard site rehabilitation as part of the total operation and budget for it as an operational cost.

In April 1998, the then Queensland Government provided a $2.5 million grant for training and research in mine rehabilitation aimed at enhancing the environmental performance of the coal industry, the State’s main export earner. The research attempts to identify innovative ways of rehabilitating land after mining activity.

In March 1999, the present Government signed an agreement with the Australian Centre for Mining Environmental Research which established a coal minesite

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10 Environmental Protection and Other Legislation Amendment Bill 2000 (Qld), *Explanatory Notes*, p 4.


14 A body that involves research organisations and includes the CSIRO, the University of Queensland and some major mining companies.
rehabilitation programme to find better ways of addressing environmental management during mining and rehabilitation afterwards.\textsuperscript{15}

Open-cut coal mining is probably one activity that has the greatest environmental impact on a landscape. Companies generally spend at least $10,000 per hectare to restore land as much as possible to its original state and, as the Mining Council of Australia has recently stated, few companies would be happy to leave behind a devastated landscape and no government would allow it.\textsuperscript{16}

However, a number of incidents over the past decade have raised questions about the ability of government regulatory agencies, particularly the DME, to ensure that mining companies observe the environmental conditions of their mining leases and rehabilitate sites appropriately. Considerable media attention was focussed on sandmining on North Stradbroke Island, the record of sand miner, Consolidated Rutile (CRL), and the DME’s ineffective attempts to force CRL to comply with environmental conditions in its mining leases.\textsuperscript{17} CRL mines titanium (used as a non-toxic pigment in all paint and plastics) and zircon (used, among other applications, in television screens) on North Stradbroke Island and employs about 190 Island residents.

Just recently, CRL was issued with a show cause notice by the DME to explain why it should not have its mining lease revoked or face a fine for a breach of environmental conditions in its mining lease for a North Stradbroke Island mine. It was claimed that groundwater discharge flowed from the sand mine and that fresh water coming from site tailings increased the level of a nearby lagoon and that, in breach of its environmental commitments, it did not properly investigate and assess the potential impacts nor implement appropriate measures to minimise them. The lagoon is on the interim list for National Estate Heritage Listing. The company responded that it had established a successful environmental management programme to control the seepage and that there should be no further problems.\textsuperscript{18} However, it will be some time before a ruling is made.

This comes only four years after CRL was also faced with a show cause notice in relation to its Gordon mining lease, again on North Stradbroke Island, when seepage from its dredge pond covered surrounding bushland.\textsuperscript{19} The DME ordered


\textsuperscript{16} Minerals Council of Australia, ‘Land Use and Rehabilitation’.

\textsuperscript{17} Wayne Sanderson, ‘Shifting sand: mine warfare is raging on North Stradbroke Island’, \textit{Courier Mail}, 9 April 1997, p 13.

\textsuperscript{18} John McCarthy, ‘ConsRutile warned: clean up your act or else’, \textit{Courier Mail}, 23 September 2000, p 22.

\textsuperscript{19} Wayne Sanderson, 9 April 1997.
that the damage to flooded areas be rectified, improved environmental management be initiated and a geohydrological study be instigated as well as requiring the company to pay a further $2 million in security. Further, in May 1991, a leak from a fuel pipe was discovered after approximately 100,000 litres of diesel had spilled and CRL then embarked on an extensive clean-up operation. A number of environmental organisations have actively campaigned to stop mining on Stradbroke Island and criticised the DME’s effectiveness as an environmental watchdog. CRL has, over the last four years, put in place an environmental management policy in consultation with the Government and community groups.

4 MINING REGULATION IN A FEDERAL CONTEXT

It is the States rather than the Commonwealth which have the primary responsibility for regulating mining activities, although the Commonwealth can exert some controls under various constitutional powers and through its new Environment Protection and Biodiversity Conservation Act 1999.

4.1 HISTORICAL CONTEXT

The first Australian mining laws were enacted in 1851 in New South Wales which were followed by similar laws in other colonies giving control over almost all minerals to the Crown in right of the particular colony. This created the background for the existing public management regime for mining activities.

4.2 COMMONWEALTH POWERS

The extent of the Commonwealth’s indirect constitutional powers to control mining within State boundaries was demonstrated in the 1970s when the Commonwealth Government passed legislation to prohibit the export of zircon and rutile concentrates, extracted from mining on Fraser Island, without Ministerial approval. The High Court found that the Commonwealth possessed constitutional power to pass the law under s 51(i) of the Commonwealth Constitution (the ‘overseas trade

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20 RW Day, Director-General, Department of Mines and Energy, ‘Department acts without fear or favour’, Letter to the Editor, Courier Mail, 12 April 1997, p 22.
22 See, eg Mineral Resources Act 1989 (Qld), s 8.
and commerce power"). The Commonwealth also enjoys sovereignty in respect of the territorial sea, the continental shelf and the exclusive economic zone.24

The new Commonwealth Environmental Protection and Biodiversity Conservation Act 1999 came into force in July 2000. Among other things, it allows for more direct Commonwealth involvement in the regulation of activities which will have a significant impact on matters of national environmental significance.25 Thus, the Commonwealth Environment Minister will be able to veto actions under this legislation rather than relying on indirect powers under the Commonwealth Constitution. The Act contains provisions which allow for accreditation of State assessment processes (eg as provided for under the Environmental Protection Act 1994 (Qld)) if they meet relevant Commonwealth standards.26

4.3 STATE AND TERRITORY POWERS

Each State and Territory has its own laws regulating mining activities within its own boundaries and for some off-shore mining operations. The comprehensiveness of the relevant legislation varies according to the extent to which the particular jurisdiction engages in mining activities. In places where there is little mining activity, new mining laws have been enacted to encourage such activity.27

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26 Environmental Protection & Biodiversity Conservation Act 1999 (the EPBC Act (Cth), Chapter 3.

5 CURRENT REGIME FOR REGULATION OF MINING IN QUEENSLAND

The main legislation governing mining activities in Queensland is the Mineral Resources Act 1989 (Qld) (MR Act), which replaced the Mining Act 1968 (Qld). The MR Act currently contains the principal measures controlling the environmental impact of mining activities, with some controls also provided by the EP Act.\textsuperscript{28} Under the MR Act, applicants for mining tenements have to supply documentation specifying proposals for protecting the environment and for progressive and final rehabilitation of the land. It also requires lodgement of financial security in the form of a guarantee or bond or other suitable means to cover any environmental damage that may result.

5.1 MINING TENEMENTS

Under the MR Act a person can apply for mining tenements in the form of exploratory titles or mining titles.

There are three types of exploratory titles:
- a prospecting permit (smaller scale prospecting for minerals);
- an exploration permit (larger scale exploration for minerals); and
- a mineral development licence (retention and evaluation tenement).

There are two sorts of mining titles:
- a mining claim (small scale mining operations); and
- a mining lease (for standard type of mining operations).

5.1.1 Prospecting Permits

A prospecting permit allows the holder to enter onto land to mark out a mining claim or mining lease, or to prospect using metal detectors or hand-held instruments or for hand mining of a mineral other than coal.

In granting the actual prospecting permit, the Mining Registrar must be satisfied that the application is correctly made and that the required amount of security for

\textsuperscript{28} Environmental management powers under other legislation such as the Petroleum Act 1923 (Qld) will not be considered in this Bulletin.
the permit has been deposited. They are subject to prescribed conditions and those imposed by the Mining Registrar.

5.1.2 Mining Claims

A mining claim generally follows upon a prospecting permit and is in relation to small-scale mining operations (handmining to take minerals during which moderate use of explosives can be authorised). The operations cover land of only one hectare or less, for minerals other than coal. Part 4 of the MR Act governs these tenements and they are, again, subject to conditions.

5.1.3 Exploration Permits

An exploration permit allows larger scale exploration for minerals by prospecting by using equipment and appropriate techniques and sampling and testing minerals. Exploration permits are governed by Part 5 of the MR Act. Prior to the proposed amendments taking effect, requirements regarding the preparation of an Environmental Impact Statement and Environmental Management Plans are provided for in this part of the MR Act as well as relevant conditions applying to the permit.

5.1.4 Mineral Development Licences

A mineral development licence is for a retention and evaluation tenement and is covered by Part 6 of the MR Act. The licence enables the holder to carry out certain activities (or possibly no activity) including those activities leading to the evaluation and economic development of an ore body, for example, geological and geophysical programmes and other such works as are reasonably necessary to evaluate the potential for development and economic viability. Again, most of the environmental controls and licence conditions are presently located in Part 6 of the MR Act and are fairly similar to those relating to prospecting permits.

5.1.5 Mining Leases

Mining leases are the most typical of all mining tenements, and the cause of most concern from an environmental perspective because they are generally for large scale mining operations over large areas of land. They are issued by the Governor

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29 Mineral Resources Act 1989 (Qld), s 24(1). The issue of security deposits is considered later.
in Council to enable persons to mine for the specified mineral or minerals and for all purposes necessary to effectually carry on the mining and other purposes that are associated with the mining. There is also an entitlement to use sand, gravel and rock on the relevant land for purposes of the mining lease but this is now made subject to the provisions of the EP Act, and, subject to approval, to conduct drilling and other activities on other land with the owner’s consent.

The Government earned $16.1 million from mining lease rentals during the 1998-1999 financial year. During this period, there was a 6.5% increase in Queensland’s coal production and coal exports increased by 8.29% to a record 93.5 million tonnes.30

Mining leases are covered by Part 7 of the MR Act. Again, Part 7 currently imposes obligations upon the applicant to prepare and provide environmental protection documentation and comply with conditions, including environmental protection measures (which will be removed by the proposed amendments in the Bill). Special provisions are made in relation to native title interests.31

6 THE ENVIRONMENTAL PROTECTION ACT 1989

Only a very brief overview of the EP Act will be provided here and only insofar as it relates to mining activities.

The EP Act has the object of protecting Queensland’s environment while allowing for development that improves the total quality of life now and for successive generations (ecologically sustainable development).32 The Act then goes on to describe the phases allowing for the achievement of that objective.

Chapter 2 provides for the development of environmental protection policies (EPPs) to enhance the environment. They can be made about the environment or anything affecting it, for example, waste management, land, air or water quality, noise, a contaminant. EPPs state environmental values to be protected, indicators and goals to protect those values (eg the EPP(Air) has air quality indicators such as for lead, and goals to be met), objectives, programmes for the achievement of objectives and decision making frameworks. Again, for example, the EPP(Air) covers the management of certain sources of contamination, including the abatement of unreasonable releases of contaminants, abatement notices, limits on concentration of lead in petrol etc.

31 See Mineral Resources Act 1989 (Qld), ss 276A-276B.
32 Environmental Protection Act 1994 (Qld), s 3.
The EP Act seeks to manage **environmentally relevant activities** which are those activities set out in the Environmental Protection Regulation 1998 as ones that will or may result in the release of a contaminant that will or may cause environmental harm.\(^{33}\) It does this through a number of measures including environmental authorities, the type granted being conditional upon the level of the environmentally relevant activity.

There are two levels of **environmentally relevant activities** depending upon the risk of environmental harm from contaminants that are posed by them.\(^{34}\) Level 1 activities (activities where there is more risk of environmental harm, for example, power station operations, oil refining or processing, sewage treatment, mineral processing) need to be licensed or receive an approval. Level 2 activities (lesser activities such as small scale pig farming or flour milling) require an approval. Most mining activity is currently regarded as a level 2 activity but under the proposed amendments to the EP Act, the level of control will depend upon the level of environmental harm that may be caused.

As well as providing a framework for the approval of environmental authorities, the EP Act also makes provision for environmental evaluations, environmental management programmes, financial assurances, contaminated land and environmental offences, and environmental protection orders. A number of those concepts will be explained at relevant points in this Bulletin.

### 7 THE PROPOSED REGULATORY FRAMEWORK

Under the new Bill, the aims and objectives of the EP Act remain the same as for all other activities but the proposed new regulatory regime for mining is covered separately in Chapter 2C, inserted by clause 6 of the new Bill. Chapter 2C provides for **environmental authorities for mining activities**. The level of control will depend upon the environmental risk of the relevant mining project as assessed against criteria to be set out in an Environmental Protection Regulation.

#### 7.1 THE NEED FOR AN ENVIRONMENTAL AUTHORITY

A holder of, or applicant for, a mining tenement **must** also apply for an environmental authority relevant to the particular mining activity. It is made clear that only holders of, or applicants for, mining tenements will be granted

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\(^{33}\) *Environmental Protection Act 1994* (Qld), s 38.

\(^{34}\) The Environmental Protection Regulation 1998 (Qld) lists all environmentally relevant activities and their levels.
environmental authorities. This has the effect that it is only those holders of
tenements who will be subject to, and liable for breach of, the conditions contained
in the environmental authority for protection of the environment and for
rehabilitation of the environment once the tenement is surrendered or cancelled.
Indeed, unless the environmental authority specifies a date or event upon which it
takes effect, it will generally commence once the relevant mining tenement is
granted under the MR Act.\(^{35}\) In his Second Reading Speech, the Environment
Minister said that this measure provides greater environmental security because the
owner of the asset (the mining tenement) is ultimately responsible for the
environmental performance on the tenement.\(^{36}\) Currently, operators can also hold
an environmental authority.

A mining activity is defined in the proposed section 34EO. The consequence of
the definition is that an environmental authority must be obtained for a broad range
of mining activities (including not just exploration, prospecting, mining and
processing, but also rehabilitation or remediation work etc) that are authorised
under a mining tenement under the MR Act: proposed section 34EP. The
environmental authorities will be of the following types:

- prospecting permit \(\rightarrow\) environmental authority (prospecting);
- mining claim \(\rightarrow\) environmental authority (mining claim);
- exploration permit \(\rightarrow\) environmental authority (exploration);
- mineral development licence \(\rightarrow\) environmental authority (mineral
development);
- mining lease \(\rightarrow\) environmental authority (mining lease).

The process through which an environmental authority is obtained depends upon its
type and whether it is a standard (or level 2) mining activity, or a non-standard
(level 1) mining activity.

A standard mining activity is a mining activity that the EPA decides will have a
low risk of serious environmental harm.

Applications for environmental authorities (prospecting) and environmental
authorities (mining claim) are generally taken to be standard mining activities.
Others - environmental authority (exploration), environmental authority (mineral
development), environmental authority (mining lease) - will only fall into the
standard category if the mining activities to be allowed meet the criteria prescribed

\(^{35}\) See Environmental Protection Act 1994 (Qld), proposed s 34KO

\(^{36}\) Hon RJ Welford MP, Minister for Environment and Heritage and Minister for Natural Resources, ‘Environmental Protection and Other Legislation Amendment Bill 2000 (Qld)’, Second Reading Speech, Queensland Parliamentary Debates, 4 October 2000, pp 3385-3388, p 3387.
under a Regulation for that particular type of environmental authority. An example might be if the prescribed criteria set a maximum area of land allowed to be disturbed and the proposed mining activities meet that limit. It can also be a standard application if the likely environmental impact is no more than the environmental impact of all activities allowed under any environmental authority of the same type that meets the prescribed criteria: **proposed section 34ES**.

A **non-standard mining activity** is one that the EPA decides has a higher risk of serious environmental harm. It will tend to be those more significant activities conducted under exploration permits, mineral development licences and mining leases.

### 7.2 Overview of Process to Obtain Environmental Authority

All applications for an environmental authority for a mining activity must be made to the EPA in the approved form, together with the prescribed fee. It is intended that both the application for the relevant mining tenement, and the application for the environmental authority that relates to it, be made to the DME which will then, within the time specified for the relevant application, transfer a copy of the environmental authority application to the administering authority ie the EPA.37

Under the following subsections, a brief description of each type of environmental authority and the environmental considerations and conditions relevant to each will be provided. The focus will be upon environmental aspects of the application for the environmental authority and the conditions thereon. The relevant provisions of the MR Act should be consulted for other matters relating to mining tenements.

### 7.3 Steps in the Application Process

The following table (taken from the Bill) summarises the process for obtaining each environmental authority and provides the relevant proposed provision of the EP Act that applies to each step:38

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37 The administering authority will normally be the Chief Executive of the EPA so this Bulletin will use the term EPA instead.

38 The table is copied from **proposed section 34ET** of the *Environmental Protection Act 1994* (Qld).
Table Of Steps To Obtain Environmental Authority

<table>
<thead>
<tr>
<th>Type of environmental authority (mining activities)</th>
<th>Assessment level decision required</th>
<th>Additional conditions allowed for standard application</th>
<th>Can an EIS requirement be made</th>
<th>Environmental management plan (&quot;EMP&quot;) or EMOS required</th>
<th>Public notification requirement and objections</th>
</tr>
</thead>
<tbody>
<tr>
<td>environmental authority (prospecting)</td>
<td>no s 34FC</td>
<td>no s 34FL(3)</td>
<td>no</td>
<td>no</td>
<td>no</td>
</tr>
<tr>
<td>Environmental authority (mining claim)</td>
<td>no s 34FC</td>
<td>yes s 34FR</td>
<td>no</td>
<td>no</td>
<td>yes s 34FS</td>
</tr>
<tr>
<td>Environmental authority (exploration)</td>
<td>yes s 34FC</td>
<td>yes s 34FV</td>
<td>no</td>
<td>yes s 34FF</td>
<td>EMP s 34GC</td>
</tr>
<tr>
<td>Environmental authority (mineral development)</td>
<td>yes s 34FC</td>
<td>yes s 34FV</td>
<td>no</td>
<td>yes s 34FF</td>
<td>EMP s 34GC</td>
</tr>
<tr>
<td>Environmental authority (mining lease)</td>
<td>yes s 34FC</td>
<td>yes s 34GY(3)</td>
<td>no</td>
<td>yes s 34FF</td>
<td>EMOS s 34GQ</td>
</tr>
</tbody>
</table>

The level of information and documentation of environmental management measures depends upon the type of environmental authority required and whether it is standard or non-standard.

A proposed section 34EV sets out the general requirements for all applications for environmental authorities. \(^{39}\)

The steps are broadly:

- is an assessment level decision required?
- are additional conditions allowed to be imposed?
- can an Environmental Impact Statement be required?
- are environmental management documents required?
- is there a public notification and objection requirement?

In the case of applications for an environmental authority (prospecting) none of the above steps apply.

Applications for an environmental authority (prospecting) or environmental authority (mining claim), are generally deemed to be standard applications but they must contain sufficient information to enable the EPA to decide the application.

\(^{39}\) Subsequent provisions in Subdivision 2 and Subdivision 3 deal with applications for mining projects and joint applications.
In applications for other environmental authorities, there must be enough information to allow the EPA to make an assessment level decision.

### 7.4 Assessment Level Decision

An **assessment level decision** means that the EPA must determine whether the application is standard or non-standard: *Part 2, Division 3*. It will be a standard application if each relevant mining activity is standard and there are **relevant standard environmental conditions**. Otherwise, or where the application is for a mining project and any mining activity forming part of it is not a standard mining activity, it will be a non-standard application. The **proposed section 34FE** provides that if the assessment level decision in relation to an application for a standard authority is not made within the period prescribed under Regulation, the EPA is taken to have decided that the application is standard. On the other hand, if it is an application for a non-standard authority (eg, a mining lease), the decision is deemed to be that the application is non-standard.

Note that the Environment Minister is permitted to intervene to make, or to override, the EPA’s decision as to the assessment level of a mining activity.\(^40\) The Queensland Greens regard that power as one of the Bill’s main weaknesses as it allows an unprecedented level of political intervention.\(^41\)

The **relevant standard environmental conditions** are those which, under **proposed section 219AA**, the Minister may place in a Code of Environmental Compliance. A Code of Environmental Compliance may be set out in the Environmental Protection Regulation. The Code provides a simplified approval process for low risk, or standard, mining activities. It comprises standard environmental conditions, which are legally enforceable and technical in nature, and guidelines to assist the holder to comply with them. When introducing the Bill, the Queensland Environment Minister stated that the Government has prepared three new Codes of Environmental Compliance in close consultation with relevant stakeholders.\(^42\)

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\(^40\) *Environmental Protection Act 1994* (Qld), **proposed s 34FG**.


\(^42\) Hon RJ Welford MP, Second Reading Speech, p 3385.
7.5 **STANDARD APPLICATIONS**

The following discussion applies in relation to:

(a) an environmental authority (prospecting);

(b) an environmental authority (mining claim); and

(c) an environmental authority for other mining activities that are assessed to be standard applications.

For (a) and (b) no assessment level decision is required.

7.5.1 **Standard Application Matters**

There are a number of decisions involving standard applications in relation to which the EPA must have regard to the following matters, which this Bulletin will refer to as ‘the standard application matters in Section 7.5.1 of this Bulletin’.

(a) the **application documents** - this concept is defined in the **proposed section 34ER**. For most standard applications, these will include only the application itself, any draft environmental authority for the application, or any other document prescribed by regulation. For an environmental authority (prospecting) it will be only the application itself.

Owing to the low risk designation of activities under prospecting permits, and other standard applications, there is no requirement for the applicant to prepare an Environmental Impact Statement or environmental management documents (an Environmental Management Plan, or an Environmental Management Overview Strategy, depending on the type of authority sought). These are considered later, in the context of higher level impact mining activities non-standard applications, in Section 7.6 of the Bulletin.

(b) the **standard criteria** – these are defined in the EPA as:

- the principles of ecologically sustainable development as set out in the National Strategy for Ecologically Sustainable Development; and
- any applicable EPP; and
- any applicable Commonwealth, State or local government plans, standards, agreements or requirements; and
- any applicable environmental impact study, assessment or report; and
- the character, resilience and values of the receiving environment; and
- all submissions made by the applicant and interested parties; and
- the best practice environmental management for the activity under the authority; and
• the financial implications of the requirements of the authority, as they would relate to the type of activity or industry carried on under the authority; and
• the public interest; and
• any applicable site management plan; and
• any other matter prescribed under a regulation;43

(b) the applicant’s ability to comply with the relevant standard environmental conditions (the conditions, which may be contained in a Code of Environmental Compliance, were explained above);

(c) any suitability report obtained for the application – under the proposed new section 219AK the EPA may investigate a person to assist it in determining whether the person is suitable to hold, or continue to hold, an environmental authority. It can also obtain information from other authorities and the police; and

(d) the status of any application under the MR Act for each relevant mining tenement (or in the case of prospecting, each relevant prospecting permit).

Note that the list of considerations is not exhaustive and the EPA may take into account other matters.44

7.5.2 Review and Appeal Rights – Standard Applications

There is no right of appeal to the Land and Resources Tribunal (the Tribunal) against a refusal by the EPA to grant a standard environmental authority. The Explanatory Notes state that the reason is that standard applications are subject to a simplified streamlined process in which there is (except in the case of mining leases and mining claims) a deemed grant of the authority if the EPA has failed to decide the application within the prescribed timeframe.

As for environmental authorities (prospecting), the conditions are fixed and cannot be modified by the EPA or the Tribunal so that any applicant who cannot comply with the conditions must be refused an authority. However, an applicant who has been refused a standard environmental authority can, instead, apply for a relevant non-standard environmental authority to which review and appeal rights do apply (See Section 7.8 of the Bulletin).

43 Environmental Protection Act 1994 (Qld), Schedule 4 (Dictionary).

44 Environmental Protection Act 1994 (Qld), proposed s 219AL.
7.5.3 Environmental Authority (Prospecting)

This environmental authority is dealt with separately to other standard applications because it is the most straightforward: see proposed Chapter 2C, Part 3 inserted by the Bill.

Because prospecting permits are considered to be ‘low impact’ in terms of likely environmental harm, short processing timeframes are provided so that miners are not kept waiting for long periods.45 If the EPA has not decided to refuse the application within the relevant period prescribed by Regulation, it is deemed to have granted the environmental authority.46 The grant of the environmental authority (prospecting) is made subject only to the standard environmental conditions set out in the relevant Code of Environmental Compliance. No other conditions may be imposed on the environmental authority.47

7.5.4 Other Standard Applications

The steps involved in the assessment of standard applications for an environmental authority (mining claim), an environmental authority (exploration), environmental authority (mineral development), or an environmental authority (mining lease) do not involve an Environment Impact Statement stage nor is the applicant required to submit any environmental management documentation.

At the outset it should be noted that under the Bill, an application for an environmental authority (mining claim) is considered to be standard. The mining operations cover land of one hectare or less and involve prospecting, handmining and moderate use of explosive when handmining and such activities generally have a low risk of serious environmental harm. Consequently, the approval process is intended to be short (see Chapter 8, Part 4).

If the application is for a standard environmental authority (exploration) or an environmental authority (mineral development) there will be a deemed grant of the authority if the EPA has not made a decision by the end of the prescribed period, provided that the application otherwise meets with the necessary requirements (see Chapter 8, Part 5, Division 2).

However, applications for a standard environmental authority (mining claim) and an environmental authority (mining lease) have to have a draft

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45 Hon RJ Welford MP, Second Reading Speech, p 3385.
46 Environmental Protection and Other Legislation Amendment Bill 2000 (Qld), proposed s 34FK.
47 Environmental Protection and Other Legislation Amendment Bill 2000 (Qld), proposed s34FL.
environmental authority made which will then go through a public notice and objection process (explained at Section 7.7 of the Bulletin).

One additional feature in the process is that, as well as the standard environmental conditions, the authority may also contain additional conditions. The applicant can ask for additional conditions to be included, or the EPA can include them even if the applicant has not asked for them. The EPA must comply with any relevant EPP requirement in deciding whether it believes it is necessary or desirable those additional conditions should be included. Additional conditions will override the standard environmental conditions to the extent of any inconsistency.\(^48\) Note that an additional condition cannot be included if the mining activity will no longer be a standard mining activity.\(^49\)

### 7.6 NON-STANDARD APPLICATIONS

Non-standard applications will be for environmental authorities for exploration, mineral development and mining leases that are assessed as being non-standard. The assessment process is more comprehensive than for standard applications and is more demanding on the applicant who may need to go through an Environmental Impact Statement process and will need to prepare environmental management documentation, relevant to the particular authority. The stages are set out in Chapter 2C, Part 5, Division 3 (for an environmental authority (exploration) and an environmental authority (mineral development)) and Chapter 2C, Part 6, Divisions 2-3 (for an environmental authority (mining lease)).

#### 7.6.1 Environmental Impact Statement

The EPA must decide whether an Environmental Impact Statement (EIS) is required, taking into account the standard criteria. If it has not made a decision by the end of the period prescribed in the Regulation, it is taken to have decided that an EIS is not required. If the Environment Minister intervenes to decide that an application is non-standard, the Minister must then determine whether an EIS is necessary and at what stage the processing of the application must start or resume.\(^50\)

If an EIS has been required for the relevant application, the process for an EIS set out in the proposed Chapter 2A must be followed, even if the applicant has submitted environmental management documentation for the application.

\(^48\) *Environmental Protection Act 1994* (Qld), proposed s 34KR.

\(^49\) *Environmental Protection Act 1994* (Qld), proposed ss 34FV, 34GY.

\(^50\) *Environmental Protection Act 1994* (Qld), proposed ss 34FF, 324FG,
Chapter 2A establishes a proposed statutory framework for an EIS process, formalising the procedures in the EP Act for the first time. The EIS provisions in the MR Act will be removed. Currently, the decision concerning the need for an EIS is one for the Minister for Mines and Energy, rather than the EPA, after considering the relevant documentation. The EIS process established by the Bill was heralded by the Environment Minister as an historic advance for environmental legislation in Queensland and as being at the leading edge of modern practice.51

An EIS has the purpose of assessing the potential adverse and beneficial environmental, economic and social impacts of the mining project, and of assessing the management, monitoring, planning and other measures proposed by the applicant to minimise any adverse environmental impacts. It considers feasible alternative means for carrying out a project so as to minimise those impacts. It also seeks to provide sufficient information about those matters to the applicant, Commonwealth and State authorities, and the public, and to assist the EPA in assessing the application: **proposed section 34AC**.

Note that another objective of the EIS process is to meet any requirements under the Commonwealth *Environmental Protection and Biodiversity Conservation Act 1999* for a project that is, or includes, a controlled action (ie one that requires approval or assessment under the Commonwealth Act or under an accredited State process under a bilateral agreement) and to allow Queensland to meets its obligations under such agreement. Under the Commonwealth Act, Queensland and the Commonwealth can enter into bilateral agreements to provide for Commonwealth accreditation of State processes and, in appropriate cases, State decisions, if specified criteria or standards identified in the Commonwealth Act or Regulations are met by the State process or decision. This will enable the Commonwealth to rely upon a State assessment process for actions impacting upon matters of national environmental significance, provided that the level of environmental protection by that State process is at least equivalent to the Commonwealth process.52

The process set out in Chapter 2A can only be briefly outlined within the framework of this Bulletin. In broad terms, the steps are as follows:53

- **terms of reference stage** – a draft terms of reference is submitted by the applicant to show how the purposes of the EIS are to be achieved for the

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51 Hon RJ Welford MP, Second Reading Speech, p 3386.


53 See *Environmental Protection Act 1994* (Qld), **proposed Divisions 2-6**. There are also miscellaneous provisions in Division 7. Part 2 deals with voluntary preparation of EISs.
The Environmental Protection and Other Legislation Amendment Bill 2000

The draft undergoes public consultation prior to finalisation by the EPA’s Chief Executive who must take into account public submissions, any response from the applicant, and other required matters;

- **submission of the EIS** – the applicant should do this, generally within two years of receiving the finalised terms of reference. The Chief Executive must be satisfied that the EIS addresses the final terms of reference before it proceeds through the public objection process to the completion stage. However, any refusal to allow the EIS to proceed further can be overridden by the Minister if the applicant applies for a Ministerial review. The Scrutiny of Legislation Committee has queried why there is no merits review by the Tribunal of a decision of such importance as to refuse to allow an EIS to proceed;\(^{54}\)

- **public notification and submissions** – this allows for public input through submissions to which the applicant may respond;

- **EIS Assessment Report** – the Chief Executive then gives to the applicant a report about the EIS, taking into account final terms of reference; the EIS; submissions; standard criteria; and other prescribed matters. The report addresses the adequacy of the EIS, the adequacy of any environmental management plan for the project, makes recommendations about the project, and recommends any necessary conditions that may be required. Once the applicant has the assessment report, the EIS process is completed.

Some aspects of the EIS process are subject to appeal to the Tribunal.\(^{55}\)

### 7.6.2 Environmental Management Documentation Stage

The environmental management documentation that pertains to an environmental authority (exploration) and an environmental authority (mineral development) is the **Environmental Management Plan (EM Plan)**. For an environmental authority (mining lease) it is the **Environmental Management Overview Strategy (EMOS)**. Note that it is only for non-standard applications that the EM Plan or EMOS, as the case may be, is required.

Requirements imposed upon the applicant to submit an EM Plan or an EMOS setting out proposed strategies for managing environmental impacts and for rehabilitation will be removed from the MR Act, and the oversight of the Mining Registrar, and brought within the province of the EPA.

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\(^{55}\) See *Environmental Protection Act 1994* (Qld), Schedule 1, Part 1, Division 1.
The documentation can be submitted together with the application for the environmental authority, after the assessment level decision, or during the EIS process. It does not matter if the EIS process is not completed.56

The EM Plan has the aim of proposing environmental protection commitments to assist the EPA in determining what conditions the environmental authority should be subject to. The purpose of the EMOS is to propose environmental protection commitments to assist the EPA to prepare a draft environmental authority.

The EPA will issue guidelines to assist applicants in preparing the documentation. For details as to what must go into an EMP, the proposed section 34GE should be consulted but essentially, it must:

- describe the tenements, all relevant mining activities, and the land on which the activities will be carried out;
- describe the environmental values likely to be affected and what the potential adverse and beneficial impacts on those values may be;
- contain sufficient information to assist the decision making process;
- contain anything that is required by an EPP or a Regulation. The Explanatory Notes give an example of the EPP (Air) which prescribes ambient air quality goals such that those goals could be used in assessing the environmental values of the receiving environment and how this relates to air emissions from mining activities; and
- state the environmental protection commitments that the applicant proposes for protecting and enhancing the environmental values under ‘best practice environmental management’. The EP Act defines ‘best practice environmental management’ as management of the activity to achieve an ongoing minimisation of the activity’s environmental harm through cost-effective measures assessed against the measures currently used nationally and internationally for the activity. Whether it is best practice or not is to be determined by having regard to factors such as administrative systems like staff training, product and process design, and waste treatment.57

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56 Environmental Protection Act 1994 (Qld), proposed ss 34GC, 34GQ.

57 See Environmental Protection Act 1994 (Qld) s 18(2).
The environmental protection commitments must be set out in such a way as to be understandable, measurable and able to be audited under the proposed provisions in Part 11 of Chapter 2C, inserted by the Bill (discussed below). They state:

- the environmental protection objectives and standards and measurable indicators;
- a rehabilitation programme for land proposed to be disturbed by the activities and which sets out a proposed amount of financial assurance; and
- an action programme to ensure that the commitments are achieved or implemented, including, for example, programmes for the following in relation to the mining activities:
  - continuous improvement
  - environmental auditing
  - monitoring
  - reporting
  - staff training.

The contents of the EMOS, relating to an environmental authority (mining lease), are virtually identical to the contents of an EMP. Again, the heart of the EMOS is the environmental protection commitments. The main difference between the environmental protection commitments in an EM Plan and in those in an EMOS is that in an EMOS the commitments must include control strategies to ensure the environmental protection objectives are achieved, including, for example, strategies in relation to the mining activities –

- continuous improvement
- environmental auditing
- monitoring
- reporting
- staff training.

Thus, the action programme in the EM Plan focuses upon achieving and implementing the commitments whereas the commitments in the EMOS must include control strategies to ensure achievement of the environmental protection objectives set out in the EMOS. It is difficult to determine if anything turns on the different wording but it appears that the requirements of the EMOS are more stringent in this regard.

Another difference is that the EM Plan’s environmental protection commitments must also include a rehabilitation programme for the relevant affected land whereas for mining leases, it is dealt with elsewhere.
The process is completed when the EPA has given the applicant an **assessment report** about the EM Plan or EMOS, as the case may be, within the prescribed period. The assessment report may be included in any relevant EIS assessment report.

No doubt, it has been considered that the EPA, as opposed to the Mining Registrar, is the most appropriate body to assess the likely environmental impact of mining activities, given its current role in assessing and regulating environmental impacts of other types of environmentally relevant activities.

### 7.7 Public Participation in the Decision Process

This is a requirement in the cases of environmental authorities for production titles ie mining claims (standard application) and mining leases (standard and non-standard applications). Because the procedure is almost identical in relation to both, they are considered together. The process is similar to that found in other legislation permitting public involvement in decision making and will not be examined apart from essential elements and features introduced by the Bill.

The applicant has to prepare and publish an **application notice**, giving specified information about the application. It will generally be given and published simultaneously or together with, and in the same way as, the **certificate of public notice** for the actual mining lease application under the proposed changes to the MR Act.

New provisions will be inserted into the MR Act to provide for a **certificate of public notice** in respect of a mining claim and a mining lease.\(^58\) This initiative seeks to enhance the integration of processes between the DME and the EPA in cases where a draft environmental authority has been given to the Mining Registrar and native title negotiations have reached a particular stage. The notice must contain a time for objections to the application (at least 28 days after the certificate is given to the applicant) and it must contain specified information. The proposed provisions set out the publication and notification requirements imposed upon the applicant. They will also apply if the applicant provides any additional documentation to the Mining Registrar after the last objection day.\(^59\)

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\(^{58}\) Environmental Protection and Other Legislation Amendment Bill 2000 (Qld), cl 75 inserting **proposed ss 64A-64D** and cl 133 inserting **proposed ss 252A-252D** into the *Mineral Resources Act 1989* (Qld).

\(^{59}\) Note the provisions about substantial compliance in *Environmental Protection Act 1994* (Qld), **proposed s 34HE**.
7.7.1 Objections

Any entity may make an objection about the application, the draft environmental authority or a condition therein within the objection period (fixed in the notice to coincide with the objection period in relation to the mining tenement application under the MR Act). However, the applicant cannot object to a condition in a draft environment authority for a standard application because those are merely the standard conditions.60

The objections are submitted to the Mining Registrar so that all objections, including those against the mining lease application, are held together and thus enable them to be heard by the Tribunal at the same time, or as close together as possible.

7.7.2 Decision

The next step is the decision stage, the procedure for which will depend upon whether or not objections have been lodged and remain current (ie not withdrawn).61

Where Current Objection

Where there are current objections when the objection period ends, the Mining Registrar refers them to the Tribunal for a decision. Thus, the Tribunal will have referred to it objections relating to the environmental authority, the issue of the mining lease, and any native title matters at the same time. The Tribunal must attempt to ensure that the objections decision hearing occurs as closely as possible to the objections hearing under the MR Act for the relevant mining tenement.

The parties to the Tribunal proceedings are the EPA, the applicant, each objector, and anyone else decided by the Tribunal.62

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60 Environmental Protection and Other Legislation Amendment Bill 2000 (Qld), Explanatory Notes, p 65.

61 Environmental Protection Act 1994 (Qld), proposed Chapter 2C, Part 6, Division 7.

62 Note that parties can request mediation. This is usually with the Mining Registrar as mediator. Environmental Protection and Other Legislation Amendment Bill 2000 (Qld), Explanatory Notes, p 66. See also the Land and Resources Tribunal Act 1999 (Qld), ss 72-75 regarding the conduct of the mediation.
The Tribunal’s decision takes the form of a recommendation to the Minister for Mines and Energy whether the application for the environmental authority should be refused or should be granted either on the basis of the draft environmental authority as it stands, or subject to different conditions. There is a range of matters listed in proposed section 34HM that the Tribunal must consider in making its decision.

In relation to the hearing of objections to the actual tenement application, the Tribunal must consider specified matters (eg financial and technical capacity of the applicant, the public interest). In hearing objections to an application for a mining lease, its decision takes the form of recommendations to the Minister for Mines and Energy. Thus, the Minister will have before him or her recommendations in relation to both the tenement application and the environmental authority application. This should allow for consistency of approach.

The Environment Minister must then seek advice from the Minister for Mines and Energy about the decision within the stated period. It is also possible for the Minister for Mines and Energy to take advice from any other entity such as from Cabinet. This ensures a whole-of-government decision is made in such cases, particularly in relation to projects of considerable significance to the State, before the final decision by the Environment Minister.

The Environment Minister must then finally decide the application, taking into account the Tribunal’s decision on the objections, and any conditions for the environmental authority recommended by the Coordinator-General under the State Development and Public Works Act 1971 (Qld). The Minister does not have to impose a condition on the environmental authority that is recommended by the Tribunal or by the Coordinator-General. The Queensland Greens have argued that the Minister not being required to adopt the recommendations of the Tribunal is a weakness of the new Bill and is very different to the situation regarding planning decisions.

No Current Objections

Where there are no current objections (ie no objections received by the end of the objection period or any objections that were lodged are withdrawn before the
Tribunal makes a decision), the EPA must issue and register the environmental authority on the basis of the draft environmental authority, the conditions of which must be the same, or substantially the same, as the draft. The process for decision regarding an application for the actual tenement where there are no current objections subsisting is similar.

7.8 REVIEW AND APPEAL RIGHTS – NON-STANDARD APPLICATIONS

Apart from appeals against decisions concerning EISs, dealt with earlier, the following decisions may be appealed to the Tribunal under Chapter 6 of the EP Act:

- Refusal of application for an environmental authority. However, in relation to an environmental authority (mining lease), it does not appear that a final decision by the Environment Minister to refuse the application is subject to appeal, although it is clear that a decision to refuse to allow the application to proceed to the draft authority and public objections stages is appealable;
- Imposition of conditions on an environmental authority (exploration) or environmental authority (mineral development); or
- Decisions about publication of an application notice regarding an environmental authority (mining lease), and not allowing an application to proceed for non-compliance with notice provisions.

7.9 PLAN OF OPERATIONS – PART 7

A Plan of Operations must be prepared for an environmental authority (mining lease) after it has been issued, at least 28 days before the authority holder carries out any activity under the mining lease. The Plan of Operations has a life of one to five years.

Prior to the commencement of the Bill, this requirement is contained in the MR Act. The proposed provisions, however, will be somewhat more comprehensive regarding the content of such plans.
Proposed section 34HX specifies the content requirements of the plan. As well as describing each mining lease for the environmental authority, the land to which each applies, the land to which the plan applies, and the period of application of the plan, it must include:

- a plan showing where all activities are to be carried out;
- an action programme for achieving or implementing the environmental protection commitments and control strategies under the EMOS (if it is a non-standard application) and complying with the conditions in the environmental authority;
- a rehabilitation programme for the land to be disturbed (see the reference to those programmes in the context of EM Plans); and
- another prescribed matter under a Regulation or an EPP.

It must be accompanied by an audit statement and the relevant fee.

The audit statement must be made by or for the environmental authority holder. It must state the extent to which the plan complies with the conditions of the environmental authority and whether or not the financial assurance for the environmental authority is properly calculated.

The rehabilitation programme must state a proposed amount of financial assurance for the plan period.

If there is any inconsistency between the environmental authority and the plan of operations, the authority prevails to the extent of the inconsistency. It is an offence for the holder of the environmental authority not to amend the plan to correct the inconsistency.

### 7.9.1 Financial Assurance

The EP Act currently obliges persons undertaking activities where the risk of environmental harm is high to provide financial assurance that can be called upon if that harm occurs and the person is no longer able to pay for rehabilitation of the environment. This avoids the need for taxpayers to meet the costs of rehabilitation.

The proposed amendments to the EP Act provide that a holder of an environmental authority must give to the EPA financial assurance as security for compliance with the environmental authority, EM Plan or site management plan or any conditions of those documents; and for the costs or expenses of environmental harm that might

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66 Environmental Protection Act 1994 (Qld), Part 9.
occur. The EPA can call upon the assurance to cover any reasonable costs it incurs in preventing or minimising environmental harm or restoring the environment, or in securing compliance. This can occur even after the environmental authority has been surrendered or cancelled: clauses 18-21 of the Bill.

While it is a current requirement under the EP Act that the person provide this assurance in the form of a bond, bank guarantee or insurance policy or another form of security deemed appropriate, the proposed changes make it unnecessary to provide it in those forms provided it is in a form that the EPA considers appropriate.

The holder of the environmental authority can make application for a discharge of the financial assurance and the proposed amendments will enable the EPA to seek from the holder an audit statement for the assurance before making a decision which will state the extent to which the activities have complied with the conditions of the environmental authority and whether or not the amount of the assurance has been properly calculated.

7.10 AMENDMENTS TO ENVIRONMENTAL AUTHORITIES

Environmental authorities, except for an environmental authority (prospecting permit), can be amended under the proposed Chapter 2C, Part 8 of the EP Act. However, it is not possible to seek amendment of conditions concerning financial assurance.67

For standard environmental authorities, the process for applying for amendment is much the same as applying for the original authority (Part 8, Division 3).

If the application for amendment is for a non-standard environmental authority, then Division 4 will apply, as follows:

- first, the EPA has to determine whether the amendment would mean that the level of environmental harm caused by any mining activity is likely to be significantly increased. If the EPA decides that it is likely, it must then be

67 Note that under proposed Chapter 2C, Part 12 the EPA may amend an environmental authority to correct a minor error or to make a more significant amendment if it considers it necessary or desirable by following the process in Division 2 or with the agreement of the holder. A non-standard authority can be amended on any of the grounds listed in proposed s 34KD (eg contravention of the EP Act; non-payment of financial assurance; and environmental audit or report; need to prevent environmental harm not already authorised). It can also cancel or suspend the authority on the conditions listed in proposed s 34KE (eg conviction of an environmental offence) following the Division 2 process. Division 2 enables the holder to make written representations as to why the proposed action should not be taken prior to a decision. The decision is able to be reviewed and appealed against.
determined whether an EIS is required. The Environment Minister can intervene to override any such assessment level decision and EIS decision;

- if it is decided that an EIS is required, the amendment is refused. The most appropriate course of action would then be for the environmental authority holder to apply for a new environmental authority that is more appropriate for the activity and follow the relevant application process that applies. Indeed, it is intended that this should be the case and, therefore, that the amendment process encompasses the same environmental management documentation, public notification and objection requirements as the initial application. Note, however, that if the Minister decides that no EIS is necessary, despite the EPA finding it is required, the application can proceed;

- if it is determined that level of environmental harm is likely to be significantly increased but no EIS is required, the amendment application can proceed. The process depends upon the type of environmental authority involved. The public notification process is somewhat altered in the case of amendment of an environmental authority (mining lease) by proposed section 34IR. The objection period is also varied because of the difference in the process but cannot end earlier than 20 business days after the publication of the notice;

- if the EPA decides that the level of environmental harm is unlikely to be significantly increased, it must grant or refuse the amendment application, complying with any relevant EPP requirement and taking into account the standard criteria.

Note also that environmental authority can be transferred with the EPA’s approval under Part 9.

7.11 SURRENDER OF AUTHORITIES

This is covered by a proposed Chapter 2C, Part 10 of the EP Act. Except in the case of environmental authorities for prospecting permits, the surrender of any mining tenement (through cancellation or another reason) will also require a surrender of an environmental authority. The surrender of an environmental authority must be approved by the EPA.

The application for surrender must be accompanied by the relevant fee, a final rehabilitation report and an environmental audit statement.

A final rehabilitation report must set out the extent to which the relevant activities under the tenement have been consistent with the environmental protection commitments under an EM Plan or EMOS, as the case may be, and include enough information to allow the EPA to decide if the conditions of the
environmental authority have been complied with and the relevant land satisfactorily rehabilitated. It must also describe any ongoing environmental management needs for the land and any other prescribed matters. The EPA then provides the person who has submitted the rehabilitation report with an assessment report about it.

The audit statement accompanying the application for surrender must state the extent of compliance with the environmental authority and attest to the extent of accuracy of the final rehabilitation report.

The decision of the EPA about approving the surrender must comply with any relevant EPP requirement. The authority must have regard to the standard criteria, the final rehabilitation report, the audit statement, any relevant assessment report, or other prescribed matter.

The Bill contains quite stringent requirements concerning the approval of surrender applications to ensure that the holder of the environmental authority is responsible for rehabilitating land affected by mining activities to the same condition as it was in prior to the commencement of the mining, or to another acceptable standard. The aim of the provisions is to prevent liability for rehabilitation being transferred to the Government or another owner of the land. Thus, no surrender is approved unless the authority is satisfied that:

- the conditions of the environmental authority (regarding rehabilitation) have been complied with; or
- the land has been satisfactorily rehabilitated; or
- there is an approved environmental management programme for satisfactory rehabilitation of the land; or
- a suitability statement has been given for the land for which a site management plan has been approved;68 or
- there is another prescribed circumstance for rehabilitation of which the authority is satisfied.

Appeal mechanisms apply to refusal of surrender applications.

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68 See Environmental Protection Act 1994 (Qld), Part 9B, Division 5 deals with site management plans.
7.12 ENVIRONMENTAL AUDITS

If, on reasonable grounds, the EPA considers it necessary or desirable, it can require a holder of an environmental authority to conduct or commission an environmental audit about a matter concerning a mining activity and to provide a report: Chapter 2C, Part 11. An example of such a matter that might trigger a request could be to see whether there is compliance with the environmental authority, whether the level of environmental harm being caused is that which has been authorised, or to check the accuracy of a final rehabilitation report.69

The Environment Minister considers that the environmental audit in this context is a significant modernisation of Queensland’s approach to ensuring good environmental management.70

The notice to the holder requiring the audit must set out a reasonable period within which the audit is to be undertaken and a report given to the authority. The holder can appeal against the need for the audit and/or the period specified. It is an offence to fail to comply with the notice without reasonable excuse.

The costs of the audit and providing the report must be met by the authority holder. Even if the EPA decides to commission an audit itself, or to evaluate an audit conducted by another party, it may recover any properly and reasonably incurred costs from the authority holder.

The Bill allows the EPA to conduct the audit itself or to appoint, under an instrument of appointment, an independent auditor with the necessary qualifications prescribed under a regulation. The Environment Minister believes that this provision allows for the skills and expertise of the private sector to play a much larger part and for the market-based cost of testing environmental performance to be met by the project beneficiaries. In turn, it will also lead to improved cost effectiveness of environmental auditing and help build the capacity of the consulting industry.71 On the other hand, some environmental groups believe that the involvement of private consultants could raise problems of conflict of interest, a number of which have occurred in relation to the preparation of EISs.72

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69 See the examples set out in the proposed s 34JR(1)(a) of the Environmental Protection Act 1994 (Qld).

70 Hon RJ Welford MP, Second Reading Speech, p 3387.

71 Hon RJ Welford MP, Second Reading Speech, p 3387.

7.13 EXISTING AUTHORITIES

A proposed Chapter 8, Part 2, will ensure that authorised existing mining activities may continue for a transitional period after the changes commence. Therefore, on the day of commencement:

- an existing environmental authority for mining activities is taken to be an environmental authority under the proposed amendments. Applications that are in the processing pipeline that have reached as far as the certificate of application stage under the MR Act will be processed as if the existing regime continues. The holder will possess a transitional authority and will have five years to convert the authority to a new environmental authority or to apply to amend, transfer or surrender it;

- a holder of an existing mining tenement who does not have a matching environmental authority (who may be unaware that they require one) is deemed to hold a single environmental authority for all level 2 (ie standard) environmentally relevant activities that are authorised under the existing tenement. However, the holder has only six months to convert the transitional authority, or to apply to amend, transfer or surrender it;

- the conditions upon which the transitional authority will operate are those applying immediately before the authority was deemed to be an environmental authority (mining activities); any financial assurance condition; and all conditions (defined in section 240) that would reasonable be expected to be a condition of the environmental authority. The latter type of conditions include conditions in mining tenements and commitments and obligations etc contained in the most recent version of a planning document for the tenement (eg an EMOS). This has the effect that past variations of an EMOS, the status of which was unclear under the MR Act, will be validated under the proposed provisions introduced by the Bill.\(^\text{74}\)

Applications which have not reached the certificate of application point will be processed under the proposed provisions, except that the relevant time limits for deciding applications will not apply.

Transitional authorities are all deemed to be non-standard so if standard mining activities are being conducted, a conversion to a standard authority under proposed section 258 may be appropriate. Otherwise, the transitional authority is amended in accordance with the provisions of Chapter 2C, Part 8 except that the public notification and objection provisions of Part 6 will not apply unless changes

\(^{73}\) Note that this will not apply to the second category of cases where there is, in fact, no matching environmental authority.
are being made to the extent or type of the authorised mining activities. There is also Ministerial power to amend the transitional authority to deal with unanticipated difficulties that might arise, particularly with older projects.75

7.13.1 Special Agreement Acts

Note that the provisions of the MR Act and the EP Act continue to apply as in force before the commencement of the changes effected by the Bill to any activity under the designated Special Agreement Acts.76 Those Acts give legislative force to a number of agreements and leases so that they operate as if they were Acts of Parliament. While such agreements and leases are protected from contractual or executive changes, they are not immune to alteration by later Acts of Parliament. Consequently, provision is made in the Bill to ensure that the EP Act will operate, as it currently stands, to mining activities covered by those Special Agreement Acts. The extent to which the EP Act applies to Special Agreement Act mines depends upon the particular mine and this will continue to be the case. Those activities will not be subject to the proposed new regulatory regime. This has been criticised by some environmentalists who consider that those Special Agreement Act mines should be within the normal regulatory framework.77 A pending audit of Special Agreement Act mines may indicate any necessary changes to current environmental conditions that apply to particular mines.

7.14 CHANGES TO THE MINERAL RESOURCES ACT 1989

A number of amendments to the MR Act have been made as a consequence of the extended coverage of mining activities under the EP Act.78

7.14.1 Application Requirements and Conditions of an Environmental Nature

With the passage of the Bill, conditions imposed upon mining tenements under the MR Act must not conflict with, be the same, or almost the same, as a relevant condition for the environmental authority.

74 See also Hon RJ Welford MP, Second Reading Speech, p 3387.
75 Environmental Protection Act 1994 (Qld), proposed s 261 and Explanatory Notes, p 132.
76 Environmental Protection Act 1994 (Qld), proposed s 268.
78 See Environmental Protection Act 1994 (Qld), proposed Chapter 8, Part 4.
Applications for mining tenements under the MR Act, will no longer need to include statements concerning environmental protection and rehabilitation, as this will be part of the environmental authority (mining activities) process under the EP Act. Moreover, requirements concerning the preparation of EISs, EM Plans, EMOSs and Plans of Operation have been removed from the MR Act. The proposed provisions introduced by the Bill will govern those environmental documents, as explained above. Other smaller amendments of this type have also been made.\(^79\)

As for conditions of mining tenements currently imposed under the MR Act, those concerning environmental rehabilitation, environmental management, and minimising land degradation and pollution will be found in the EP Act and will be obligations imposed on the holders’ environmental authorities.\(^80\)

A new condition of the tenement that will be imposed by the Bill is that the holder must carry out improvement restoration for the mining tenement.\(^81\) Improvement restoration means to repair damage to pre-existing improvements caused by any activity undertaken by the holder of the authority.\(^82\) Pre-existing improvements are all those improvements on, or attached to the relevant land, that are on a mining tenement immediately before the application for the tenement was lodged (eg a structure). The idea is to restore the pre-existing improvement to the same, or almost the same, condition as it was in before the damage to it occurred, or to replace the improvement. It is interesting to note that the damage to the improvement need not be of an environmental nature.

### 7.14.2 Security Deposits

As a consequence of the provisions to be included in the EP Act to cover financial assurance for mining activities, the provisions in the MR Act concerning security deposits to be given by applicants for mining tenements will relate only to the restoration of any damage to pre-existing improvements for the land rather than to an amount needed to rectify damage to the environment.

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\(^79\) For example Environmental Protection and Other Legislation Amendment Bill 2000 (Qld), cl 73 will insert into s 21 of the *Mineral Resources Act 1989* (Qld), the outline of the mining programme requirement, removing the more detailed requirements currently imposed upon the applicant for a mining claim.

\(^80\) See for example proposed s 82 of the *Mineral Resources Act 1989* (Qld), in relation to conditions of mining claims.

\(^81\) See the *Mineral Resources Act 1989* (Qld), proposed ss 25, 82, 101, 116, 144 inserted by the Environmental Protection and Other Legislation Amendment Bill 2000 (Qld).

\(^82\) Environmental Protection and Other Legislation Amendment Bill 2000 (Qld), cl 63 inserting a proposed s 6C into the *Mineral Resources Act 1989* (Qld).
7.14.3 Public Consultation

The certificate of application requirements under the MR Act have been downgraded because of the proposed public notification procedure inserted into the EP Act. There is an attempt to ensure that sufficient information on the proposed mining lease is available to enable native title negotiations to proceed.\(^{83}\)

New provisions are to be inserted into the MR Act concerning the issue of a certificate of public notice (see Section 7.7 of the Bulletin).

The procedure for the notification of affected landowners and the convening of an informal conference between the applicant and any concerned landholder who requests it is unaffected by the amendments.

7.14.4 Compensation

New provisions are inserted into the MR Act to allow for the amendment of compensation agreements between holders of the mining lease and affected landowners. Such agreements are either negotiated between the parties or determined by the Tribunal.

At present, the MR Act requires the existence of a compensation agreement before a lease is granted but is silent about whether it can be amended or changed in any way during its term if there is some change in the circumstances of the lease. This has caused concern to some landholders who feel that they have not been adequately compensated for the loss of the use of their land when mining operations change and previously unforeseen impacts result. The Environment Minister believes that the amendments introduced by the Bill address this oversight.\(^{84}\) The new arrangements will apply to all mining leases with compensation agreements made before or after the commencement of the Bill.

A proposed section 283A will enable parties to amend the original compensation in the event of a material change in circumstance (eg a different type of mining operation changes the impact of the mining under the lease). Once the amendment is made, it is binding and replaces the original agreement, provided it is filed with the Mining Registrar. Alternatively, the parties can, pursuant to a proposed section 283B, ask the Tribunal to review the original compensation. The Tribunal may decide to confirm the original compensation or to amend it. In conducting the

\(^{83}\) Environmental Protection and Other Legislation Amendment Bill 2000 (Qld), cl 132, amending Mineral Resources Act 1989 (Qld), ss 64 and 132 and the Explanatory Notes, p 154.

\(^{84}\) Hon RJ Welford MP, Second Reading Speech, p 3387.
review the Tribunal will consider whether the applicant has attempted to mediate or negotiate an amendment agreement as well as other relevant matters.

### 7.14.5 Integrated Decision Making

An integrated approach to decision making with respect to granting of the mining tenement application and granting of the relevant environmental authority is regarded as a vital component of the overall scheme. Accordingly, any changes to the status of mining tenements and other decisions in relation to the application for such generally must be notified to the EPA within specified time frames.

For example, in relation to an application for the grant of a mining claim, there is a need for the Mining Registrar, within five days (in the usual case) of the joint application being lodged, to give a copy of it to the EPA. The Mining Registrar also must inform the EPA about matters such as (but not limited to): the reasons for rejecting an application for a mining tenement (also given to the applicant together with reasons for it); any surrender of the claim; notice of abandonment; or notice of a cancellation of the claim due to a breach by the holder etc.

In addition, the proposed section 34KN states that before certain decisions or actions are taken, the EPA has to seek advice from the Chief Executive of the DME. The reason is to ensure a whole-of-government perspective on actions or decisions that may impact adversely on a mining project. The decisions and actions contemplated are listed in that provision and include, for example, refusing the surrender, or transfer of, an application or any decisions about a non-standard application or environmental authority. It was noted earlier, in relation to the Environment Minister making a decision about the grant of an environmental authority (mining lease), that the Minister seeks advice from the Minister for Mines and Energy and that a Cabinet discussion may, in fact, occur.

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85 Environmental Protection and Other Legislation Amendment Bill 2000 (Qld), *Explanatory Notes* 93.
8 RESPONSE TO THE INTRODUCTION OF THE BILL

The Queensland Environment Minister told Parliament, at the time when the Bill was introduced, that in making the fundamental changes to the management of mining, it is not possible to satisfy every aspiration of every group. Mr Welford made a commitment to review the proposed legislation within 18 months to address any issues arising from its implementation, which will provide another opportunity for input from stakeholders.86

A number of submissions were made in relation to the proposed Bill after it was presented to Cabinet earlier this year. The Queensland Mining Council made submissions on a number of matters of concern to it in the Bill, such as the requirement of an EIS for applications for environmental authorities (exploration permits) and environmental authorities (mineral development licences), and any proposal that might result in an increase in the amount of financial assurances required. It also stressed the need for ongoing training and education within the EPA to ensure that EPA officers have sufficient knowledge of how the industry operates.87 In general, however, the Council was supportive of the changes, with Chief Executive Officer, Mr Pinnock, stating that the process had been one of the most tortuous and difficult exercises lasting more than three years, and spanning three governments, that the Council had ever undertaken but that the end result should give the public every confidence in the environmental management of mining both from the industry perspective and from the government regulation perspective.88

At the same stage of the Bill’s formation, the Queensland Greens issued a media release stating that the legislation would create a regulatory framework for mining that was worse than that existing under the MR Act and expressed concerns that lack of strong controls over mining could create the same type of ecological disaster as that at Ok Tedi.89

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86 Hon RJ Welford MP, Second Reading Speech, p 3385.


The Greens Spokesperson, Mr Hutton, criticised the apparent reduction in the level of public involvement in all aspects of the process; the ability for the Minister to intervene to override decisions of the EPA and to ignore recommendations of the Tribunal; the failure of the proposed legislation to deal with the important issue of rehabilitation and security deposits; and the leaving out of mines covered by Special Agreement Acts. In addition, he argued that the bringing in of independent auditors to do environmental audits could lead to problems of conflict of interest.

In terms of administrative arrangements, the Greens criticised failure to ensure that experienced environmental staff at the DME were transferred to the EPA, leaving the latter body under-resourced and ill equipped to be an effective regulator of mining impacts. This denouncement was backed by the Queensland Conservation Council Coordinator.

However, the Queensland Environment Minister has stated that the EPA staffing levels did not need to mirror those in the DME to enable the EPA to assert its authority. It appears that more staff have been recruited by the EPA as well as former staff of the DME coming across to it to administer the new arrangements. It is anticipated that the new administrative arrangements will be finalised by the end of the 2000-2001 financial year.

With the introduction of the Bill on 4 October 2000, the Greens still consider that the main weaknesses of the Bill are that public involvement in setting impact assessments appears to have been reduced; that rehabilitation standards remained unclear; and that big mining projects with their own Special Agreement Acts are not covered. The Queensland Mining Council has welcomed the proposed framework but is disappointed about the loss of consensus between the stakeholders.

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92 Siobhain Ryan, 17 April 2000, p 4.


94 Jacob Greber, ‘Mining accord falls into disarray’, *Courier Mail*, 5 October 2000, p 4.
9 CONCLUSION

In imposing regulations upon the mining industry, the Bill strikes a balance between good environmental management and requirements and obligations that are not too cumbersome or prescriptive, providing the industry with the confidence it needs to develop, attract investment, and contribute to Queensland’s economic growth.

Removal of environmental regulation from the scope of the DME’s oversight and transferring it to the EPA is an integral administrative feature of that process. It enables the DME to get on with encouraging mining projects without danger of it facing a conflict of interest with its environmental regulation functions. A whole-of-government approach to many approval decisions is another important aspect, particularly for the mining industry.

However, the impact of the proposed changes can only be realised once they have operated for some time, hence the Government’s commitment to undertake review of the new legislation within 18 months of its commencement.
BIBLIOGRAPHY

Monographs


Newspaper Articles


Case

Media Releases


Internet Articles


Legislation

Qld
- Environmental Protection Act 1994
- Environmental Protection and Other Legislation Amendment Bill 2000
- Mineral Resources Act 1989

Cth
- Environmental Protection and Biodiversity Conservation Act 1999
- Environmental Protection and Biodiversity Conservation Bill 1999
- Seas and Submerged Lands Act 1973
This Publication:

RBR 12/00  Environmental Controls Over Mining: The Environmental Protection and Other Legislation Amendment Bill 2000 (QPL Nov 2000)

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