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Agriculture Resources and Environment Committee <arec@parliament.qld.gov.au>

Submission to the Agricultural, Resource and Environment Committee

On 28 November 2012, Hon Andrew Cripps MP, Minister for Natural Resources and Mines, introduced the Mining and Other Legislation Amendment Bill 2012. The Bill was referred to the Agriculture, Resources and Environment Committee (AREC/the committee) in accordance with Standing Order 131. The committee will now examine the policies the Bill seeks to give effect to, the Bill's lawfulness, and the application of fundamental legislative principles, as set out in section 4 of the *Legislative Standards 1992*.

This bill is not aimed at a primary legislation, it is aimed at amending ten acts in the one bill.• Mineral Resources Act 1989• Fossicking Act 1994• Petroleum and Gas (Production and Safety) Act 2004• Petroleum Act 1923• Geothermal Energy Act 2010• Greenhouse Gas Storage Act 2009• Mines Legislation (Streamlining) Amendment Act 2012.The Bill also amends the:• Environmental Protection Act 1994;• Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012; and• Wild Rivers Act 2005

This bill should be rejected in its current form.

Alternative ways of achieving policy objectives

As the Bill addresses the regulatory burden, inconsistencies and uncertainty already in primary legislation; they could not have been addressed without changes to legislation. Three legislative options were considered to achieve the policy objectives:
Option 1: Act decisively to amend the legislation to remedy the issues listed in a single Bill. This is the preferred option.
Option 2: Whilst each Act could have been amended individually, this would be a time consuming process and a far simpler option is to include all amendments in one Bill.
Option 3: Do nothing. This is not appropriate because the amendments are necessary to reduce the regulatory burden on industry and government, ensure a consistent and modern approach to regulation and to remove doubt over certain provisions.
The amendment of Part 6A and 7AAA of the Mineral Resources Act 1989 is the only way to provide the legislative clarity needed for the management of the Aurukun bauxite resource project.
Amendments of the Mineral Resources Act 1989 are considered necessary to allow a competitive tendering process to be implemented for coal exploration

Option two should now be commenced

Scrap the bill, it is rushed and poorly drafted without regard to natural justice.
The acts should be amended one at a time (To give level one mining tenement stake holders the right to participate)
The acts should be amended individually with careful thought and consideration.
This action will allow stake holders the right to participate in the legislative processes.
The introduction of the bill on the 28 November has resulted in many of

the stake holders, not being aware of the proposed changes!
They have not had the opportunity to participate in the process.
These are the people who will be affected directly by the bill
Opal mining is a winter occupation in Queensland.
Almost all of the projects are on shut down due to the summer heat.
Christmas and new years are times that people spend with family. (Not writing submissions to government.)
The longest heat wave and catastrophic bush fires have kept many miners and farmers out of touch with each other. The timing of this bill is obstructive. Significant changes to ten acts of law(are not justified by the reasons given by the Minister) The bill is ambiguous and it uses opal mining as a political tool to divert the public's attention away from the real agenda.

The minister has stated the laws are needed to addresses regulatory burden **(the bill is not going to address the regulatory burden.)**

1. The bill is going to create new laws
2. New tenements
3. New tendering systems
4. New judicial roles
5. **New enforcement regimes. At the tune of 6.4 million dollars per year to implement.**

The bill states: The inconsistencies and uncertainty already exists in the primary legislation.
They could not have been addressed without changes to legislation.

Extract from explanatory notes

Modernisation of statutory roles under the Mineral Resources Act 1989

The exercise of statutory powers by the mining registrar has created organisational inefficiencies, complicated decision making and is based on district based mining administration that no longer reflects the spatial and economic significance of resource development in Queensland. It also creates an inconsistency between heads of power for decision makers under the Mineral Resources Act 1989 and the remaining more modern, Queensland resources legislation.
The Bill removes this inconsistency by amending the Mineral Resources Act 1989 by transferring the powers and functions of the mining registrar to the Minister or chief executive. This change does not make the role of mining registrar redundant; rather, mining registrars will continue to exercise their current functions by way of delegated authority.

This primary problem for the Minister is not legislation.
The registrars have been doing the job of upholding the objectives of the act MRA1989 and other acts.
The heads of government can't get what they want fast enough, so they have decided that the quick solution for them is to strip the registrar of his statutory powers (this is unacceptable).

The bill is not amending the old law to improve the law or remove an inconstancy.
The bill is creating a new judicial enforcement officer "The authorised officer."
The authorised officer will no longer need to have an acquired knowledge of the legislation and experience that is needed for the role of registrar. (This role can be filled by deputising any public servant.)
This bill must be scraped in its current form to avoid abuses to the legislation and the parliamentary processes

The following matters suggest that an Act not be used to implement policy:

• The policy does not involve modification of existing rights and obligations

•The policy is purely administrative in character
• The policy is not of sufficient significance to justify it being given permanency in an Act of Parliament.
The Queensland Cabinet Handbook requires that an Authority to Prepare a Bill submission include justification for legislation as the most appropriate means of proceeding.

The minister states that "they" could not have been addressed without changes to legislation. The minister has provided little or no justification as to why He is changing the other acts.
He has submitted a political document. Not of the quality that is required under the legislative standards act 1992.
The bill is not amending one primary act; the bill is attempting to fast track the amendment of ten acts with no regards to the legislative requirements and with contempt to the stake holders.
The proposition that the bill will help the opal miners is at best patronizing.
How is stripping the registrar of their statutory power helping opal miners?
Registrars have an acquired juridical role under natural law. That allows them to adjudicate and intervene to find the best ways of moving forward. The role of the registrar calling a conference between disagreeing parties is also striped from the legislation by this policy and the only source of appeal will be the land court. This is an expensive and time consuming option. Scrap the bill now.

Come on we are all adults here!
This bill is not remedying any specific short coming of the legislation. It is a political attempt to assert that there is a problem with the primary legislation in regard to the registrar and miners and the heads of government.

The committee must scrap the current bill as it is ambiguous and vague. The agenda is not to amend a primary act. The agenda is to amend 10 acts without proper legislative processes.
It is not one group of people that are being affected. It is many people that should have a role to play in this processes.
The minister will say 'We have the support of the peak bodies.'
These peak bodies do not represent the vast majority of stake holders, as assumed.
All the sovereign people of the state of Queensland have a vested interest in these laws and regulations
The ten acts of parliament that are being amended including MRA1989 affect the day to day lives of many people in Queensland.
We are not talking about one group of people. We are talking about changing the definitive acts that sets all mining regulations in Qld.
The committee must examined the validity of these so called peak bodies. Any person can get a group of mates together and have a meeting and then apply to the fair trading office to register incorporated association.

This does not create a qualification or an expertise.

The minister would be advised to sort which of these bush barristers are legitimately qualified to give him advice on matters such as opal mining and the development of legislation. This current bill is a good example of the quality of this representation.

Option two

Acts should be amended individually
This is the preferred option as far as natural justice is concerned, the people of Qld have certain rights when it comes to legislation.

Is a new law needed?

Policy may be implemented in many ways that may or may not require legislation. For example, it may be preferable to make agreements or industry codes of practice to implement a policy. There must be significant reasons for choosing to implement a policy through an Act of Parliament. These reasons may include:

- existing rights and obligations must be modified and this may only be done effectively by unilateral intervention of the Parliament
- a significant policy objective may be to ensure permanency for the policy to be implemented and this may only be achievable by an Act of Parliament
- the high level of importance given to the policy by the government may indicate that an Act of Parliament is the appropriate way to present the policy to the community.

The general and vague language of this bill uses the plight of opal miners to rally legislators to amend acts of parliament on our behalf. I thank them for their time on this matter.
"I do want a better deal for all opal miners, not just a few" But for all equally. As this bill does not deliver outcomes to all level two small

environmental authorities equally. Then it should be scraped.
The rent of $56 per hectare, the environmental levy of $550, the council rates of $86, compensation to the farmer $400 pa and compensation to native title? Yes, this is all that we are talking about.
Yes there are fees when you amend or renew a tenement. Security deposit $150 and bond to EPA $500-$2500. That is the cost of doing business, “opal mining is a gamble".
Opal miners have no legal right to complain about the cost of the activity!
I and all opal miners have no legal right to complain about money charged by the department. I signed that right away when I was asked to declared as all miners are required under policy that I have the financial and technical capacity to carry out the activity.
This has been the policy of the department for many years. So why now, why all of a sudden are you going to budget an estimated 6.4 million dollars per year to implement a bill to help opal miners. What is the significance? Any miner who complains that they cannot afford the fees attached to regulation has made a false and misleading statement to the department. That miner is at risk of a fine or a jail sentence. It is no wonder that only a small minority of opal miners are represented in these peak bodies. I can't speak about the sapphire miners as I am not aware if they sign a statutory statement when applying for a tenement.
Option two is the only way to move forward.
Sort out what can be done by policy and regulation and do the rest, one act at time. I forgot to tell the committee a mining claim is $320 for five years and there is no environmental authority attached to a mining claim under the current MRA 1989 and EPA 1994. The use of machinery could be prescribed under regulation to a mining claim or with the permission of the registrar. Don't take my word for it, ask the Minister. The use of machinery on mining claims was allowed in the past. It is only policy that restricts this activity today.
Why, because a mechanism that protects the rights of miners and the environment was legislated so that miners who want to use big, heavy earth moving equipment could have security of tenure.

This is called an environmental level two prescribed environmental authority for a mining lease. What is the minister talking about? He is talking about new legislation.

He could have easily and inexpensively delivered the out comes to opal miners under policy and regulation. He has chosen not to.
This bill is driven by something other than the plight of the Queensland opal miner.
The minister is proposing a new tenement and a new policing regime. That is legislated in such a way that it undermines the right of all current tenement holders.

A prescribed tenement for corundum and other gem stone. Yes, that is correct a new tenure, somewhere between a mining lease and a claim. This is not simplifying the process it is complicating the process and not all opal miners will be able to convert to this new system. As the amendment are poorly thought out. The result is a proposal to legislate a discriminating legislation. The benefit of the changes does not apply equally to all opal miners'. It is discrimination and the bill should be scrapped.

The following matters suggest that an Act not be used to implement policy:

- the policy does not involve modification of existing rights and obligations
- the policy is purely administrative in character
- the policy is not of sufficient significance to justify it being given permanency in an Act of Parliament.

The Queensland Cabinet Handbook requires that an Authority to prepare a Bill submission include justification for legislation as the most appropriate means of proceeding.

Policy development of a government Bill

2.3 – 2.7 The Queensland Legislation Handbook

This is the extract from the last statement of the alternative ways to achieve policy

The amendment of Part 6A and 7AAA of the Mineral Resources Act 1989 is the only way.

I ask the committee is a new law needed to assist opal miners?

As all the amendments that relate to opal mining could have been achieved under the MRA1989 and the MRR 2003 the EPA 1994 under policy and regulation.

I ask you not support the bill in its current form.

The closing statement demonstrates that no serious attempt was made to put forward any other way of achieving the policy for opal miners. The lack of effort to identify alternative ways to achieve policies exposes the hidden agenda of the bill. The political use of the opal miners to divert attention away from 6A and 7AAA is unacceptable and the bill should be rejected now by the committee

Example

The amendment of Part 6A and 7AAA of the Mineral Resources Act 1989 is the only way to provide the legislative clarity needed for the management of the Aurukun bauxite resource project.

Amendments of the Mineral Resources Act 1989 are considered necessary to allow a competitive tendering process to be implemented for coal exploration.

There is no mention of opal miners in the alternative ways of achieving policy change.

Why????

I will go further to demonstrate that the benefits that the minister is now promising opal miners could have been achieved by changes to policy in the Mineral resources regulations 2003.

NO1 Rents under regulation.
The rents are prescribed and the amount of rent can be changed by the government at any time. It is my understanding that miners who protested about rent in the past 3 years, protested about rent being CPI indexed. On the basis that the miners had a set rent for a set term according to their grant. We do not need to debate the issue of rent being prescribed and set by the regulations; it is clear and evident that this is the case. So there is no need to further amend the MRA1989 to achieve this end result! Is there?
No2 Use of machinery on mining claims.
It has never been disputed that the MRA 1989 has sufficient power to allow the use of machinery on mining claims. However, it has not been the policy in Queensland for a long time. In the past machinery was used on mining claims with consent from the registrar or the minister. It is not up to me to show the history of this activity, only to demonstrate that there are other ways available to the minister to deliver these benefits to opal miners, without altering the definitive document the MRA 1989. It is only

policy that prohibits the use of machinery on mining claims.
The bill goes beyond the scope of mining claims to create a new tenement with a new name and a new set of rules and regulations.
So the language of the minister again is not clear. After the passing of the bill in its current form Queensland will have three types of tenement for opal mining.
NO. 1 Mining Lease
NO. 2 Mining Claim
NO. 3 Production tenement and a prescribe tenure for corundum and other gem stones.

How is this going to reduce legislative processes? Is the policy going to be opal mining must be done on a prescribed tenement? I have written to the Premier and asked for a guarantee that the rights of opal miners who hold leases will not be diminished in the future, as a result of this bill. I have had no reply to date.

To implement the current bill will according to the explanatory notes, cost approximately 6.4 million dollars per year.

How could it be estimated to cost 6.4 million dollars P.A. to help out small miners?

Recommendations should be made to deliver the benefit promised to opal miners under the policy and regulation making powers of the MRA 1989 and MRR2003.

Variation of conditions of mining claim

(1) The conditions to which a mining claim is for the time being subject may be varied by the mining registrar in terms not inconsistent with this Act upon the agreement in writing of the

holder of the mining claim.

Provision of security

(1) Before a mining claim is granted or renewed, the mining registrar taking into consideration the outline under section 61(1)(j)(iv) shall determine the amount of the security to be deposited by the holder of that mining claim as reasonable security for—

(a) compliance with the conditions of the mining claim; and

(b) compliance with the provisions of this Act; and

110 Use of machinery in mining claim area

(1) The Governor in Council may, by regulation, declare with respect to a particular mining claim, all mining claims, all mining claim areas in a specified area of the State, all mining claims in respect of a specified mineral or all mining claims in respect of a specified mineral in a specified area of the State—

(a) the types of machinery, mechanical devices or other equipment (if any) that may or may not be used for prospecting or hand mining;

(b) the methods by which prospecting or operations for mining may or may not be carried on.

Mineral Resources Act 1989

Part 4 Mining claims

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111 Declaration of prohibited machinery in mining claim area

The Governor in Council may by regulation with respect to any part of the State, declare that certain types of machinery, mechanical devices or other equipment may not be used in, on or under the area of any mining claim within that part.

112 Mining registrar may authorise use of prohibited machinery for purposes other than mining etc.

(1) Despite section 111, the mining registrar may authorise the use of prohibited machinery for purposes other than prospecting, exploring or mining in, on or under the area of a mining claim within an area specified in a declaration under that section.

Fundamental legislative principles

7.1 Considering fundamental legislative principles
7.2 The rights and liberties of individuals
7.2.1 Does the legislation make rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review?
7.2.2 Is the legislation consistent with principles of natural justice?
7.2.3 Does the legislation allow the delegation of administrative power only in appropriate cases and to appropriate persons?
7.2.4 Does the legislation provide for the reversal of the onus of proof in criminal proceedings without adequate justification?
Contents
The Queensland Legislation Handbook
7.2.5 Does the legislation confer 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?
7.2.6 Does the legislation provide appropriate protection against self-incrimination?
7.2.7 Does the legislation adversely affect rights and liberties, or impose obligations, retrospectively?
7.2.8 Does the legislation confer immunity from proceeding or prosecution without adequate justification?
7.2.9 Does the legislation provide for the compulsory acquisition of property only with fair compensation?
7.2.10 Does the legislation have sufficient regard to Aboriginal tradition and Island custom?
7.2.11 Is the legislation unambiguous and drafted in a sufficiently clear and precise way?
7.2.12 Does the legislation in all other respects have sufficient regard to the rights and liberties of individuals?
7.3 The institution of Parliament
7.3.1 Does the legislation allow the delegation of legislative power only in appropriate cases and to appropriate persons?
7.3.2 Does the legislation sufficiently subject the exercise of a delegated legislative power to the scrutiny

The committee must Say no to this bill

1. Serious contradiction exists between the introduction speech the objectives and the actual bill
2. The bill is ambiguous
3. The bill has been rushed in its drafting and the quality of the bill is not there.
4. The bill is contradictory
5. The bill is not clear and precise
6. The bill puts at risk the natural justice of stake holders
7. The bill devalues the amendments that apply to level one mining projects.
8. Legislation that affects level one mining tenements should be dealt with individually and each act amended individually.
9. Level one stake holders are being obstructed from the right to consider the amendment in this bill That apply directly and indirectly to level one projects
10. Introduction of the bill in December with a closing date for submissions 21 January is obstructive to the process
11. The bill is misleading according to the terminology used
12. There is no legislative precedent for the use of the words small scale mining in the MRA 1989 and the EPA 1994 with regards to mining tenements.

13. Mining claims are level two tenements.
14. The bill has been groomed to appear to be sympathetic to the plight of opal miners. All opal mining tenements are level two tenements. The amendments are not restricted to the plight of opal miners on mining claims. The amendments will apply to all level one tenement and level two tenements in Queensland.
15. The words opal miner small scale miners are not legislative terms. The legislation uses Terms such as Eligible person, Tenement holder, and environmental authority holder to identify the entity according to the act.
16. Small scale miner is not a recognised entity under the legislation. The use of the wording should be immediately scraped from the bill and any subsequent bill to amend the MRA 1989 and the EPA 1994. It does not reflect the rights of all entities as defined under the MRA 1989.
17. The minister may have misled the parliament and the people in his speech with regard to the use of the words 'Not liable for annual rental payments. Also with regards to obligation to lodge royalty returns. With regards to the amount of area promised for a prescribed tenement.
18. The bill does not openly declare changes to statutory powers of authorised officers
19. The bill removes the right to object at conference
20. The bill makes the only course for objection available to a landholder to go to the land court. This may be seen by some as an act of obstruction. The process is expensive and creates an obstacle to stake holders rights
21. The bill strips the registrar of statutory powers without consultation or proper grounds
22. The bill will impact on natural justice
23. The bill may be discriminatory
24. The bill does not simplify regulation, it increases regulatory burden
25. The bill introduces terms that are not consistent with the current MRA 1989 and EPA 1994
26. The bill removes the role of a magistrate to issue a warrant to search and seize property
27. The bill makes it possible to appoint a public servant as an authorised office (member of local government) to police the act without requiring any other authority except the act MRA 1989. This amendment is vague and not openly declared.
28. The bill makes all mining claims to not be personal property.
29. The bill sights regulations that do not exist at this point in time
30. The bill requires self-assessment putting the assessing entity at the risk of self-incriminating due to lack of knowledge about the act and possible future regulations. It is an offence to make a false or misleading statement to the department or the authorised officer. This offence carries a maximum two year jail sentence.

31. The act is vague in regard to the miner who transitions from a lease to a prescribed tenement. The miner who applies to convert a mining lease loses the right to the mining lease at application and is given an interim prescribed tenement. (all work should stop at that point until the regulations are drafted) Miners are being asked to agree with regulation and conditions that do not exist.
32. The bill is premature and the warrantable offences and other penalties that can arise as a result of the assertion of the amendments have not been declared in the bill
33. In the event that the application to convert is rejected, the miner cannot fall back on the mining lease as the Environmental authority is cancelled. So they are out in the cold, the bill contains amendments that allow the minsters to reject the application to convert.
34. However, the obligations of the environmental authority are not cancelled. At application the amendments are ambiguous as to the consequence of the application.
35. A departmental auditor or a third party auditor may find in the future that the miner has declared in a misleading way the amount of disturbance, the state of rehabilitation, the presence of a permanent structure etc. At which time the miner can be charged under the legislation or ordered to carry out work ordered to increase a bond or have the prescribed tenement cancelled and the equipment and minerals on the sight seized and sold at auction. Also the miner will be liable for the cost of the officer who is appointed to force compliance with the legislation and any other costs associated with the action. This is not declared in the bill.

The bill should be scrapped immediately and option two of alternative ways to achieve policy adopted without reservation