Parliamentary Committees

Resources and Other Legislation Amendment Bill 2021

Report No. 9, 57th Parliament

Transport and Resources Committee

August 2021

Transport and Resources Committee

Chair	Mr Shane King MP, Member for Kurwongbah
Deputy Chair	Mr Lachlan Millar MP, Member for Gregory
Members	Mr Colin Boyce MP, Member for Callide
	Ms Jess Pugh MP, Member for Mt Ommaney
	Mr Les Walker MP, Member for Mundingburra
	Mr Trevor Watts MP, Member for Toowoomba North

Committee Secretariat

Telephone	+61 7 3553 6621
Fax	+61 7 3553 6699
Email	trc@parliament.qld.gov.au
Technical Scrutiny Secretariat	+61 7 3553 6601
Committee webpage	www.parliament.qld.gov.au/TRC

Acknowledgements

The committee acknowledges the assistance provided by the Department of Resources, the Department of Transport and Main Roads and the Department of Regional Development, Manufacturing and Water.

All web address references are current at the time of publishing. Please note that all in-text references have been removed. Refer to original source for more information.

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Abbreviations

the committee	Transport and Resources Committee
APPEA	Australian Petroleum Production & Exploration Association
ATP	Authorities to Prospect
DA	Driver Authorisations
DDA	*Disability Discrimination Act 1992 (Cwth)*
DRDMW	Department of Regional Development, Manufacturing and Water
DTMR/TMR	Department of Transport and Main Roads
EDO	Environmental Defenders Office
HRA	*Human Rights Act 2019*
LAGQ	Limousine Action Group (Queensland) Inc
LAQ	Limousine Association Queensland
LSA	*Legislative Standards Act 1992*
PL	Production Leases
PPQ	Personalised Plates Queensland
PTO	Personalised Transport Ombudsman
PTOA	*Personalised Transport Ombudsman Act 2019*
QAO	Queensland Audit Office
QCC	Queensland Conservation Council
QRC	Queensland Resources Council
RSDAA	Ride Share Drivers Association of Australia
SDNRAIDC	Former State Development, Natural Resources and Agricultural Industry Development Committee, 56th Parliament
TCQ	Taxi Council of Queensland
TO(PT)A/TOPTA	*Transport Operations (Passenger Transport) Act 1994*
TPWC	Former Transport and Public Works Committee, 56th Parliament

Acts and Regulations cited in this report are Queensland Acts or Regulations unless otherwise specified.

Chair's foreword

This report presents a summary of the Transport and Resources Committee's examination of the Resources and Other Legislation Amendment Bill 2021.

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

The committee has recommended that the Bill be passed. The committee has also made 2 additional recommendations aimed at addressing some of the issues raised by stakeholders during the course of the inquiry.

On behalf of the committee, I thank those individuals and organisations who made written submissions, appeared before the committee and provided additional written responses. I also thank the Department of Resources, the Department of Transport and Main Roads and the Department of Regional Development, Manufacturing and Water for their assistance during the course of the committee's inquiry.

I commend this report to the House.

Shane King MP

Chair

Recommendations

1 Introduction

1.1 Role of the committee

The Transport and Resources Committee (committee) is a portfolio committee of the Legislative Assembly which commenced on 26 November 2020 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.[1]

The committee's primary areas of responsibility are:

- Transport and Main Roads
- Energy, Renewables, Hydrogen, Public Works and Procurement
- Resources.

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

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

The Resources and Other Legislation Amendment Bill 2021 (Bill) was introduced into the Legislative Assembly and referred to the committee on 16 June 2021. The committee is to report to the Legislative Assembly by 6 August 2021.

1.2 Inquiry process

On 23 June 2021, the committee invited stakeholders and subscribers to make written submissions on the Bill. Thirteen submissions were received. Appendix A contains a list of submissions received.

The committee received a public briefing about the Bill from the Department of Resources, the Department of Transport and Main Roads (DTMR) and the Department of Regional Development, Manufacturing and Water (DRDMW) on 21 July 2021. Appendix B contains a list of officials.

The committee held a public hearing on 21 July 2021. Appendix C contains a list of witnesses. Written responses were received from witnesses to questions taken on notice at the hearing.

The committee also received written advice from the Department of Resources, who co-ordinated the responses on behalf of the three departments, responding to matters raised in submissions as well as to additional written questions from the committee.

The submissions, correspondence and transcripts of the briefing and hearing are available on the committee's webpage.

1.3 Policy objectives of the Bill

The objectives of the Bill are to:

- to clarify the legal standing of certain historically granted tenures, activities and entitlements under the *Mineral Resources Act 1989* and *Petroleum Act 1923*

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

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

- to repeal the *Personalised Transport Ombudsman Act 2019* (PTO Act) and make minor consequential amendments to the *Transport Operations (Passenger Transport) Act 1994* (TOPTA).
- to ensure water restrictions can be equitability investigated and enforced across the South East Queensland region by amending the *South East Queensland Water (Distribution and Retail Restructuring) Act 2009* to align with the powers local government water service providers have under the *Local Government Act 2009*.
- to exclude cyber security measures, reported to the Water Supply Regulator, from being made publicly available to mitigate the risk of malicious attacks on water service providers and water supply schemes by amending the *Water Supply (Safety and Reliability) Act 2008*.[3]

1.4 Government consultation on the Bill

1.4.1 Amendments *Mineral Resources Act 1989* and *Petroleum Act 1923*

In relation to consultation on the proposed amendments to the *Mineral Resources Act 1989* and the *Petroleum Act 1923*, the explanatory notes state:

> The proposed amendments to the *Mineral Resources Act 1989* and the *Petroleum Act 1923* have not been released for consultation. The Parliamentary Committee process will provide an appropriate forum for stakeholders to raise issues in relation to the amendments.[4]

A number of stakeholders were critical of the Department of Resources' consultation processes in relation to the proposed amendments.

The Environmental Defenders Office (EDO) expressed their disappointment that to their knowledge no representatives of the conservation sector or the environmental law space were informed of the Bill prior to the day it was introduced into the Queensland Parliament. The EDO advised that they are considered a major stakeholder and would have been grateful to be given forewarning of the policy and law changes so they could provide input at an early stage.[5] The EDO advised:

> We would really implore the Department of Resources to improve their consultation processes. We were quite surprised by this bill. Each of our organisations are consistently involved, to their credit, in many departments in regulation changes that occur day to day and are advised with due warning and involved in these processes so that we can understand them, convey them to our membership and also feed into them public interest considerations, whereas this bill and the policy changes in it have come completely out of the blue for us.[6]

The Queensland Resources Council (QRC) advised:

> The QRC is regularly considered a major stakeholder to bills related to the resources regulation. On this occasion we were informed of the bill only one day before it was introduced, although we did know it was being planned through a discussion with the minister. We are disappointed that the Department of Resources did not consult us through the development of the bill when we could have provided valuable input and any issues such as concerns with language could have been rectified prior to the bill's introduction. On future bills, particularly those that contain material changes to policy that impacts our members, it would be appreciated if the department would commit to a more thorough consultation process with all major stakeholders and, of course, that is a major part of the Queensland Resources Industry Development Plan.[7]

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3 Explanatory notes, pp 1-4.

4 Explanatory notes, p 6.

5 Submission 12, p 6.

6 Public hearing transcript, Brisbane, 21 July 2021, p 4.

7 Public hearing transcript, Brisbane, 21 July 2021, p 6.

And,

> Under the proposed Queensland Resources Industry Development Plan, that consultation period is laid out at 12 weeks. We understand there are some mitigating circumstances in relation to the items in this bill, particularly in relation to certainty of tenure. On this occasion, and prior to the finalisation of the Resources Industry Development Plan, we have agreed that this bill go forward without further consultation. However, it has left some issues that are a little bit grey. Some of the language is not clear. Because obviously this is not the first time bills have proceeded without adequate consultation, we are using this instance to highlight the importance of due process. In future, we would like to see a proper 12-week consultation between the industry, the department, the minister and other relevant departments and ministers to ensure that when this legislation comes to the House there are no grey areas in it and that the language is not ambiguous.[8]

The committee sought an explanation from the Department of Resources regarding the reasons for not undertaking consultation with stakeholders prior to the introduction of the Bill into the Parliament. The Department of Resources advised:

> The Department of Resources notes the concerns about consultation on these amendments. The Department of Resources is committed to consulting broadly on regulatory proposals that have a material impact and such proposals would be subject to consultation with appropriate timeframes to allow stakeholders to consider the full range of issues that may arise from them.
>
> However, given the expiry of relevant Petroleum Act 1923 provisions on 1 November 2021, as well as the clarifying nature of the proposed amendments, broader consultation on them was not undertaken. It is the Department of Resources' view that these proposed amendments do not have a material impact, but rather seek to preserve and clarify the validity of existing rights.[9]

1.4.2 Amendments to *Personalised Transport Ombudsman Act 2019* and *Transport Operations (Passenger Transport) Act 1994*

The explanatory notes identify that consultation was undertaken with key stakeholders who were supportive of the proposed repeal of the PTO Act, but provided feedback that access to mediation services for industry participants is important.[10]

The explanatory notes state:

> Key feedback from industry and stakeholders during this consultation was that the Personalised Transport Ombudsman would be ineffective due to its limited powers in making and enforcing binding decisions, and in reviewing government policies or decisions. This was despite the Personalised Transport Ombudsman's prescribed powers being consistent with a number of other ombudsmen schemes, such as the Queensland Ombudsman. Although the Personalised Transport Ombudsman could reduce costs, time and stress in providing the timely resolution of disputes, these savings may be minimal if there is limited engagement by customers and industry due to the Personalised Transport Ombudsman's limited powers.[11]

8 Public hearing transcript, Brisbane, 21 July 2021, p 7.

9 Department of Resources, correspondence, 29 July 2021, p 7.

10 Explanatory notes, p 6.

11 Explanatory notes, p 6.

The committee sought additional information regarding the consultation process with personalised transport stakeholders and in particular the Personalised Transport Industry Reference Group (PTIRG). DTMR advised:

> Stakeholders engaged as part of the review of the powers and functions of the Personalised Transport Ombudsman suggested that revising the approach and membership of the group would be beneficial to address policy issues of concern to the personalised transport industry. The Department of Transport and Main Roads (TMR) is reviewing the PTIRG to ensure that its membership and format support a focus on problem-solving and sharing practice approaches to cross-cutting issues the industry is facing in partnership with TMR.
>
> TMR has continued to engage individually with members of the PTIRG on issues directly affecting them. This has included quarterly meetings with the Limousine Association of Queensland and frequent engagement with other personalised transport industry stakeholders, including the Taxi Council of Queensland and the Limousine Action Group. In addition, TMR has conducted two annual personalised transport industry surveys to measure perceptions of the personalised transport framework.[12]

1.4.3 Amendments to *South East Queensland Water (Distribution and Retail Restructuring Act 2009)*

The explanatory notes identify that consultation was undertaken with both Seqwater and council-owned distributor-retailers who unanimously supported the proposal.[13]

1.4.4 Amendments to *Water Supply (Safety and Reliability) Act 2008*

The explanatory notes identify that consultation was undertaken with 84 drinking water service providers, the Queensland Water Directorate and the Local Government Association of Queensland and there was broad support for the removal of the requirement to include this information in publicly available documents.[14]

1.5 Should the Bill be passed?

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

After examination of the Bill, including consideration of the policy objectives to be implemented, stakeholders' views and information provided by the various departments, the committee recommends that the Bill be passed.

Recommendation 1

The committee recommends the Resources and Other Legislation Amendment Bill 2021 be passed.

[12] Department of Resources, correspondence, 29 July 2021, p 8.

[13] Explanatory notes, p 6.

[14] Explanatory notes, p 6.

2 Examination of the Bill

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

2.1 Amendments to *Mineral Resources Act 1989*

The purpose of the proposed amendments to the *Mineral Resources Act 1989* is to validate a number of mining leases that were granted between the commencement of the *Mineral Resources Act 1989* and 2010 which may have administrative deficiencies relating to either:

- the Minister did not comply with the requirement under former section 271(1)(a) to recommend to the Governor in Council that an instrument of lease be issued to the applicant for the lease with respect to the whole or part of the land the subject of the application for the lease; or
- an instrument of lease was not issued to the holder of the lease.[15]

When introducing the Bill the Minister for Resources stated:

> The bill amends the Mineral Resources Act 1989 to validate certain mining leases which may have administrative deficiencies. Prior to 2012 mining leases in Queensland were granted by the Governor in Council based on a recommendation by the minister. Up until 2010 the minister was also required to recommend to the Governor in Council that an instrument of lease be issued. The Department of Resources has identified there were 86 mining leases for coal and 847 mining leases for other minerals that have one of the following or both administrative deficiencies: firstly, the minister did not recommend the issuing of the lease; secondly, the instrument of lease was not issued to the holder.
>
> To make it clear, prior to 2010 when recommending the grant of the mining lease, the minister was required to also make a recommendation to the Governor in Council that an instrument of lease be issued under previous section 271(1)(a). My department is aware of some grants where the minister of the day did not include the recommendation to issue the instrument of lease to the Governor in Council.[16]

The committee sought additional detail on the numbers of leases with each type of deficiency. The Department of Resources advised:

> … based on a digital search of MERLIN, that all 86 mining leases for coal and 847 mining leases for other minerals did not have instruments of lease issued. MERLIN is the predecessor system to the Department of Resources' digital register, MyMinesOnline.
>
> Within the time available, the Department of Resources is unable to provide definitive advice on how many of the affected leases are also affected by the issue where the Minister of the time did not make a recommendation to the Governor in Council that an instrument of lease be issued.[17]

The explanatory notes identify that the amendments are necessary to ensure certainty for the holder of these mining leases and whilst having retrospective effect, do not confer any new rights or obligations on any stakeholders. The proposed amendment allows that:

> … any mining lease granted with either or both of these administrative deficiencies is taken to be, and always to have been, as valid as they would have been if both requirements had been met.[18]

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15 Explanatory notes, p 8.

16 Queensland Parliament, Record of Proceedings, 16 June 2021, p 1872.

17 Department of Resources, correspondence, 29 July 2021, p 2.

18 Explanatory notes, p 8.

The explanatory notes also identify that the amendments:

> … only address a narrow administrative deficiency that might affect an otherwise validly granted mining lease and do not seek to validate any other issues that may be associated with individual granted mining leases.[19]

The Minister also confirmed this issue stating:

> It is important to note that these amendments will only validate these grants to the extent that they are impacted by one or both of the identified administrative deficiencies. They do not impact any other aspects of the mining leases or associated approvals and agreements. As these leases were all approved prior to 2010, these proposed amendments are, by necessity, retrospective in effect. However, they are crucial to ensure certainty for the holders of these mining leases and ensure that they can continue to operate with confidence.[20]

The Department of Resources advised the committee that it considers that:

> … these mining leases are validly granted. Their existence and details about individual resource authorities, including the mining leases and applications for new resource authorities, are recorded on a register that the chief executive is required to maintain under section 197 of the Mineral and Energy Resources (Common Provisions) Act 2014. This electronic register is available through the department's website, and anyone can access it and obtain public records about a particular resource authority.

The Department of Resources also provided the following historical context:

> … prior to 2012 mining leases in Queensland were granted by the Governor in Council based on a recommendation made by the relevant minister. Up until 2010, the minister was also required to include a recommendation to the Governor in Council that an instrument of lease be issued. The department has recently become aware that, prior to 2010, a number of mining leases were granted by the Governor in Council where either or both of the following occurred: either the minister did not recommend the issuing of the instrument of lease to the Governor in Council; or the instrument of lease itself was not issued to the holder. These deficiencies occurred after the assessment of individual mining lease applications had been completed by the minister and after the minister had formed the view that a mining lease should be recommended for approval. They are effectively minor procedural oversights that have no bearing on the outcome of the assessment process.[21]

The department acknowledged:

> While the department believes that these mining leases are valid, these deficiencies do create some uncertainty for their holders and could give rise to potential legal challenges about the validity of the individual leases. To provide greater certainty, this bill proposes a clarifying amendment to remove any ambiguity.[22]

The department confirmed:

> The identified minor administrative deficiencies relate only to the issuing of a hard copy instrument of lease and had no impact upon the assessment or the validity of the approval of the leases. They occurred at the end of the assessment process in place at the time, after the responsible Minister had formed a view about the mining lease application.
>
> The Governor in Council, as the authorised decision maker under the Act approved the grant of these leases on the recommendation of the Minister of the day.[23]

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19 Explanatory notes, p 1.

20 Queensland Parliament, Record of Proceedings, 16 June 2021, p 1872.

21 Public briefing transcript, Brisbane, 21 July 2021, pp 3-4.

22 Public briefing transcript, Brisbane, 21 July 2021, p 4.

23 Department of Resources, correspondence, 23 July 2021, p 2.

The committee sought additional information regarding whether the department intends to take any further actions to rectify these deficiencies. The Department of Resources advised:

> The proposed draft legislation will address the process deficiencies by validating the grant of impacted mining leases. No further action is required if the amendments are passed by the Parliament.
>
> The Department of Resources notes that there has been no requirement to issue an instrument of mining lease since 2010.[24]

The committee sought additional information from the Department of Resources regarding how this issue occurred, how and when it was detected and why it has taken so long to be rectified. The committee also sought additional information regarding what processes have been put in place to ensure all the leases with deficiencies have been rectified and that this type of error will not occur again. The Department of Resources provided the following response:

> This historical oversight only recently became apparent to the Department of Resources and the government is acting quickly to ensure that there is certainty for the holders of impacted mining leases.
>
> It was identified during investigations relating to a recent Land Court proceeding concerning the New Acland Stage Three expansion project. The Department of Resources had reviewed, for that proceeding, the documentation held concerning the Stage One and Stage Two approvals. During that process, the Department of Resources identified that a number of mining leases granted at that time were subject to these administrative deficiencies.
>
> To preserve the integrity of the tenure framework and provide certainty to mining lease holders and stakeholders, the Department of Resources then reviewed the historical grants of mining leases and the historical construction of the Mineral Resources Act 1989 to identify how many tenures were affected by these administrative deficiencies.
>
> This issue will not occur again as there is no longer a requirement to issue an instrument of mining lease. This requirement was removed in 2010.[25]

2.1.1 Stakeholder views

The proposed amendment of the *Mineral Resources Act 1989* was supported by mining industry stakeholders. The QRC stated:

> The retrospective application of this amendment rectifies this administrative deficiency and provides certainty to the holders of the affected Mining Leases.[26]

The Association of Mining and Exploration Companies (AMEC) advised that they sought the views of their members regarding the clarification of certain historically granted tenures, activities and entitlements under the *Mineral Resources Act 1989* and *Petroleum Act 1923,* and that:

> The feedback onthese changes is that they are overdue and that members were supportive. It is hoped this amendment will effectively address some administrative deficiencies and retrospectively validate the impacted Mining Leases and also avoid any uncertainty around those leases.[27]

However, environmental advocacy groups were less supportive of the proposed amendments.[28] The Lock the Gate Alliance stated:

> The ROLA Bill reveals major failings in basic management and administration of mining and petroleum law in Queensland and seeks to retrospectively fix these problems.

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24 Department of Resources, correspondence, 29 July 2021, p 3.

25 Department of Resources, correspondence, 29 July 2021, p 2.

26 Submission 6, p 1.

27 Submission 9, p 2.

28 See submission nos 4, 7, 8 and 12.

> In our view, the Bill exposes broader problems with mining and gas regulation which is exacerbated by a marked lack of public transparency and vastly inadequate resourcing for compliance and enforcement.[29]

The Queensland Conservation Council (QCC) agreed, stating:

> In our view, the fact that 933 mining leases across Queensland do not currently comply with legislative requirements strongly indicates there are significant systemic issues with how the Minister and the department administers mining lease applications and how the resource industry undertakes due diligence to ensure that it complies with legislative requirements.[30]

The EDO also commented on this issue stating:

> The fact that the provision of mining leases in Queensland can be subject to such a significant oversight in legislative process demonstrates clearly that the Queensland Government has for decades not been sufficiently engaged in regulating the resource industry. This oversight also points to the strong need for more transparency in the regulation of the resource industry …[31]

The EDO questioned:

> … how the public and industry can have faith in the Queensland government, that they take their laws seriously, when we have such a stark example of the government and the department officers not taking their laws fully into account when they are going through their legal processes.[32]

The QCC advised the committee that this is not the first instance what they consider to be 'systemic issues in the application of Queensland's mining laws'. The QCC cited the example of the Water Reform and Other Legislation Amendment Bill advising:

> What came out of that process was the recognition that there were some provisions under the Water Act that should have been applied to mining companies in the Bowen Basin in particular. This applied to those companies being required to get a water licence for the groundwater that they either took or interfered with and for some reason, which did not become evident at the time, those provisions were turned off.[33]

2.1.1.1 Administrative practice – issuing of instruments of lease

The Department of Resources advised:

> The Department of Resources has identified that over 900 mining leases granted prior to 2010 may have been affected by minor administrative deficiencies relating to the issue of a hard-copy instrument of lease. This does not impact mining leases granted after 2010.[34]

The Minister for Resources also noted:

> … it was administrative practice up until 2010 to not routinely issue instruments of lease. New holders were sent letters advising of the grant of the lease, including conditions, and were able to request an instrument of lease if they required it.[35]

In addition, some stakeholders were critical of industry participants for not conduction 'some sort of due diligence in regard to making sure that they comply with all necessary regulatory requirements.'[36]

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29 Submission 7, p 1.

30 Submission 8, p 1.

31 Submission 12, p 3.

32 Public hearing transcript, Brisbane, 21 July 2021, p 4.

33 Public hearing transcript, Brisbane, 21 July 2021, p 3.

34 Public briefing transcript, Brisbane, 21 July 2021, p 3.

35 Queensland Parliament, Record of Proceedings, 16 June 2021, p 1872.

36 Public hearing transcript, Brisbane, 21 July 2021, p 3.

The committee sought a response from industry stakeholders on this issue. QRC responded:

> The change happened when the decision-maker for leases went from the Governor in Council to the minister. However, the lease was effectively still valid. The assessment was still the same, the decision was made, so that part of it is still all very valid and legal. Of course, we have the public register as well, so that information is available there. It was just that administrative instrument that was not provided. A mining company can obviously continue without that because they have the decision.[37]

The Australian Petroleum Production & Exploration Association (APPEA) advised that they have never thought to check whether the government had actually made the decision properly. APPEA advised:

> Basically, you put in your application, you provide what you are told you need to provide and back comes a letter saying, 'We have granted the lease.' I think there was such a letter included in one of the submissions—it did not have a lot of detail—that said, 'We are granting this lease under this legislation,' and that was it.[38]

2.1.1.2 Other activities

The Lock the Gate Alliance stated its concern about the management of mining regulation in Queensland. It provided a number of examples where there has been 'a history of successive breaches and non-compliance with environmental conditions'.[39]

The Department of Resources advised:

> It is important to note that this amendment will only validate these grants to the extent that they are impacted by one or both of the identified administrative issues. It does not address or validate any other issues that may exist in relation to individual leases, including any noncompliance or unlawful activities.[40]

2.1.2 Stakeholder comments outside the scope of the Bill

A number of issues were raised by stakeholders which were outside the scope of the Bill. These issue are discussed in the following sections.

2.1.2.1 Public register of mining and petroleum tenures

A number of stakeholders called for a public register of mining and petroleum tenures which is common in other jurisdictions.[41]

The Wilderness Society advised that in their view the large number of potentially invalid mining leases has been made possible by an absence of transparency.[42] The Lock the Gate Alliance agreed, advising:

> To improve basic transparency to try to prevent some of these failings in future, we believe the Bill should be amended to require that all mining and petroleum leases and renewals (whether existing or new) are placed on a public register, as occurs in other states like NSW for example.[43]

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37 Public hearing transcript, Brisbane, 21 July 2021, p 8.

38 Public hearing transcript, Brisbane, 21 July 2021, p 8.

39 Submission 7, p 2.

40 Public briefing transcript, Brisbane, 21 July 2021, p 4.

41 See submission nos 4, 7, 8 and 12.

42 Submission 4, p 3.

43 Submission 7, p 1.

The QCC also agreed advising:

> We contend that the failure to properly grant mining leases would not have occurred if there had been public transparency on the granting of mining, gas and petroleum leases, which is common in other states. In order to improve transparency, we strongly recommend that the Bill is amended to require mining, petroleum and gas lease applications and renewals to be placed on a public register to enable public scrutiny, which we strongly believe will assist in avoiding similar issues in the future.[44]

The EDO also agreed:

> The Bill highlights particularly the need for mining and petroleum and gas tenures to be required to be made available to the public, ideally on the government's website. Tenure documents for resource activities are of public interest, they set out the rights of proponents to undertake activities on private and public land and the terms of those rights.
>
> If tenure instruments were required to be made available to the public, the fact that mining leases have not been validly provided to proponents for a period of approximately 20 years would more likely have come to light at an earlier date. In fact, this scenario may not have happened at all as there may have been better processes to verify the provision of the mining leases prior to release to the public.[45]

In supporting a public register of mining leases, the Lock the Gate Alliance commented on the New South Wales practice:

> In New South Wales there is a public register of all mining leases and all renewals. In New South Wales they also need to produce an annual return, which is public, which shows the activities they have been doing in that year.[46]

In response to the suggestion that there should be a public register of mining leases, QRC advised:

> Queensland does have a few ways that you can look up information about mining leases, petroleum leases and exploration permits. We have what is called a GeoResGlobe, which is a mapping tool that you can go on according to location, and there are also the public inquiry reports which list a range of information about those leases. Different jurisdictions have different approaches, but in Queensland there is that public report that is available. If you are a landholder, for instance, with a conduct or compensation agreement or you are a traditional owner or you have a cultural heritage management plan—those stakeholders actually get the physical lease, which may include some confidential material within that lease like work programs and such.[47]

The department also advised that it:

> … does maintain a public facing register in the form of MyMinesOnline, which is the publicly available electronic register provided in accordance with section 197 of the Mineral and Energy Resources (Common Provisions) Act 2014.
>
> In addition to MyMinesOnline, the Department's website also contains a range of public facing information about applications and existing resource authorities.[48]

The Department of Resources also advised that it:

> … is committed to being transparent in relation to resource authorities and applications and believes that a public register is an important tool to achieve this goal. Whilst outside the scope of this Bill, the Department of Resources would welcome the opportunity to discuss the register and its content with all interested stakeholders.[49]

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44 Submission 8, p 2.

45 Submission 12, p 4.

46 Public hearing transcript, Brisbane, 21 July 2021, p 2.

47 Public hearing transcript, Brisbane, 21 July 2021, p 8.

48 Department of Resources, correspondence, 23 July 2021, p 2.

49 Department of Resources, correspondence, 29 July 2021, p 7.

The EDO commented on the lack of effective access to information, stating:

> Regulating in the dark, without public scrutiny, raises risks of poor process (which is exemplified by this omission to provide valid mining leases), may reduce the quality of decision making and even raises risks of corruption.[50]

In supporting the need for transparency, the EDO advised:

> Too often important public interest documents such as tenure documents are being exempt from public access due to claims of commercial-in-confidence. Tenure instruments for resource activities are a public interest document. They detail the ability for resource companies to have access to land, including land they do not own. Any truly commercially sensitive information in these documents could be redacted. There is no need for the documents to be exempt from public access.[51]

The EDO noted that public registers are provided for under other Queensland legislation including the *Environmental Protection Act 1994*.[52] The Lock the Gate Alliance also noted the existence of 'a public register of environmental authorities'.[53]

In relation to the issue of transparency, the department advised the committee that it:

> … is committed to being transparent in relation to resource authorities and applications and believes that a public register is an important tool to achieve this goal. Whilst outside the scope of this Bill, the Department would welcome the opportunity to discuss the register and its content with all interested stakeholders.[54]

The EDO's submission also commented on the Right to Information (RTI) provisions which they advised is based on a model whereby 'government information is intended to be released administratively as a matter of course, unless there is a good reason not to (with access applications under the RTI Act intended to be necessary only as a last resort'. The EDO advised:

> Unfortunately, applications under the RTI Act for documents surrounding resource activities which are not on a public register are frequently refused, typically under a broad interpretation of 'commercial in confidence' justifications which favour private commercial interests over the public interest in understanding how resource activities in Queensland are being regulated.[55]

The Lock the Gate Alliance also advised of their experience with RTI processes, advising:

> We have the misfortune of having to go through the right-to-information process to try to gain access to mining leases so we can get some basic level of transparency around what a project is supposed to be doing. It can take up to six months to have that level of transparency, yet these documents do not contain anything that is commercial-in-confidence. It should not be too hard to have them on the public register, basically. We have heard that from the department—that it would not be too difficult for them to comply with that.[56]

50 Submission 12, p 4.

51 Public hearing transcript, Brisbane, 21 July 2021, p 4.

52 Submission 12, p 5.

53 Public hearing transcript, Brisbane, 21 July 2021, p 2.

54 Department of Resources, correspondence, 23 July 2021, p 2.

55 Submission 12, p 5.

56 Public hearing transcript, Brisbane, 21 July 2021, pp 2-3.

The committee sought additional information from the department on the issues raised by stakeholders in relation to RTI processes. The Department of Resources advised that it:

> … is committed to being transparent in relation to resource authorities and applications and believes that a public register is an important tool to achieve this goal. Whilst outside the scope of this Bill, the Department of Resources would welcome the opportunity to discuss the register and its content with all interested stakeholders.[57]

2.1.2.2 Review of administration and content of mining laws

The QCC cited the large number of mines impacted by the proposed amendments as a reason for seeking a review of 'the administration and content of Queensland's mining laws' to 'expose any further failings and to ensure the resource industry is properly regulated and managed into the future'.[58]

The QCC advised:

> In regard to addressing what are potentially some systemic issues with how Queensland's mining laws are applied, we would very much like to see a root-and-branch review of all of Queensland's mining legislation, in particular how it is applied. I think that is the only way we are going to get a decent understanding of whether there are any other issues with how Queensland's mining laws are being applied currently and also to look forward to what are the changes we need to make to ensure Queensland's mining industry is properly regulated.[59]

2.1.3 Committee comments – *Mineral Resources Act 1989*

The committee is satisfied that the proposed amendments will rectify a historical deficiency. The committee is also satisfied that all other processes to ensure the validity of the mining leases have been met. The committee considers that tenure holders should not be penalised for departmental errors.

The committee is satisfied with the response from the Department of Resources regarding its actions to ensure that all mining leases impacted by these deficiencies have been identified and processes have been put in place to ensure this type of issue will not occur in the future.

In relation to the issue of a public register of mining and petroleum tenures, the committee notes the Department of Resources advice regarding the existence of MyMinesOnline. The committee welcomes the Department of Resources commitment to transparency and its offer to discuss the register with all interested stakeholders. The committee is of the view that this is an issue that could be explored further by the department in the future with a view of enhancing transparency.

The committee also notes the issues raised by stakeholders regarding the difficulties they have experienced in obtaining information from the department. The committee considers that information regarding mining and petroleum tenures should be available to the public wherever possible. The committee acknowledges that within this, details deemed to be 'commercial-in-confidence' may need to be redacted to protect sensitive information.

2.2 Amendments to *Petroleum Act 1923*

The purpose of the proposed amendments to the *Petroleum Act 1923* is to address two issues in relation to authorities to prospect (ATP) and production leases (PL) granted under the *Petroleum Act 1923*.

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57 Department of Resources, correspondence, 29 July 2021, p 6.

58 Submission 8, p 1.

59 Public hearing transcript, Brisbane, 21 July 2021, p 3.

The explanatory notes identify that the first issue relates to an ambiguity in the provision relating to renewals of existing production leases granted under the *Petroleum Act 1923* which was identified as part of a matter that is currently before the Land Court of Queensland. The ambiguity relates to whether a PL continues in force where a validly made application to renew the production lease has been made, but not decided, prior to the expiry of the production lease. Whilst this is allowed for an ATP in the *Petroleum Act 1923* and similar provisions in the *Petroleum and Gas (Production and Safety) Act 2004*, it is not expressly provided for in relation to PL.[60]

The explanatory notes state that the amendments are proposed to operate both retrospectively and prospectively to provide certainty to all stakeholders and ensure the ongoing integrity and consistency of the tenure management framework.[61]

The second issue relates to ATP that are subject to undecided applications for PL under the *Petroleum Act 1923* immediately before 1 November 2021. The intention was that from 1 November 2021, all ATP and new PL would be administered under the *Petroleum and Gas (Production and Safety) Act 2004* and therefore all authorities to prospect would expire on that date. There are no transitional provisions provided for authorities to prospect that are subject to applications for a production lease but which remain undecided on 1 November 2021.[62]

Under the existing provisions ATP with associated PL applications will expire and the associated production lease applications will lapse if they remain undecided on 1 November 2021.[63]

The amendments propose to amend the *Petroleum Act 1923* to provide that these ATP will continue in force if their application for PL remain undecided on 1 November 2021 and also to clarify that the associated PL applications may be decided after 1 November 2021 if required. Any ATP that is not subject to application for a PL will expire on 1 November 2021.[64]

The Minister for Resources issued a media statement on 16 June 2021 which states, in relation to the extension of the ATP:

> "Also, we are making clear that if a company has made a valid application to renew a production lease under the *Petroleum Act 1923* prior to it expiring, that lease remains valid while a decision is made on the renewal," Mr Stewart said.
>
> "The amendments will also ensure that sufficient time is available for key production lease applications to be appropriately considered in the context of broader government policy commitments."
>
> In some cases, companies hold authorities to prospect (ATP) under the *Petroleum Act 1923* which are due to expire on 1 November 2021.
>
> "A number of these ATPs are in the Lake Eyre Basin, for which the Government has committed to consult on how an appropriate balance of environmental and economic considerations can be achieved in the Basin," Mr Stewart said.
>
> "The amendments will allow government the time it needs to make these decisions for these ATPs.
>
> "Importantly the amendments do not put any onus on government to approve the applications prior to policy positions being decided."[65]

60 Explanatory notes, p 2.

61 Explanatory notes, p 2.

62 Explanatory notes, p 2.

63 Explanatory notes, p 2.

64 Explanatory notes, p 2.

65 Hon Scott Stewart MP, Minister for Resources, 'Amendments provide certainty for Queensland's resources sector', media release, 16 June 2021.

The Department of Resources advised the committee that they are aware of six remaining ATP on which PL lease applications have been made. The department advised:

> No further authorities to prospect can be issued under the Petroleum Act 1923, so these proposed provisions will only apply to the six remaining authorities and any production lease applications made over them.[66]

The committee sought additional information regarding what actions the department is taking to process the applications in a timely manner. The Department of Resources advised:

> Applications for the grant of a production lease (PL) are subject to the Department of Resources' assessment process. The amendments provide the required legislative intervention to allow appropriate time to assess and decide affected applications for renewal. In particular, these provisions ensure that these decisions can be made after all required assessments have been completed.
>
> In March 2021, the Department of Resources contacted all holders with lodged applications for PLs and renewals and all holders of an Authority to Prospect under the *Petroleum Act 1923* (1923 Act) to advise of the impending end of the 1923 Act provisions. The Department of Resources has continued to work closely with the resource companies to progress these applications.
>
> At this point in time there is sufficient uncertainty as to whether the applications will be decided in time for the 1 November 2021 deadline. This is due to a range of factors that may impact the timeline for deciding individual applications including:
>
> - the quality of the application materials received;
> - the complexity of the issues presented; and
> - whether the Department of Resources needs to seek further information to assist its assessment.
>
> The Department of Resources has also taken steps to process these applications in a timely manner by working closely with the PL holders to ensure the applications are supported by sufficient information to allow the Department of Resources to undertake its assessment against the statutory framework.[67]

2.2.1 Background

The *Petroleum and Other Legislation Amendment Act 2004* inserted section 25U into the *Petroleum Act 1923*. The explanatory notes for the Petroleum and Other Amendment Bill 2004 stated in relation to this clause:

> Expiry of pt 4 and ending of authorities to prospect Clause 19, section '25U provides for the expiry of part 4, relating to an authority to prospect, on 1 November 2021. The expiry of this part on this day is unlikely to be an issue as all 1923 Act authorities to prospect should have ended owing to the relinquishment condition to these authorities.[68]

[66] Public briefing transcript, Brisbane, 21 July 2021, p 4.

[67] Department of Resources, correspondence, 21 July 2021, p 4.

[68] Explanatory notes, Petroleum And Other Legislation Amendment Bill 2004, pp 18-19

Section 45 of the *Petroleum Act 1923*, was also amended by the *Petroleum and Other Amendment Act 2004*, and provides for the ending of the ability to renew a petroleum lease to end on 1 November 1921. The *Petroleum and Other Legislation Amendment Act 2004* amended section 40 of the *Petroleum Act 1923* to:

> … reflect the fact that the prospecting permits will no longer be issued. The clause only allows for the right to the grant of a petroleum lease where the proposed lease is wholly outside the area of a coal or oil shale mining tenement. The restriction of the right to a petroleum lease is intended to allow for the coal seam gas policy framework to apply to all petroleum leases where there is overlapping land with a mining tenement. The amendment provides for a term of 30 years for all future petroleum leases. This term is consistent with the term provided for in the Petroleum and Gas (Production and Safety) Act 2004. The ability to apply for a petroleum lease expires on 1 November 2021 as there will no longer be any authorities to prospect from which applications for a petroleum lease can be made.[69]

The Department of Resources confirmed that the Bill:

> … seeks to address an issue in relation to the expiry on 1 November 2021 of provisions under the Petroleum Act 1923 for the administration of authorities to prospect and the grant of new production leases. In the absence of legislative intervention, all authorities to prospect under the Petroleum Act 1923 will expire and any associated lease applications will lapse. The bill proposes amendments to provide certainty to authority to prospect holders under the Petroleum Act 1923 who have already made a valid application for a production lease before 1 November 2021 by confirming that their authority to prospect will continue in effect despite the expiry of the relevant provisions. [70]

2.2.2 Stakeholder views

Industry stakeholders were broadly support of the proposed amendments to the *Petroleum Act 1923*.[71] The QRC advised the committee:

> … it is right that the government has stepped in to provide a legislative amendment to prevent those applications from expiring on 1 November. In the absence of any transitional provisions, this amendment was necessary to prevent the affected tenures from being returned to the state despite having been validly granted and through no fault of the proponent.[72]

However, environmental advocacy groups did not support the proposed amendments.[73] The Lock the Gate Alliance stated:

> We have major concerns, particularly, about enabling Authorities to Prospect with petroleum lease applications to be extended as proposed in the Bill and instead believe the ATPs should lapse as was envisaged when the laws were passed originally.[74]

And,

> The Bill also highlights a failure to properly transition Authorities to Prospect from the 1923 Act, despite having many years to do so. Due to this failure, the Bill now proposes to enable Authorities to Prospect issued under the old Act for which petroleum lease applications have been submitted to be extended indefinitely instead of lapsing as required on 1 November 2021.[75]

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69 Explanatory notes, Petroleum and Other Legislation Amendment Bill 2004, p 18.

70 Public briefing transcript, Brisbane, 21 July 2021, p 4.

71 See submission nos 6, 9 and 13.

72 Public hearing transcript, Brisbane, 21 July 2021, p 6.

73 See submission nos 4, 7, 8, and 12.

74 Submission 7, p 1.

75 Submission 7, p 3.

The EDO also commented:

> The original intent of the provisions being amended was that ATPs subject to petroleum lease applications that were not decided by 1 November 2021 should lapse. We do not support the amendments proposing to change this intent by extending the life of these ATPs indefinitely. If they are undecided at this time it is most likely because they are in some way contentious and it has not been appropriate to decide the application. For example, there are ATPs in the Channel Country Strategic Environmental Area under the *Regional Planning Interests Act 2014* (Qld) which are inappropriately over areas of vulnerable floodplain area, including one of the last free-flowing desert rivers in the world in Cooper Creek, and which should not be extended.[76]

The EDO further suggested:

> … there are ATPs in strategic environmental areas that are impacted by this decision which are inappropriate over areas of vulnerable flood plain and, therefore, it would be appropriate for these ATPs to simply not be renewed for the considerations currently before government as to how to move forward with protection of this area to be resolved. If decided that they are going to be allowed, future applications could be made.[77]

In response to this issue, the department advised:

> There is an ongoing policy process seeking to balance environmental protections and economic development activities, such as gas extraction. This process is currently being led by the Minister for the Environment and the Great Barrier Reef and Minister for Science and Youth Affairs and is beyond the scope of the Bill. It would be inappropriate to take away existing rights without a clear policy of government. These amendments are intended to provide additional time to allow the policy position of government to be finalised.[78]

The EDO also noted their concern that the department has not been operating in accordance with the law in relation to the 'long-standing administrative practice which allows decisions on validly made renewal applications to be made after the expiry of the production lease'.[79]

2.2.2.1 Land Court matter

Some stakeholders expressed concern regarding the pursuit of retrospective amendments whilst the matter is before the Land Court.[80] The Lock the Gate Alliance advised:

> The explanatory memoranda indicates that this change is being made in part due to a current Land Court matter. Retrospective law changes to undermine a legal challenge that is on foot are extremely problematic. In our view, the law should have been complied with, and if it wasn't, then the petroleum company should accept the consequences, just like all Queenslanders do every day as we comply with the laws that govern our activities. We are strongly opposed to this change being made retrospective to nullify a current legal challenge.[81]

In its response to this issue, the department acknowledged the concern expressed by stakeholders in relation to the potential impact on a matter before the Land Court of Queensland. The Department of Resources advised:

> The Applicants to the Land Court matter are, among broader claims about compensation, raising issues about what lease holder rights exist where the underlying lease expires before a decision to renew is made.

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76 Submission 12, pp 5-6.

77 Public hearing transcript, Brisbane, 21 July 2021, p 4.

78 Department of Resources, correspondence, 23 July 2021, p 12.

79 Submission 12, p 6.

80 See submission nos 7, 8 and 12.

81 Submission 7, p 4.

> If the amendments to the *Petroleum Act 1923* are passed by the Parliament, the legal position about the rights that exist in this situation will be clarified. The proposed amendments do not change the Department's historic interpretation of the *Petroleum Act 1923* or the existing administrative processes.
>
> The amendments to the *Petroleum Act 1923* will not remove the Applicants' right to request a review of compensation due to changes in activities or a material change of circumstances. The amendments are retrospective to ensure that there is clarity about the validity and lawfulness of any historical lease renewals.[82]

2.2.2.2 Expiry dates

A number of stakeholders raised their concerns regarding the fact that no time limit has been included in the Bill on the ATP with a submitted PL application. The Wilderness Society noted the Minister for Resources' media release, as discussed above, and advised:

> We understand this statement is referring to the Queensland government's long standing election commitment to protect the rivers and floodplains of the Channel Country. We also understand that work has commenced on this commitment via ongoing community consultation in relation to possible amendments to the Regional Planning Interests Act. Minister Stewart's comments imply that the government is waiting for this work to progress before considering whether to approve some of these outstanding PL applications.[83]

The Wilderness Society advised that, given these circumstances, they do not believe that these ATPs should remain in force indefinitely and strongly recommended that an expiry date be placed on the ATPs in line with the timeframe within which the government expects to resolve the Channel Country protections. The Wilderness Society has suggested a maximum time frame of 2 years, or until 1 November 2023, would be reasonable.[84]

The Lock the Gate Alliance also raised this issue stating:

> We are also concerned that the way the Bill is framed potentially opens a loophole, which may enable companies to lodge petroleum lease applications over ATP areas, in order to have ATPs extended indefinitely that would otherwise lapse.[85]

And,

> It creates a kind of legal limbo that could continue for many years, and which creates considerable uncertainty for the community. We believe that there should, at the very least be a time limit on expired petroleum leases of two years maximum.[86]

The QCC advised:

> Allowing ATPs to be extended indefinitely will create considerable ongoing uncertainty for property owners, community and First Nation Peoples due to the threat that resource activities can occur on their land at any time in the future.[87]

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82 Department of Resources, correspondence, 23 July 2021, p 6.

83 Submission 4, p 2.

84 Submission 4, pp 2-3.

85 Submission 7, p 4.

86 Submission 7, p 4.

87 Submission 8, p 2.

The committee sought additional information regarding if an expiry time where to be applied what that time frame should be. The Lock the Gate Alliance, EDO and QCC responded:

> With regard to the Blue Energy ATPs (ATPs 656, 657, 658, 660) which we understand are 4 of the 6 ATPs affected by the November 2021 sunset clause. We see no justification for an extension as the proponent has not completed the work under their work plan to justify a PL application.[88]
>
> …
>
> We are unaware of the remaining two ATPs affected and their specific circumstances. At the most a two years period should suffice for the Department to decide one way or the other whether PLs over these ATPs should be granted.[89]

The APPEA advised:

> … sufficient time needs to be given to the government to make a decision on the grant. If that is being proposed in the context of the Lake Eyre Basin election commitment that the government has, as I think has been noted in submissions and maybe evidence, that commitment has been around for six or seven years. I think the approach in the bill of leaving it open-ended reflects existing practice and that would be appropriate.[90]

Or alternatively:

> An alternative approach is for the government just to make a decision and grant the tenures under the existing legislation. I think what they are effectively doing is extending that so that they can consider things such as the Lake Eyre Basin. An alternative to a time line is just to make the decision to grant the tenures and move on. [91]

QRC advised:

> … something that we have consistently advocated for is clear time frames on approvals for the assessment process. We have time frames in place under the Environmental Protection Act, but they are not extended to the resources side.[92]

The Department of Resources advised the committee:

> In line with other resource authority approvals, there is no time limit proposed for a decision on the associated production lease applications or the extension of the authorities to prospect. The imposition of any such time frame would be arbitrary at best and would be out of step with the rights that these holders would enjoy, aside from the current sunset date of 1 November 2021.[93]

The department also advised:

> The timeline for deciding individual applications can depend on a range of factors including the quality of the initial application received, the complexity of the issues presented in each individual circumstance and internal government and Departmental priorities at the time.[94]

88 Lock the Gate Alliance, correspondence, 28 July 2021, p 2.

89 Lock the Gate Alliance, correspondence, 28 July 2021, p 1.

90 Public hearing transcript, Brisbane, 21 July 2021, p 7.

91 Public hearing transcript, Brisbane, 21 July 2021, p 7.

92 Public hearing transcript, Brisbane, 21 July 2021, p 7.

93 Public briefing transcript, Brisbane, 21 July 2021, p 4.

94 Department of Resources, correspondence, 23 July 2021, p 6.

In response to the time frames suggested by the environmental advocacy groups, the Department of Resources advised:

> Imposing an arbitrary timeline for decisions limits this flexibility and is inconsistent with the treatment of all other petroleum tenures which remain in force until any associated application for renewal or higher tenure is decided.[95]

The committee sought additional information regarding the timelines for processing of applications. The Department of Resources advised:

> Since 1 January 2019, 11 renewals of production leases (PLs) administered under the *Petroleum Act 1923* (1923 Act) have been applied for and decided by the Minister with an average application period of 490 days.
>
> All applications for a production lease, including renewals are subject to a rigorous statutory assessment process to ensure the application complies with the relevant legislative frameworks. The holder of a production lease (PL holder) who makes an application under section 45 of the 1923 Act to renew a PL is entitled to a renewal of the PL provided that:
>
> - there has been substantial compliance with the conditions of the PL, the 1923 Act and the royalty requirements of the Petroleum and Gas (Production and Safety) Act 2004; and
> - the application complies with the requirements in section 45(2) of the 1923 Act.
>
> To confirm that the PL holder is entitled to a renewal of the PL, a renewal application is subject to the Department of Resources' tenure and technical assessment processes.
>
> The timeline for deciding individual applications can vary for a number of reasons including:
>
> - the quality of the application materials received;
> - the complexity of the issues presented; and
> - whether the Department of Resources needs to seek further information to assist its assessment.[96]

2.2.2.3 Further applications

The Wilderness Society expressed concern that the current wording in the Bill could result in a 'rush of PL applications over existing ATPs being submitted' between now and 1 November 2021. The Wilderness Society advised:

> We believe that this aspect of the Bill is only intended to capture the existing PL applications and the wording should be amended to reflect this.[97]

The Wilderness Society recommended that the wording be amended to state:

> … only PL applications already submitted at the time of the introduction of the Bill should have their underlying ATPs extended for the specified timeframe.[98]

95 Department of Resources, correspondence, 23 July 2021, p 9.

96 Department of Resources, correspondence, 29 July 2021, p 3.

97 Submission 4, p 3.

98 Submission 4, p 3.

In response to stakeholders concerns regarding a potential rush of applications, the department advised that it is aware of 6 remaining ATPs and no new ATPs can be issued under the Petroleum Act 1923. It further advised:

> These six ATPs currently have 16 applications for production leases over them. The amendments as drafted will capture all six of these ATPs and any applications for production leases over them that remain undecided as at 1 November 2021. It is noted that there is a possibility of further production lease applications being made over any remaining areas within the six remaining ATPs prior to 1 November 2021.[99]

2.2.2.4 Clause 5 – Insertion of new section 45A and 45B

Clause 5 inserts new sections 45A and 45B. Proposed section 45A clarifies that a PL remains in force in the circumstances where a valid application for renewal has been made under existing section 45 but has not been decided prior to the expiry date for the PL and remains in force until the state of any renewed term, a refusal of the application takes effect, the applicant withdraws the application or the lease is cancelled.[100]

New section 45A(3) works with new section 45B to clarify when the term of any renewed production lease commences if the previous lease was continued in force under new section 45A.[101]

The proposed insertion of sections 45A and 45B were supported by the Queensland Resources Council (QRC) as they address:

> … the ambiguity arising from circumstances where an application to renew a production lease has been made, but not decided, prior to the expiry of the production lease. The proposed amendments clarify that a production lease will continue in force until the outcome of the application is decided.[102]

The QRC noted that the proposed amendments reflect:

> … the long-standing administrative practice of the Department of Resources and will provide consistency with the provisions allowed for an application for an ATP.[103]

2.2.2.5 Clause 6 – Insertion of new section 52B

The explanatory notes state:

> This new section addresses the lack of transitional provisions for authorities to prospect that are subject to production lease applications validly made under section 40 of the Petroleum Act 1923, but which remain undecided on 1 November 2021. It is intended to ensure that these authorities to prospect do not expire and the associated production lease applications can be decided, if required, after 1 November 2021.
>
> New section 52B provides that, if a valid application for a production lease is made over an authority to prospect, and the application remains undecided before the end of 1 November 2021, Part 4 and section 40 of the Petroleum Act 1923 continue to apply to the authority to prospect despite their expiry on 1 November 2021. Section 40 continues to apply so that the Minister may grant any undecided production lease applications after 1 November 2021.
>
> It also clarifies that section 40A continues to apply to the authority to prospect so that it remains in force until either the start of the term of the production lease that has been applied for, or the application is withdrawn by the applicant.[104]

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99 Department of Resources, correspondence, 23 July 2021, p 9.

100 Explanatory notes, p 8.

101 Explanatory notes, p 9.

102 Submission 6, p 1.

103 Submission 6, p 1.

104 Explanatory notes, p 9.

QRC also noted its support for the proposed section 52B 'which will prevent the applications from lapsing and provide certainty for lease holders that applications may be decided after 1 November 2021, if necessary.'[105]

However, industry stakeholders questioned the wording used in relation to the proposed amendment included in clause 6. Clause 6 states:

> **Insertion of new s 52B**
> After section 52A—
> *insert—*
> 52B Continuing effect of particular authorities to prospect despite expiry on 1 November 2021
> (1) This section applies to an authority to prospect if, before the end of 1 November 2021—
> (a) the holder of the authority to prospect applied under former section 40 to the Minister for the grant to the applicant, or to the applicant and other qualified persons nominated by the applicant, of a lease or leases; and
> (b) the application had not been decided or withdrawn.
> (2) Despite the expiry—
> (a) former part 4 and former section 40 continue to apply to the authority to prospect; and
> (b) the Minister may grant the lease or leases under former section 40; and
> (c) the authority to prospect continues in force as mentioned in section 40A.
> (3) In this section— expiry means the expiry, on 1 November 2021, of—
> (a) former part 4 under former section 25U(1); and
> (b) all authorities to prospect still in force immediately before 1 November 2021 under former section 25U(2); and
> (c) former section 40 under former section 40(9).
> ***former***, in relation to a provision, means the provision as in force immediately before its expiry.

The QRC advised that it seeks:

> … further clarity around the intention of the amendment to s 52B. Under section 40(2) of the *Petroleum Act 1923*, the holders of an Authority to Prospect are entitled to the grant of a production lease, provided they satisfy certain requirements. Although the production lease is considered an 'entitlement,' s 52B (2) states:
>
> *"the Minister may grant the lease or leases under former section 40;"*
>
> The language used here in this new section is inconsistent with the remainder of the Act as it suggests the Minister will have some discretion in granting an application. This would constitute a change in the policy approach taken by the Department of Resources, but this is not reflected in the explanatory notes.[106]

QRC expressed concern about whether there was an intention to change the policy approach of the granting of PL or if the inconsistency was due to the language used in drafting the Bill. Assuming the inconsistency was due to the drafting language, QRC suggested:

> … the Department considers using this alternate wording, which is consistent with the language of the 1923 Act:
>
> *"the Minister will continue to be bound by the requirements under former section 40 to grant the lease or leases"*[107]

[105] Submission 6, p 2.

[106] Submission 6, p 2.

[107] Submission 6, p 2.

The APPEA also identified the same issue, stating that there:

> … is an inconsistency between the Petroleum Act 1923, which makes it clear that the granting of a Production Licence is an 'entitlement', and the language proposed in the new s52B(2)(b), which states that:
>
> "Despite the expiry the Minister **may grant** the lease or leases under former section 40" [emphasis added][108]

The AAPEA advised that the existing wording suggests there is some discretion available to the Minister which is not consistent with the language used in the Act. The AAPEA suggested the following alternative wording:

> (2) Despite the expiry—
>
> (a) former part 4 and former section 40 continue to apply to the authority to prospect; and
>
> **(b) the applicant is entitled to have a lease granted under former section 40(2);** and
>
> (c) the authority to prospect continues in force as mentioned in section 40A.[109]

Both AAPEA and QRC agreed that their different proposed wordings have the same meaning:

> Essentially, we would like to refer back to section 40(2) of the Petroleum Act 1923, which clearly states that the applicant is entitled to have a lease granted.[110]

The committee sought a response from the Department of Resources on this issue. The department advised:

> The way the bill is drafted to operate, which we worked through with the parliamentary drafters, is that clause 6 provides the ability for the minister to continue to make a decision but that decision is made through the existing section 40 of the Petroleum Act 1923. So the same approach has to be taken whether the decision is made after 1 November 2021 or before, and that provides a range of circumstances in which the minister must grant the production lease application. In summary, it is still the same criteria and the same obligation to approve or not approve whether it is made before or after 1 November 2021.[111]

In relation to whether the entitlement to receive a lease for production under the proposed amendments remains, the department advised:

> … the applications will fall back to the section 40. Despite a decision being made after the commencement of this bill, the same obligation to approve will apply.[112]

[108] Submission 13, p 1.

[109] Submission 13, p 2.

[110] Public hearing transcript, Brisbane, 21 July 2021, p 8.

[111] Public briefing transcript, Brisbane, 21 July 2021, p 6.

[112] Public briefing transcript, Brisbane, 21 July 2021, p 6.

In response to the suggested amendments proposed by the QRC and the APPEA, the department advised:

> … as section 40 continues to apply by virtue of proposed new section 52B(2)(a), all of the rights and entitlements under that section will continue to apply to the six authorities to prospect (ATPs) that have production leases over them. This includes section 40(2) which sets out the entitlement to grant, and section 40(4) which states a lease is to be granted by the Minister.The Department believes that subsection 52B(2)(b) merely provides that despite the sunset date of 1 November 2021 in s40(9), the Minister is still able to exercise the powers under the other provisions of former section 40. This means that the obligation that "a lease is to be granted by the Minister" provided in s40(4) in the listed circumstances will still be imposed on the Minister if they were to use the power provided by proposed s52B to make a decision on a lease application after 1 November 2021. As such, it is considered no further amendments are necessary to proposed s52B.[113]

2.2.2.6 Extensions where other conditions have not been complied with

The Lock the Gate Alliance advised that:

> Any extension should only be provided to ATP holders that have fully complied with their workplans, as is required by section 78 of the *Petroleum and Gas (Production and Safety) Act 2004*.[114]

The Lock the Gate Alliance commented specifically on 4 of the ATPs which are the subject to the proposed amendment advising that the tenure holder had not undertaken the required actions under their work plan. The Lock the Gate Alliance stated:

> That should disqualify them basically from having applied for a petroleum lease over these areas.[115]

In response to committee questions regarding the fact that work has not been completed by some tenure holders, the Lock the Gate Alliance responded:

> It seems that they want a special exemption in order to have those ATPs continue to exist indefinitely until a petroleum lease is allowed for. We do not think they deserve to have petroleum leases, given that they have undertaken no work to justify having a petroleum lease.[116]

The Lock the Gate Alliance also noted that other tenure holders have tenures within sensitive areas including the Cooper Basin and they have successfully complied with the additional requirements.[117]

2.2.3 Committee comments – *Petroleum Act 1923*

The committee is satisfied that the proposed amendments only relate to 6 ATP and no other applications are affected by this issue. The committee is also satisfied that the Department of Resources is working on the processing of these applications as a matter of priority.

In relation to the issues raised by the QRC and APPEA regarding the proposed clause 6 of the Bill, the committee is satisfied that section 40 of the *Petroleum Act 1923* will continue to apply.

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113 Department of Resources, correspondence, 23 July 2021, p 10.

114 Submission 7, p 1.

115 Public hearing transcript, Brisbane, 21 July 2021, p 2.

116 Public hearing transcript, Brisbane, 21 July 2021, p 5.

117 Public hearing transcript, Brisbane, 21 July 2021, p 5.

2.3 Amendments to *Personalised Transport Ombudsman Act 2019* and *Transport Operations (Passenger Transport) Act 1994*

The Bill proposes to repeal the PTO Act and make consequential amendments to the TOPTA.

The Personalised Transport Ombudsman (PTO) was expected to be appointed in 2020 but the appointment and commencement of the legislation was deferred due to the impacts of the COVID-19 pandemic on the personalised transport industry.[118]

DTMR have since reviewed the objectives of the act focusing on the issues raised by the TPWC and industry submissions at the time. The DTMR review considered expanding the PTO's remit but found that there were appropriate mechanisms already in existence to effectively deal with disputes in the industry, including customer complaints lines and existing services provided by other state and commonwealth agencies.[119]

The review covered issues including:

- the appropriateness of introducing new regulations while the sector was recovering from the impacts of the pandemic; and
- the costs to government of funding the PTO.[120]

The review determined that the costs would outweigh the potential benefits and decided to repeal the Act to respond to industry views and make cost savings to government.[121]

The explanatory notes state that DTMR will establish channels for mediation of personalised transport matters and enhance existing complaints frameworks to ensure systemic issues which may arise are monitored on an ongoing basis.[122]

2.3.1 Background

The former Transport and Public Works Committee, 56th Parliament, (TPWC) considered the Personalised Transport Ombudsman Bill 2019, reporting in March 2019. The TPWC, whilst recommending that the Bill be passed, made 7 additional recommendations. The TPWC's report noted that stakeholders had highlighted a number of concerns and requested changes to the Bill and the committee's recommendations sought to address those concerns.[123] The government response tabled by the Minister supported 3 recommendations, supported in principle 3 recommendations and did not support one recommendation.[124]

The explanatory notes state:

> The former Public Works and Utilities Committee recommended establishing an ombudsman, or equivalent entity, with the responsibility for dealing with disputes in the personalised transport industry as part of its consideration of the Transport and Other Legislation (Personalised Transport Reform) Amendment Bill 2017. The Queensland Government supported the recommendation and committed to establishing an ombudsman, or equivalent entity, for the personalised transport industry.

118 Explanatory notes, p 3.

119 Explanatory notes, p 3.

120 Explanatory notes, p 3.

121 Explanatory notes, p 3.

122 Explanatory notes, p 3.

123 Transport and Public Works Committee, 56th Parliament, *Report No 17, Personalised Transport Ombudsman Bill 2019*, March 2019

124 Queensland Government, *Queensland Government Response to Transport and Public Works Committee Report No. 17*, tabled 28 June 2019.

> In 2019, the government delivered on its commitment by providing for the establishment of the Personalised Transport Ombudsman through the *Personalised Transport Ombudsman Act 2019*.[125]

The issue of the former Public Works and Utilities Committee's (PWUC) recommendation was also canvassed in the TPWC report stating:

> The committee wishes to highlight that the recommendation of PWUC was that 'an ombudsman, or equivalent entity, is allocated responsibility for dealing with disputes in the industry in a timely manner'. Whilst the committee is satisfied that the Personalised Transport Ombudsman is to be established, it is clear to the committee that the proposal, as included in the Bill, is not as recommended by PWUC.[126]
>
> ...
>
> The committee also notes that the PWUC also made additional recommendations which address some of the issues raised by stakeholders as follows:
>
> *Recommendation 12:*
>
> *The committee recommends the Minister:*
>
> - *facilitate development of an industry standard for driver conditions in the personalised transport industry in consultation with the Personalised Transport Industry Reference Group*
> - *commit to a review of driver working conditions 18 months after the removal of the legislative requirement for bailment agreements to ensure current standards are being maintained, and*
> - *report to Parliament on the review findings in relation to whether the independent contractor and bailment arrangements have upheld appropriate industrial conditions.*[127]

2.3.2 Departmental actions

DTMR advised the TPWC when it considered the Personalised Transport Ombudsman Bill 2019 that whilst the provisions relating to the PTO in that Bill would commence on Royal Assent. However, the department had allowed a minimum of 6 months to establish the office and anticipated that the office would be operational in early 2020.[128]

At the committee's public hearing, DTMR advised the committee that:

> Following enactment of the Personalised Transport Ombudsman Act, the Department of Transport and Main Roads took steps to establish the Office of the Personalised Transport Ombudsman in 2020. The COVID-19 pandemic has had a significant impact on the personalised transport industry. Patronage for taxi and booked hire services declined as a result of reduced movement in the community and lower levels of business and tourism movement. It continues to affect the industry to this point.[129]

DTMR advised that it was decided to defer the commencement of the Act 'in September 2020 so as not to introduce additional regulation while the industry was focused on recovery'.[130]

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125 Explanatory notes, p 3.

126 Transport and Public Works Committee, 56th Parliament, *Report No 17, Personalised Transport Ombudsman Bill 2019*, March 2019, p 4.

127 Transport and Public Works Committee, 56th Parliament, *Report No 17, Personalised Transport Ombudsman Bill 2019*, March 2019, p 4.

128 Transport and Public Works Committee, 56th Parliament, *Report No 17, Personalised Transport Ombudsman Bill 2019*, March 2019, p 7.

129 Public briefing transcript, Brisbane, 21 July 2021, p 2.

130 Public briefing transcript, Brisbane, 21 July 2021, p 2.

DTMR advised the committee that the deferral provided an opportunity to conduct a review of the functions and powers of the PTO to ensure the new role met the requirements of both industry and government. The review identified that the level of complaints about personalised transport services was manageable within the existing dispute resolution mechanisms. The review confirmed that the PTO would not add value. The review also found:

> … there is an opportunity for government to address the objectives of the ombudsman role by making improvements to existing government and industry processes in relation to mediation, guidance about ways to resolve complaints, and consolidation of the department's reviews of personalised transport complaints.[131]

DTMR advised that it is developing a personalised transport mediation service and seeking to partner with the Taxi Council of Queensland (TCQ) to provide access to independent mediation services for the taxi industry. DTMR advised:

> This will be delivered by accredited mediators to provide new opportunities for complainants to access free alternative dispute resolution, which would have been part of the role of the Personalised Transport Ombudsman.[132]

TCQ stated in their submission:

> … TCQ understands that in lieu of a personalised transport ombudsman TMR has been tasked with establishing mediation services for parties in the sector who may be unable to resolve disputes and complaints by themselves. TCQ is pleased to advise the Committee that we stand ready to draw on our experience and expertise to assist TMR with the provision of mediation services in regard to bailment agreements and other relations that are unique to the taxi industry.[133]

However, TCQ advised the committee, in relation to bailment agreements:

> Bailment agreements are one of those peculiar things that happens in the taxi industry. In fact, I think we are one of the only industries that use bailment agreements. … They effectively are the mechanism whereby two microbusinesses join together in a joint adventure of delivering a taxi service. They are quite unique. TCQ understands them and we have a few lawyers that we use that understand them. Generally speaking, nobody else does. We have been in the practice of mediating disputes that occur between parties for bailment agreements. As far as I am aware, we are really the only one that has any experience in that. We have talked to TMR about moving into that role that they anticipated the ombudsman would have for mediating disputes, but those discussions seem to have fallen over. We do not know what TMR is planning to do.[134]

In relation to its other intended actions, DTMR advised:

> Improvements to the use of existing communication channels are also being taken forward to provide additional guidance and education about ways to resolve complaints. This includes providing further information about the different processes available to complainants and the regulatory responsibility of different state and Commonwealth agencies that may have a role in investigating complaints around specific issues.
>
> The Department of Transport and Main Roads is also enhancing its capacity to rapidly identify and report on systemic issues arising from complaints received through consolidated reporting of personalised transport complaints received through different channels to support regular reviews of the issues rising.[135]

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131 Public briefing transcript, Brisbane, 21 July 2021, p 2.

132 Public briefing transcript, Brisbane, 21 July 2021, p 2.

133 Submission 10, p 1.

134 Public hearing transcript, Brisbane, 21 July 2021, p 13.

135 Public briefing transcript, Brisbane, 21 July 2021, p 2.

The committee sought additional information from the department regarding how the existing mechanisms and frameworks will be enhanced to deal with complaints and monitoring of the industry. DTMR advised that it:

> … has provided improved information on its website and to its industry email list about relevant Commonwealth and State agencies that regulate issues within the personalised transport industry, for example Fair Work Australia, WorkSafe, the Australian Taxation Office, which might have a role in facilitating the resolution of particular disputes.
>
> To further facilitate the resolution of disputes, such as those not regulated by Government, dispute resolution guidance and access to free mediation services will be provided. TMR is currently finalising an agreement with the Department of Justice and Attorney-General for a personalised transport industry mediation service, which is to be delivered through the existing dispute resolutions branch and at no cost to industry; and is currently in negotiations with the Taxi Council of Queensland to finalise an agreement to extend its existing dispute resolution offering for the taxi industry.
>
> TMR is also making changes to optimise its internal complaints categorisation and management process to support improved identification of systemic issues arising from complaints.[136]

2.3.3 Stakeholder views

Taxi, rideshare and limousine stakeholders supported the repeal of the *Personalised Transport Ombudsman Act 2019*[137]. The TCQ stated that it:

> … unequivocally supports the repeal of PTOA and consequential changes to TO(PT)A.[138]

TCQ advised that it:

> … considers the ombudsman's office to be created under PTOA presented as a "toothless tiger" and a wastefully inefficient use of public monies. Accordingly, the repeal of the PTOA can be considered as an appropriate correction and a decision that is definitely in the public interest.[139]

However, TCQ also stated:

> Most of our comments are in regard to the ombudsman as created under that act. We think the ombudsman could have been created with teeth and could have had a much broader role. One example is managing the review of the reforms. That was not a task that was available under the act. We have simply addressed our issues about the ombudsman to the ombudsman as defined by the act.[140]

2.3.3.1 Replacing the functions of the personalised transport ombudsman

LAQ advised the committee:

> While we are happy to get rid of the ombudsman, we need someone in the area who is going to gather complaints and who knows the definition of limousine so that if there are any disputes they are in the right area.[141]

136 Department of Resources, correspondence, 29 July 2021, p 9.

137 See submission nos 1, 2, 3, 10 and 11.

138 Submission 10, p 1.

139 Submission 10, p 1.

140 Public hearing transcript, Brisbane, 21 July 2021, p 14.

141 Public hearing transcript, Brisbane, 21 July 2021, p 12.

TCQ advised:

> … we think that some of the activities the ombudsman was going to do in terms of mediation services can be done better in a different way, albeit we are not sure what TMR is planning on that basis. Even today, we are still unsure as to how TMR is going to do that. In terms of the ombudsman's role in looking at issues within the industry, taking those to government and trying to get reform, it is our view that the industry bodies that represent the various sectors of the industry are quite effective.[142]

The Ride Share Drivers Association of Australia (RSDAA) advised that when the draft legislation for the establishment of the PTO was presented, they submitted that the proposed legislation was badly flawed. However, the RSDAA continues to support the establishment of an 'independent statutory authority' to oversee the industry, act independently of DTMR and with the authority to make binding decisions that all parties are bound to.[143]

RSDAA advised the committee that there is no body:

> … that holds the rideshare operators to task over unfair treatment of drivers, a case of the operators being the accuser, judge, jury and executioner.[144]

In response to the RSDAA's call for the need for an independent statutory authority, DTMR advised:

> An independent statutory authority is not supported by Government as it would duplicate existing regulatory functions of TMR and would result in unnecessary increased administration costs for industry and government.[145]

2.3.3.2 Costs associated with Personalised Transport Ombudsman's Office

A number of stakeholders raised the issue of the costs associated with the Act. The Limousine Action Group (Queensland) Inc (LAGQ) stated:

> It would have been more cost effective if Industry was listened to in the first place, as an Ombudsman would provide little to no benefit to the Industry or the community.[146]

The LAGQ stated:

> We are bitterly disappointed with the time and money that has been wasted in this entire process.[147]

The TCQ noted that the department had 'reportedly spent $429,800 up to April 2021 on the non-existent ombudsman's office' and suggested that 'in the interests of promoting public accountability and transparency' that the committee seek to identify where and how these funds were spent.[148]

142 Public hearing transcript, Brisbane, 21 July 2021, p 13.

143 Submission 3, pp 1-2.

144 Public hearing transcript, Brisbane, 21 July 2021, p 10.

145 Department of Resources, correspondence, 23 July 2021, p 15.

146 Submission 2, p 1.

147 Public hearing transcript, Brisbane, 21 July 2021, p 10.

148 Submission 10, p 1.

The committee sought additional information on this issue. DTMR confirmed:

> Approximately $430,000 has been spent to establish the Office of the Personalised Transport Ombudsman. This includes fully equipped office accommodation and equipment, development of ring fenced IT systems and the services, development of a strategic communication plan, and recruitment processes. In relation to office accommodation, office accommodation was secured at 53 Albert Street in Brisbane and required a minor refit that included cabling for information and communication technology and refurbishment of fittings. The information technology requirements for the Office of the Personalised Transport Ombudsman have included systems, data and processes prepared for the office. These were effectively ring fenced to ensure independence and privacy. Some of those systems included case management systems, which included an adaptation of an existing departmental system, document management systems, and some online complaint forms and online presence. There was some work done on communications planning to develop a strategic communication plan for the Personalised Transport Ombudsman and then some commencement of recruitment processes. Obviously, due to the pandemic, those processes did not proceed.[149]

The committee questioned whether any of these funds could be recovered by using it for other purposes. DTMR responded that:

> A lot of that funding has been expended. We are currently working through some processes in relation to the accommodation and obviously demobilising some of those IT systems and equipment that have been set up currently.[150]
>
> …
>
> When it comes to furniture and IT equipment, that certainly gets recycled back into the department's stock, so to speak.[151]

DTMR confirmed:

> Approximately $430,000 was spent to establish the office. This related to fully equipped office accommodation and equipment, development of ring-fenced IT systems, recruitment processes and the development of the Personalised Transport Ombudsman strategic communications plan. Where possible, these assets have been redeployed in the Department.[152]

2.3.4 Stakeholder comments outside the scope of the Bill

Stakeholders raised a number of issues outside the scope of the Bill. These issues are discussed in the sections below.

2.3.4.1 Limousines in Transport Operations (Passenger Transport) Act 1994

Limousine stakeholders advised the committee that they consider that numerous practical issues have arisen because of the lack of distinction between limousine and booked hire licences included in the TOPTA. Submitter, David Henderson advised the committee:

> Like Taxis, licensed Limousines should have their own distinct section in the Act distinguishing Licensed Limousines from non perpetual, annual Book Hire / Ride Share vehicles.[153]

[149] Public briefing transcript, Brisbane, 21 July 2021, p 5.

[150] Public briefing transcript, Brisbane, 21 July 2021, p 6.

[151] Public briefing transcript, Brisbane, 21 July 2021, p 6.

[152] Department of Resources, correspondence, 23 July 2021, p 16.

[153] Submission 1, p 1

By way of background, Mr Henderson advised the committee:

> A transferable perpetual Limousine License was originally purchased from the State of Queensland, plus Stamp Duty paid, for often large amounts of money and the owners also pay an annual fee, whereas Booked Hire/Ride Share only pay the annual fee.
>
> This in itself is totally unfair - making license owners pay twice, once to buy the license and secondly because they have been lumped to the Booked Hire category they also pay an annual fee![154]

The Limousine Association Queensland (LAQ) agreed there was a need to separate limousines from Book Hire categories of personalised transport. LAQ advised:

> These issues will need to be addressed and amendments made to Transport Operations (Passenger) Transport Act 1994 TOPTA to ensure that there is no ambiguity regarding the vehicles and what type of services they are legally able to provide.
>
> This will also remove any interpretations that could be made by individuals contrary to the intent of the Act.[155]

LAQ confirmed that they are seeking the legislation to define taxis, limousines and booked hire.[156] LAQ stated:

> We just want definition in TO(PT)A so that the TMR inspectors, the police and anyone else we pick up know what a limousine is. We have defined plates.[157]

LAQ also advised:

> The LAQ has been canvassing since 2016 to get limousines back as a separate item in the system. They are identifiable by an 'L' numberplate and they have a lot of exemptions relating to bus lanes, alcohol, DDA and so on. People would take their limousines off and put them onto booked hire in their own name, still running around calling themselves limousines and trying to exercise their rights.[158]

LAQ also advised that the members of their association have struggled:

> …to overcome difficulties and unintended consequences created by inconsistencies in the State Government's Stage One and Two reforms. These issues stem from the lack of a clear regulatory definition for Limousines and the impact of the overarching regulatory framework which has encouraged the introduction of some 20000+ casual and part time booked hire ("rideshare") drivers into the Queensland market, producing an oversupply of vehicles and drivers without a corresponding increase in patronage putting severe stress on Limousine business models.[159]

The LAQ's concerns include:

- A regulatory framework prioritising casual or part time market participants over full time industry professionals.
- Regulatory ambiguity
- Safety structures misaligned and lacking compliance action and support.

[154] Submission 1, p 2.

[155] Submission 11, p 1.

[156] Public hearing transcript, Brisbane, 21 July 2021, p 12.

[157] Public hearing transcript, Brisbane, 21 July 2021, p 12.

[158] Public hearing transcript, Brisbane, 21 July 2021, p 11.

[159] Submission 11, p 1.

LAQ advised that since the legislative amendments were made in 2017 a number of operators using booked hire licences and calling themselves limousines has increased significantly. LAQ stated:

> These businesses and individuals are creating irreparable damage to the Limousine brand and have begun to erode the hard-won goodwill generated with our customers. This is compounded by ongoing inaction by compliance officers and the departmentally generated regulatory ambiguity.

LAQ highlighted their members' distress regarding the lack of support and misunderstanding from the department regarding the:

> … obvious benefits of plates to visually demarcate vehicles and market sectors and the consistently and a continuing failure of compliance action to address issues perverts what little of a level playing field has been created during Stage Two reforms.[160]

LAQ also highlighted a range of issues which have caused confusion and that have impacted on their members' service delivery.

LAQ stated:

> The absence of a distinct class of vehicle and service in our case has resulted in the regulatory enforcement authorities making errors that impact our service delivery to our clients in an unacceptable way.[161]

In addition to seeking a separate limousine section in the TOPTA, are also seeking that a limousine definition be created and the role of limousines within the personalised transport market be clarified.[162]

In response to the calls by limousine stakeholders for a separation of limousines from book hire providers in the TOPTA, the DTMR advised:

> The framework for the personalised transport industry has maintained limousine licences as a separate and distinct type of licence under the Transport Operations (Passenger Transport) Act 1994. Under section 158(3) of the Transport Operations (Passenger Transport) Regulation 2018, specific vehicle requirements for a limousine licence are stipulated. The requirements for a limousine are different from those for a booked hire vehicle.
>
> Although booked hire services can be delivered in a limousine or other booked hire vehicle, there are specific provisions that apply to services in limousines that do not apply to other booked hire service licences. These include the service of alcohol, the use of priority transit lanes, and certain vehicle requirements.[163]

DTMR also advised:

> The Queensland Government has delivered reforms to the personalised transport industry to ensure Queenslanders have safe, accessible, affordable and accountable services. They are also about ensuring Queensland's personalised transport industry can respond to change and innovation. The framework for the personalised transport industry has maintained limousine licences as a separate and distinct type of licence under the Transport Operations (Passenger Transport) Act 1994.
>
> Although booked hire services can be delivered in a limousine or other booked hire vehicle, there are specific provisions that apply to services in limousines that do not apply to other booked hire service licences. These include the service of alcohol, the use of priority transit lanes, and certain vehicle requirements.[164]

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160 Submission 11, p 3.

161 Submission 11, p 4.

162 Submission 11, pp 5-6.

163 Department of Resources, correspondence, 23 July 2021, p 14.

164 Department of Resources, correspondence, 23 July 2021, p 16.

And,

> There has been no material change to the type of service that may be provided in a limousine under the personalised transport reforms. A booked hire service may be provided by a taxi under a taxi service licence, a limousine under a limousine licence or a booked hire vehicle under a booked hire service licence. Limousines may use priority transit lanes and are the only personalised transport vehicles with an exemption under the *Liquor Act 1992* that allows them to serve alcohol.[165]

The committee sought additional information regarding whether the issue of separating licensed limousines from book hire vehicles during the stage 3 review. DTMR advised that it is not considering this issue as part of the stage 3 review which is currently being completed.[166]

2.3.4.2 Misleading personalised plates

In addition to the issues regarding noted in the previous section, Mr Henderson also raised the issue of misleading personalised number plates on booked hire vehicles. Mr Henderson advised:

> Many Booked Hire operators intentionally and successfully mislead the public that they operate a Limousine by putting a personalised number plate, purchased from PPQ on their Booked Hire vehicles e.g. LIM0** (** being two numbers).
>
> Very few people understand that a registration plate such as L12685 (my plate) actually refers to a fully legal perpetually licensed Limousine.
>
> But use of the words LIM0 (LIMO** or LIM zero number number) followed by two numbers misleads the public into falsely thinking at the use of this number plate combination means, literally what it states or purports to advertise, when it is not a Licensed Limousine but a Booked Hire/Ride Share vehicle pretending to be a fake Limousine.[167]

Mr Henderson clarified the reasons for his concerns advising:

> That is a problem for us because they are misrepresenting limos. We get a lot of press saying that a limo driver has been picked up at the border for breaching his duties, and he is not a limo driver at all. He is probably a rideshare vehicle, but the media say he is a limo.[168]

Mr Henderson questioned why these plates were acceptable when personalised number plates such as TAXI** are not allowed.[169]

Mr Henderson advised the committee that limousine plates are defined as a limousine by their limousine plates:

> The 'L' stands for 'limousine' and underneath in small writing it says 'Queensland limousine'.[170]

In response to this issue, DTMR advised:

> Limousines are required by legislation to display particular distinguishing number plates and this information is provided on the Queensland Government website. Any vehicle that is not displaying a distinctive registration plate is not a limousine.
>
> The Department of Transport and Main Roads (TMR) undertakes regular scanning for illegal advertisements relating to taxi and limousine services. In the first quarter of 2021, 23 advertisements were investigated leading to the removal of 7 advertisements.[171]

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165 Department of Resources, correspondence, 23 July 2021, p 17.

166 Department of Resources, correspondence, 29 July 2021, p 10.

167 Submission 1, p 1.

168 Public hearing transcript, Brisbane, 21 July 2021, p 11.

169 Submission 1, p 1.

170 Public hearing transcript, Brisbane, 21 July 2021, p 11.

171 Department of Resources, correspondence, 23 July 2021, p 14.

The Personalised Plates Queensland (PPQ) terms and conditions state:

> PPQ and the Department of Transport and Main Roads have absolute discretion in the approval and manufacture of Plates and have the right to stop manufacture of any Plates considered not appropriate for issue at any time after the Plate order process has been undertaken. The Department of Transport and Main Roads also has a statutory power to recall for exchange any inappropriate Plates that may be inadvertently issued. PPQ complies with strict guidelines from the Department of Transport and Main Roads and think it's best to keep it clean and play nice on our roads. A personalised plate is an official form of identification. All Content will be assessed against a number of criteria.[172]

PPQ identifies that plate content not appropriate for issue includes:

- Plate Content that infringes, or potentially infringes, any third party's rights including intellectual property rights and/or implies or falsely represents a connection with any third party business.
- Plates that create ambiguity in identification of a vehicle or enable mistaken recognition of a vehicle and/or its occupants.[173]

The committee sought further information regarding this issue. DTMR advised it:

> … does not consider that personalised plates in isolation contravene the advertising protections for the limousine industry in section 275 of the Transport Operations (Passenger Transport) Regulation 2018. There may be an offence where the wider circumstances of a particular complaint provide further evidence that an operator is seeking to advertise a limousine service, such as details of how to access or place a booking for the service.
>
> Given the continuing concerns being raised by the limousine industry about the impact of such personalised plates on their business, TMR will review the option of blocking plates from sale that may purport to resemble a taxi or limousine number plate.[174]

2.3.4.3 Driver Authorisation

Mr Henderson also raised the issue of Driver Authorisations (DA). Mr Henderson advised that in the past Limousine Licensed Operators received one free DA. However, with the change to the legislation in 2017 they are now required to pay an annual fee in addition to having paid for the limousine licence. Mr Henderson is seeking reinstatement of this previously available benefit.[175]

Mr Henderson advised:

> Not only do we have to buy our limousine licences, which are now worth nothing; we now have to pay for our driver's authority, whereas booked hire only pay an annual fee, plus their DA. We paid hundreds of thousands of dollars in some cases for our limousine licences that are now worth probably less than $100 in some cases, and we have to pay for our DAs. I would like you to consider reinstating the free DAs for limousine licence holders. They only gave us one, but that was a big help, and it distinguished us from rideshare.[176]

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172 Personalised Plates Queensland, 'Terms and Conditions', https://www.ppq.com.au/terms-and-conditions#website-conditions-of-use

173 Personalised Plates Queensland, 'Terms and Conditions', https://www.ppq.com.au/terms-and-conditions#website-conditions-of-use

174 Department of Resources, correspondence, 29 July 2021, p 9.

175 Submission 1, p 2.

176 Public hearing transcript, Brisbane, 21 July 2021, p 11.

In response to this issue, DTMR advised:

> The Department does not currently support reinstating a waiver of driver authorisation fees for holders of limousine licences. If a fee waiver was extended to limousine licence owners, in fairness it would also need to be reinstated for taxi service licence owners and to holders of booked hire service licences. Doing this would have a significant impact on revenue.
>
> Additionally, a driver authorisation permits the holder to drive a taxi, limousine or other booked hire vehicle. Because there is no means to restrict the holder to driving just one type of vehicle, if a fee waiver was granted to a limousine licence owner that person could also drive a taxi or booked hire vehicle. This would, again, be unfair to other drivers of those services.[177]

2.3.4.4 Attaching limousine licences to vehicles

Mr Henderson also raised the issue of attaching limousine licences to vehicles. Mr Henderson advised:

> There are 20,000 rideshare vehicles out there. There are 580 limousine licences, but only 280 are attached to cars. What we want to try and do is get those limousine licences on cars and give them an incentive to do so. There is none. There is no incentive.[178]

LAQ explained the previous system:

> … it was a very tightly controlled system. To get a car classified as a limousine, the director of TMR had to approve the type of vehicle.
>
> …
>
> Then every six months TMR was gazetting the types of vehicles you could use.
>
> …
>
> If a car is above 2,800 millimetres you can put on an 'L' numberplate; if it is below 2,800, you cannot. You can use it for booked hire and do anything you like; we have no issue with that at all.[179]

DTMR advised:

> Under section 158(3) of the Transport Operations (Passenger Transport) Regulation 2018, specific vehicle requirements for a limousine licence are stipulated.[180]

2.3.4.5 Need for financial support

LAGQ raised the issue of financial support for the personalised transport industry advising:

> The personalised passenger transport industry needs further financial support to continue to provide their essential service to the community. Our devastated industry is struggling financially. There is no job keeper and limited work due to lockdowns and interstate travel restrictions.[181]

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177 Department of Resources, correspondence, 23 July 2021, pp 14-15.

178 Public hearing transcript, Brisbane, 21 July 2021, p 11.

179 Public hearing transcript, Brisbane, 21 July 2021, p 12.

180 Department of Resources, correspondence, 23 July 2021, p 17.

181 Submission 2, p 1.

DTMR advised the committee:

> The Government recognises that COVID-19 has had significant impacts on the personalised transport industry. This is why it has provided financial assistance to the industry through a fee relief package and a further $23 million support package for the Queensland taxi and limousine industry, comprising lump sum payments to authorised booking entities, licence holders and operators. Additionally, to keep Queensland moving, the Government announced a $54.5 million essential transport package to support Queensland bus, ferry, personalised transport and regional air services. As part of this package, limousine licences were extended for six months, limousine driver authorisations were extended for six months, and limousine booking entity authorisations were extended for six months.[182]

2.3.5 Committee comments – *Personalised Transport Ombudsman Act 2019* and *Transport Operations (Passenger Transport) Act 1994*

The committee is satisfied that the repeal of the PTO Act is appropriate. The committee notes that DTMR will continue to work with industry stakeholders to address issues as they arise.

In relation to the issue of misleading number plates, the committee considers that licenced limousines have a legislated meaning and therefore warrant some protection from those who misrepresent themselves to be limousines. In particular, those that misrepresent themselves to be limousines should not be assisted in this process by PPQ which is licenced by government to provide licence plates. The committee welcomes the commitment by DTMR to review the option of blocking plates from sale that may purport to resemble a taxi or limousine number plate.

The committee recommends that DTMR investigate the banning and recall of those licence plates issued by PPQ that misrepresent themselves as taxis or limousines. Examples of these plates have been identified in section 2.3.4.2 above.

The committee also recommends that DTMR publish material to inform the public about limousine and taxi licence plates and the differences to book hire vehicles.

Recommendation 2

The committee recommends the Department of Transport and Main Roads investigate the banning and recall of licence plates issued by PPQ that misrepresent themselves as limousines or taxis.

Recommendation 3

The committee recommends the Department of Transport and Main Roads publish material to inform the public about limousine and taxi licence plates and the differences to book hire vehicles.

2.4 Amendments to *South East Queensland Water (Distribution and Retail Restructuring) Act 2009*

The *Water Supply (Safety and Reliability) Act 2008* enables water service providers to set restrictions for the volume of water, hours of use and the way water is used. It is an offence to contravene a water service provider's water restrictions with penalties attached.

The Bill inserts a new section 53E which provides for compliance powers of entry for water restriction officers to provide investigation and enforcement powers for water restriction distributer-retailers. These powers will align with the powers local government water services providers have under the Local Government Act.[183]

[182] Department of Resources, correspondence, 23 July 2021, p 15.

[183] Explanatory notes, p 4.

The Minister stated that due to an historical anomaly Urban Utilities and Unitywater are not able to enforce water restrictions in the same way as other water providers. The proposed amendments are required to enable Urban Utilities and Unitywater to provide authorised officers with the same powers as local government officers under the Local Government Act.[184]

Urban Utilities and Unitywater service approximately 2 million people and approximately 62 per cent across the South-East Queensland region.[185]

The proposed amendments were supported by the QCC on the basis that:

> … they will address systemic issues with how Queensland resource laws are applied andissues affecting urban water users in SEQ …[186]

The QCC also advised that the proposed amendments:

> … will lead to greater security for South-East Queensland water users, and the more uniform application of water restrictions across the South-East Queensland region will lead to greater equity, fairness and uniformity on how they are applied across the region.[187]

The committee sought additional information regarding how water restrictions have been policed for the areas covered by Urban Utilities and Unitywater without the proposed amendments. DRDMW advised:

> The combined storage level of the South East Queensland (SEQ) Water Grid has not declined to a level requiring the introduction of water restrictions since the Millennium Drought.
>
> During the Millennium Drought, it was the responsibility of the former Queensland Water Commission to impose and enforce water restrictions. No Penalty Infringement Notices were issued for noncompliance with water restrictions at that time.
>
> The Queensland Water Commission disbanded on 1 January 2013 and SEQ water service providers were made responsible for setting and enforcing water restrictions.
>
> All SEQ water service providers, including the distributor-retailers will in the first instance use a community engagement approach to educate the community on reducing water consumption.[188]

2.4.1 Water restrictions in South East Queensland

DRDMW advised the committee that the proposed amendment 'will ensure a consistent and equitable water restriction framework for all of South-East Queensland.'[189] DRDMW said:

> Water restrictions will be imposed by South-East Queensland water service providers when the combined level of the SEQ Water Grid declines to 50 per cent. Under the existing legislative framework, local government water service providers Logan, Gold Coast and Redland city councils have existing powers to investigate and enforce water restriction offences under the Local Government Act 2009. Due to an historical anomaly, equivalent investigation powers are not available to Urban Utilities and Unitywater.

184 Queensland Parliament, Record of Proceedings, 16 June 2021, p 1872.

185 Public briefing transcript, Brisbane, 21 July 2021, p 3.

186 Submission 8, p 3.

187 Public hearing transcript, Brisbane, 21 July 2021, p 3.

188 Department of Resources, correspondence, 29 July 2021, p 12.

189 Public briefing transcript, Brisbane, 21 July 2021, p 2.

> Whilst most Queenslanders act responsibly during drought times, it is important that our laws in this regard apply equally to everybody. Combined, Urban Utilities and Unitywater service nearly two million people and approximately 62 per cent of the South-East Queensland region. The lack of equivalent investigative powers for distributor-retailers means that water restrictions are not able to be enforced on a significant majority of the South-East Queensland population. This undermines the role that water restrictions play in delivering water security during times of drought. The amendments in this bill will allow distributor-retailers to appoint water restrictions officers, who will have the authority to enter a property, but not a building or dwelling where the person resides, for the purpose of investigating alleged water restriction offences.[190]

DRDMW confirmed:

> The amendments in the bill are supported by both Unitywater and Urban Utilities and simply seek to remedy an historical anomaly so that distributor-retailers have the same investigative and enforcement powers for water restrictions as local government service providers in the rest of the state.[191]

The committee questioned whether there is widespread abuse or overuse of water in South East Queensland when there are restrictions in place. DRDMW advised:

> … having an ability to enforce equally and fairly across South-East Queensland increases the likelihood of achieving the targets that are in the water security plan, but it is a little difficult for me to estimate how much water is saved through equal enforcement. I can say that the introduction of water restrictions is critical to maintaining the effectiveness of the assets, and creating a fair and consistent regime across South-East Queensland is an important pillar of that.[192]

DRDMW also confirmed that South East Queensland is continuing to have stronger levels of water efficiency subsequent to the millennium drought. However, if water restrictions were needed water utilities will decide when enforcement actions are required based on a range of indicators. DRDMW also noted that the water utility business have a strong preference towards education before utilising enforcement measures.[193]

2.4.2 Committee comments – *South East Queensland Water (Distribution and Retail Restructuring) Act 2009*

The committee considers that the proposed amendments bring the legislative process into line for all water providers in South East Queensland and are therefore reasonable and appropriate.

2.5 Amendments to *Water Supply (Safety and Reliability) Act 2008*

Following a 2017 QAO report[194] recommending measures to water services providers to identify and manage risks associated with monitoring, treating and distribute drinking water in their service areas, the water supply regulator issued a notice requiring cyber security information and metrics be included in key documents such as a water service provider's drinking water quality management plan and annual reporting requirements.[195]

However, when the first annual reports were issued in September 2019 it was identified that there were significant risks to urban water security as a result of these documents containing highly sensitive cyber security information, being required to be made publicly available under sections 575 and 575A.[196]

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190 Public briefing transcript, Brisbane, 21 July 2021, p 3.

191 Public briefing transcript, Brisbane, 21 July 2021, p 3.

192 Public briefing transcript, Brisbane, 21 July 2021, p 5.

193 Public briefing transcript, Brisbane, 21 July 2021, pp 6-7.

194 Queensland Audit Office, Report 19: 2016-17 – Security of critical water infrastructure, June 2017.

195 Explanatory notes, p 4.

196 Explanatory notes, p 4.

The proposed amendments remove the current requirement to make available highly sensitive cyber security information and reporting metrics. There is no change to the requirement for cyber security information to be reported to the water supply regulator.[197]

DRDMW confirmed that the proposed amendment:

> … will strengthen cybersecurity in Queensland for the water industry. It will enable water service providers to exclude highly sensitive cybersecurity information and reporting metrics from publicly available information and reports. As part of the regulatory framework, water service providers must have an approved drinking water quality management plan, report annually on their drinking water quality management plan, undertake annual key performance indicator reporting and undertake certain auditing obligations. A drinking water quality management plan is a regulated risk management framework that ensures the safety of customers of drinking water service providers. The key performance indicators are designed to monitor performance on a number of metrics including, but not limited to, water supply security and demand management. Having this sensitive information publicly available, either online or via request, may make Queensland's water service providers vulnerable to malicious cyber attacks and place a community's water supply at risk.[198]

DRDMW also confirmed that the water service providers will continue reporting on cybersecurity measures to the Water Supply Regulator and that the measures are designed to minimise cybersecurity risks and the protection of sensitive information.[199]

Sunwater whilst supporting the amendments proposed in the Bill, advised that they particularly support the exclusion of cyber security measures from being publicly available as it will ensure appropriately secure levels of confidentiality to its stakeholders and customers.[200]

In relation to the public's rights to know, DRDMW advised:

> An application for such information can be made and considered under the Queensland Right to Information Act and the Information Privacy Act 2009; however, it is anticipated that highly sensitive information would not be released through this process.[201]

2.5.1 Auditor-General's Report No 19: 2016-17 – Security of critical water infrastructure

The Auditor-General tabled Auditor-General's Report No 19: 2016-17 – Security of critical water infrastructure in June 2017. The Auditor-General made two recommendations to the then Department of Energy and Water Supply and two recommendations to the water providers.[202] The report was referred to the former State Development, Natural Resources and Agricultural Industry Development Committee, 56th Parliament (SDNRAIDC). The SDNRAIDC tabled its report in July 2018.[203]

2.5.2 Committee comments – *Water Supply (Safety and Reliability) Act 2008*

The committee notes that the reporting of cybersecurity measures will continue to be reported to the Water Supply Regulator which will ensure that the spirit of the Auditor-General's recommendations that cyber security oversight, identification and monitoring continue to be the focus of both the department and water providers continues. The committee therefore considers that the proposed amendments are reasonable and appropriate.

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197 Explanatory notes, p 4.

198 Public briefing transcript, Brisbane, 21 July 2021, p 3.

199 Public briefing transcript, Brisbane, 21 July 2021, p 3.

200 Submission 5, p 2.

201 Public briefing transcript, Brisbane, 21 July 2021, p 3.

202 Queensland Audit Office, Report 19: 2016-17 – Security of critical water infrastructure, June 2017, p 4.

203 State Development, Natural Resources and Agricultural Industry Development Committee, 56th Parliament, *Report No 11, Consideration of the Auditor-General's Report 19: 2016-17 Security of critical water infrastructure*, July 2018.

3 Compliance with the *Legislative Standards Act 1992*

3.1 Fundamental legislative principles

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

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

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

Clauses 3, 5 and 13 of the Bill raise issues of fundamental legislative principle.

The following table provides a summary of the issues of fundamental legislative principle in the Bill, which are then discussed in detail later in this brief.

SUMMARY TABLE OF ISSUES OF FUNDAMENTAL LEGISLATIVE PRINCIPLE

CLAUSES	ISSUES OF FUNDAMENTAL LEGISLATIVE PRINCIPLE
Clause 13 introduces new section 53E into the SEQ Water Act and provides for general powers of entry for water restriction officers. Further, pursuant to new section 53F, a number of consequential powers are given to a water restriction officer after entry, including search powers and requiring a person to provide personal information.	**Power to enter premises** – the power to enter premises and search for or seize documents, should only be pursuant to a warrant. These powers are consistent with those already contained within the SEQ Water Act and available for discharge officers and connection officers. It is for the committee to decide whether these powers (and the breach of fundamental legislative principle through the infringements on the rights and liberties of individuals that are involved) are justified in the circumstances.
Clause 3 inserts new section 334ZOA into the *Mineral Resources Act 1989*, with the effect of validating the grant of mining leases between 1989 and 2010 that contain certain administrative deficiencies. Clause 5 inserts new sections 45A and 45B into the *Petroleum Act 1923*, which allow an authority to prospect to remain in force where an application to renew has been made, but not decided prior to its expiry.	**Retrospectivity** – a Bill should not adversely affect rights and liberties, or impose obligations, retrospectively. The explanatory notes explain that the retrospective effect of the provisions is not adverse. The committee could be satisfied that there is no impact on a person's rights and liberties.

3.1.1 Rights and liberties of individuals

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

3.1.1.1 Clause 13 – Legislative Standards Act 1992, section 4(3)(e) – power to enter premises

Clause 13 inserts new Chapter 2C, Part 6, which provides for powers of water restriction officers. This Part contains new sections 53E and 53F.

The explanatory notes provide an explanation of water restrictions:

> The *Water Supply (Safety and Reliability) Act 2008* enables water service providers to set restrictions for the volume of water, hours of use and the way water is used. It is an offence to contravene a water service provider's water restriction with penalties attached.[204]

And, further:

> … the Bill gives distributor-retailers, Urban Utilities and Unitywater, appropriate powers to support the implementation, monitoring, investigation and enforcement of water restrictions in their geographic service areas.[205]

The Bill provides for these powers by inserting new section 53E into the SEQ Water Act.[206]

New section 53E provides for general powers of entry for water restriction officers. Entry can be by consent of the occupier or upon warrant but neither consent nor a warrant is required:

- if it is a public place, during times it is open to the public
- if it is a place of business the subject of a service provider water restriction under the *Water Supply (Safety and Reliability) Act 2008* and the place is open for carrying on the business or otherwise open for entry.

A water restriction officer may not, however, enter a building or structure used for residential purposes unless it is a public place and the entry is made when it is open to the public, or the entry is authorised by warrant.

A number of consequential powers are afforded to a water restriction officer after entry, through new section 53F of the SEQ Water Act. These powers include the power to:

- search any part of the place
- inspect, measure, test, photograph or film any part of the place or anything at the place
- require a person to state their name and residential address
- require a person to give evidence of their name and residential address.[207]

Issue of fundamental principle

Whether legislation has sufficient regard to the rights and liberties of the individual depends on whether, for example, it confers power to enter premises and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer.[208]

Legislation should confer power to enter premises, and search for or seize documents or other property, with the occupier's consent or under a warrant issued by a judge or other judicial officer. This principle supports a long established rule of common law that protects the property of citizens.[209] Strict adherence to the principle may not be required, however, if the premises are business premises operating under a licence or premises of a public authority.[210]

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204 Explanatory notes, p 4.

205 Explanatory notes, p 4.

206 Clause 13.

207 SEQ Water Act, ss 53CZ, 53DC and 53DD.

208 LSA, s 4(3)(e).

209 Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 44.

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

Fundamental legislative principles are particularly important when powers of inspectors and similar officials are prescribed in legislation because these powers are very likely to interfere directly with the rights and liberties of individuals.[211]

In this Bill, once a power of entry is exercised, many other powers flow, including search powers and requirements to provide personal information, such as name and residential address.

The explanatory notes set out the purpose of these powers:

> The Bill delivers the policy objectives by providing investigation and enforcement powers for water restrictions to the distributors-retailers in the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*. The powers available to distributor-retailers will align with powers local government water service providers already have under the *Local Government Act 2009.* Equitable powers between all water service providers will ensure consistency in the imposition, investigation and enforcement of water restrictions.[212]

The explanatory notes provide this justification:

> The new compliance powers include a right to enter: an open place of business the subject of a water approval, an open public place, where the occupier consents or by a warrant. These powers are consistent with the existing powers in the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009* for discharge officers and connection officers. Appropriate limitations have been placed on these powers of entry. They do not include the power to enter a building or structure used for residential purposes unless there is a warrant.[213]

Further, a water restriction officer would be subject to certain requirements. For example, where a warrant is issued, identifying themselves to a person at the place by producing an identity card or other document evidencing their appointment.[214]

In addition, the SEQ Water Act requires a water restriction officer to take all reasonable steps to ensure the officer causes as little inconvenience, and does as little damage, as is practicable.[215] If, however, a person incurs loss or expense directly caused by the exercise, or purported exercise, of a relevant power, the person may claim compensation from the distributor-retailer in the appropriate court.[216]

Committee comment

The Bill provides for powers of entry, and a wide range of consequential powers, including search powers for water restrictions officers and the ability for such officers to request personal information.

The committee considered whether these powers (and the breach of fundamental legislative principle through the infringements on the rights and liberties of individuals that are involved) are justified in the circumstances, given the purpose of providing appropriate powers to support the implementation, monitoring, investigation and enforcement of water restrictions.

The committee is of the view that the breach of fundamental legislative principle is justified.

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

212 Explanatory notes, p 4.

213 Explanatory notes, p 6.

214 SEQ Water Act, s 53CW.

215 SEQ Water Act, s 53DF.

216 SEQ Water Act, s 53DI.

3.1.1.2 Clauses 3 and 5 – Legislative Standards Act 1992, section 4(3)(g) – rights and liberties

Clause 3 proposes to insert new section 334ZOA into the *Mineral Resources Act 1989*. This provision would validate the grant of mining leases between 1989 and 2010 that contain certain administrative deficiencies. Specifically, that these affected mining leases are taken to have always been valid and anything done under or in relation to the lease is also taken to be valid, as if the instrument of lease had been issued to the holder of the lease.

Clause 5 introduces new sections 45A and 45B into the *Petroleum Act 1923* to allow for an authority to prospect to remain in force where an application to renew has been made, but not decided, prior to its expiry. These leases will continue in force until an application is decided or is otherwise resolved. The explanatory notes provide that the amendments 'are proposed to operate both retrospectively and prospectively, to provide certainty to all stakeholders and ensure the ongoing integrity and consistency of the tenure management framework'.[217]

Issue of fundamental principle

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation does not adversely affect the rights and liberties, or impose obligations retrospectively.

Strong argument is required to justify an adverse effect on rights and liberties, or imposition of obligations, retrospectively.[218]

The explanatory notes state that the effect of these retrospective provisions is not adverse:

> Neither of those proposed amendments confer new rights or obligations on stakeholders and merely confirm that existing rights and obligations are not impacted by procedural deficiencies or legislative ambiguity. As such it is considered that the proposed amendments do not adversely affect rights and liberties, or impose obligations, retrospectively.[219]

Committee comment

The committee considered whether the retrospective operation of the legislation is justified. The committee is of the view that, given that the proposed provisions are curative and that the explanatory notes advise that they do not adversely affect a person's rights and liberties, the breach of fundamental legislative principle is justified.

The committee noted that the some holders of mining leases and authority to prospect are not individuals and therefore these provisions would not affect individual rights and liberties.

3.2 Explanatory notes

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

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

217

218 See LSA, s 4(3)(g).

219 Explanatory notes, p 5.

4 Compliance with the *Human Rights Act 2019*

The portfolio committee responsible for examining a Bill must consider and report to the Legislative Assembly about whether the Bill is not compatible with human rights, and consider and report to the Legislative Assembly about the statement of compatibility tabled for the Bill.[220]

A Bill is compatible with human rights if the Bill:

(a) does not limit a human right, or
(b) limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HRA.[221]

The HRA protects fundamental human rights drawn from international human rights law.[222] Section 13 of the HRA provides that a human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

The committee has examined the Bill for human rights compatibility. The committee brings the following to the attention of the Legislative Assembly.

4.1 Human rights compatibility

4.1.1 Human rights issues

The Bill is prima facie relevant to the following sections of the HRA: section 8 (compatibility with human rights); section 21 (freedom of expression); section 24 (property rights); and section 25 (privacy).

4.1.1.1 Clause 3 – Human Rights Act, section 24

Clause 3 of the Bill allows for validation of mining leases which have been granted without the issue of an instrument of lease. This *prima facie* affects property rights (HRA section 24).

The right to property is expressed in the HRA as the right to own property. However, it is established that the right extends to the uses to which the property is put.[223] Section 12 of the HRA allows these other legal approaches to be taken into account.

The purpose of clause 3 is to allow for correction of an administrative oversight with respect to the issue of the instrument of lease. It does not alter rights over the property but maintains them where there has been an administrative or procedural error or oversight. It also expressly provides that the rights and liabilities of 'all persons' are preserved as if the lease issue had been procedurally correct. Therefore, if other conditions, such as safety requirements or environmental considerations, had been imposed these will remain and any corrective measures remain open to all the parties. Additionally, HRA section 24 proscribes the arbitrary deprivation of a right to property. If done pursuant to legislation, the act is not arbitrary.[224]

Clause 3 is therefore compatible with human rights within the terms of HRA section 8.

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220 HRA, s 39.

221 HRA, s 8.

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

223 *Swancom Pty Ltd v Yarra CC* [2009] VCAT 923.

224 *Swancom Pty Ltd v Yarra CC* [2009] VCAT 923

4.1.1.2 Clause 5 – Human Rights Act, section 24

Clause 5 of the Bill allows for the continuing effect of a lease during a period after the lease has formally expired but where the leaseholder has applied for a renewal and is waiting for a decision on the application.

It does not affect any rights already granted and, for the same reasoning as expressed above applying to Clause 3, it is compatible with human rights within the terms of HRA section 8.

4.1.1.3 Clause 6 – Human Rights Act, section 24

Clause 6 of the Bill similarly applies to an authority to prospect pending decision on a grant application within a limited period relating to an amendment of the relevant legislation. It also is procedural in nature relating to administration of the relevant process.

For the same reasoning as above, it is compatible with human rights within the terms of HRA section 8.

4.1.1.4 Clause 13 – Human Rights Act, sections 24 and 25

Clause 13 of the Bill allows for entry onto property. This prima facie breaches HRA sections 24 (property rights) and 25 (privacy). However, this power will only apply where a business property is otherwise open to public entry, or the owner consents to the entry, or where a warrant to enter has been issued. HRA sections 24 and 25 would only be breached if the entry is "arbitrary" and section 25 adds that the entry has to be "unlawful". Neither would be the case here. The purpose of the entry is limited to gathering evidence of possible breaches of the law regarding water use and consumption, and aligns with powers already held by local government water service providers. The Bill extends this existing power to a water restriction officer. It is not an introduction of a new power but placing the same power onto a new office holder. It is also for the public purpose of providing sufficient water for the community, which is necessary for human life. If a business is a corporation the HRA will not apply to it in any event.[225]

Clause 13 is therefore compatible with human rights within the meaning of HRA section 8.

4.1.1.5 Clause 18 – Human Rights Act, section 21

Clause 18 of the Bill relates to the redaction of cybersecurity information from documents that are otherwise available to the public. This *prima facie* breaches HRA section 21 (freedom of expression) as that section expressly includes the right to receive information, which would include access to information held by a government or entity. However, the purpose of the redaction is to protect sensitive cyber security information directly related to the supply of a commodity essential for life. In addition, the right to access information remains available under other legislation to anyone who feels aggrieved by the redaction.

The provision is therefore compatible with human rights within the meaning of HRA section 8.

4.1.1.6 Clause 21

The repeal provision in Clause 21 has no human rights implications as it repeals provisions that have not commenced and leaves existing resolution remedies intact.

Committee comment

The committee finds the Bill is compatible with human rights.

[225] HRA, s 11.

4.2 Statement of compatibility

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

A statement of compatibility was tabled with the introduction of the Bill as required by s 38 of the HRA. The statement contained a sufficient level of information to facilitate understanding of the Bill in relation to its compatibility with human rights.

Appendix A – Submitters

Sub #	Submitter
001	David Henderson
002	Limousine Action Group (Queensland) Inc
003	Ride Share Drivers Association of Australia
004	The Wilderness Society
005	Sunwater
006	Queensland Resources Council
007	Lock the Gate Alliance
008	Queensland Conservation Council
009	Association of Mining and Exploration Companies
010	Taxi Council of Queensland
011	Limousine Association of Queensland
012	Environmental Defenders Office
013	Australian Petroleum Production & Exploration Association Limited

Appendix B – Officials at public departmental briefing held Wednesday 21 July 2021

Department of Resources

- Mr Chris Shaw, Executive Director, Georesources Policy
- Mr Darren Moor, Executive Director, Minerals and Coal
- Ms Lana Bartholomew, Executive Director, Petroleum and Gas

Department of Transport and Main Roads

- Mr Peter Milward, General Manager (Passenger Transport Integration)
- Ms Suzanne Rose, Executive Director (Service Policy)

Department of Regional Development, Manufacturing and Water

- Mr David Wiskar, A/Deputy Director-General

Appendix C – Witnesses at public hearing held Wednesday 21 July 2021

Lock the Gate Alliance

- Ms Ellie Smith, QLD project coordinator

Queensland Conservation Council

- Mr Nigel Parratt, Water Policy Officer

Environmental Defenders Office

- Ms Revel Pointon, Managing Lawyer, Southern and Central Queensland

Queensland Resources Council

- Hon Ian Macfarlane, Chief Executive
- Ms Katie-Anne Mulder, Policy Director Resources

Australian Petroleum Production & Exploration Association

- Mr Matthew Paull, A/g Queensland Director

Limousine Action Group (Queensland) Inc

- Ms Jacqui Shepard, Chairperson

Ride Share Drivers Association of Australia

- Mr Les Johnson, Secretary

Taxi Council of Queensland

- Mr Blair Davies, Chief Executive Officer – also represented the Limousine Association Queensland in capacity as its National Advocate

Limousine Association Queensland

- Mr Colin Duffield, Vice President

Individuals representing in their private capacity

- Mr David Henderson