Queensland Small Mining Council

PO Box 210

Quilpie Q 4480

Agriculture, Resources and Environment Committee
QUEENSLAND PARLIAMENTARY SERVICE
Parliament House

QSMC Submission on the *Mining and Other Legislation Amendment Bill 2012*

The Queensland Small Miners Council (QSMC) is an established forum for the State's Small-Scale Mining representative Groups and provides this forum to co-operate with representation to regulatory authorities on matters that are of a mutual concern to our industries.

The QSMC consists of delegates from the North Queensland Miners Association (NQMA), the Queensland Opal Miners Association (QOMA), the Queensland Sapphire Producers Association (QSPA), the Yowah Opal Mining Community Services Association (YOMCA) and the Queensland Boulder Opal Association (QBOA), which collectively now provide representation for over 2,000 mining members and their families.

The mining of alluvial gold and other minerals, as well as Queensland's opal and sapphires, has always provided avenues for the "ordinary citizen" to enjoy should they wish to pursue these vocations and/or invest in these employment *and* enjoyment opportunities, which prior to the Labor government taking office were all vibrant Industries.

Over the last decade, overzealous regulation and the introduction of new burdening costs has steadily resulted in the decline of small scale miners. Processes and maintenance costs for these simple tenements has become over demanding, creating an 'environment of exclusivity' by the past regulatory regimes controlling these industries.

The never-ending paperwork to apply for and maintain tenements appear to be more about keeping the departmental regime's employees appearing to be busy and "empowered" than in delivering any tangible service that is expected by the people of Queensland of what was once proudly referred to as a "Public Service".

The consequence was poorly advised Government policy by bureaucrats who administered the mining sector. They generally formulated policy without any or adequate industry consultation. In the past, that has been an all too common behaviour adopted and perfected by the State's regulatory regimes.

This led to the creation of regulations that are causing a range of impediments, which has significantly contributed to the demise of the remnants of the small scale operators in this State.

These impediments are promptly "removing the right" of ordinary Queenslanders and other interested persons from pursuing and enjoying these pastimes which have significantly contributed to the development and history of this State.

The Small Scale Mining sector has at no other time in the history of Queensland been in such dire straits.

The QSMC provided the new Premier, the Hon. Campbell Newman, an industry submission at a regional visit to Quilpie, which through his personal intervention, led to new rounds of consultation between the regulators and the QSMC.

Although the consultation and proposed legislation has not yet addressed concerns and requirements for the small "gold and hard rock sectors", the current proposed legislation will immediately lead to the revitalisation of the small mining gem sectors that are by and large looking forward to the new legislation and regulation albeit with some proposed recommendations by QSMC for minor amendments.

The QSMC would naturally have preferred that the amendments in the Bill for the Small Scale Mining Sector proposed were in their own separate legislation, as it would have allowed the QSMC to provide its submission earlier.

It has been difficult to decipher what parts of the proposed legislation has a direct impact on our industry. This is particularly relevant given the short time in which to review the document and to respond before the closing date for submissions, which we have missed.

A major delay in our submission was caused by the release of the "Draft Mining Code" which was only forwarded by the department on 08/ 02/13 and caused delay in finalising the QSMC submission. Given the frequency that this "Small Mining Code" is mentioned in the bill and the unknown content that these points may have contained therein, it may have had an effect on the position of the submission raised now by the QSMC.

QSMC are pleased that we have now had the opportunity to peruse this document and are relieved to find that there are no "major concerns".

We will formally advise the State of any concerns by 20 February 2013 so the proposed "mandatory" conditions, which are subject to drafting by the Office of Parliamentary Counsel, can be finalised.

Given the circumstances, the QSMC humbly requests that the Parliamentary Committee accept our attached submission.

QSMC do not perceive that our recommendations and queries are too onerous for the Parliamentary Review Committee to include in the review, as QSMC has been keeping the State regulators informed of the content during the development of our submission.

Overall, the QSMC are satisfied with the consultation with the State that led to the drafting of this Bill and the opportunity for QSMC to provide representation to this Parliamentary Committee at the public hearing.

It is all a very refreshing change!

Kindly

.....
Kevin Phillips
Secretary QSMC

07 4656 2003
0427 66 2003

Queensland Small Mining Council
PO Box 210
Quilpie Q 4480

Agriculture, Resources and Environment Committee
QUEENSLAND PARLIAMENTARY SERVICE
Parliament House

QSMC Submission on the Mining and Other Legislation *Amendment Bill 2012*.

Small scale mining for opal and gemstones

As stated in the Legislation Brief for the amendment legislation, small scale mining operations for opal and gemstones that do not fit the scope of a mining claim which is either limited to a very small area, (generally100m x 100m), where operators are limited to the use of either hand tools or hand held electric and/ or pneumatic driven tools.

Machinery operators in the past therefore had the only option of the mining lease tenure which allows for machinery mining.

This then exposes them to the same regulatory and financial regime faced by large scale mining operations. As a result, there is an undue financial and regulatory burden placed on this industry, given its relatively low risk to the state for these low impact mining activities.

Amendments to the *Mineral Resources Act 1989* and *Mines Legislation (Streamlining) Amendment Act 2012* modify the existing mining claim tenure to allow small scale miners of opal, corundum, gemstones and other precious stones (opal and gemstone miners) on a mining lease, up to 20 hectares in size, to convert to a "new type mining claim" which will now allow machinery mining on these mining claims without the need for individual mining applicants requesting special dispensation from the Minister who could exercise discretionary powers to allow the machinery on mining claims.

The Minister generally only granted the use of machinery if the mining claim tenure area had under lying safety problems because of underground workings.

The size of these "new mining claims" has been increased to 20 hectares to allow for not only the safe operation of machinery but for other mining activities that may need to be conducted on the tenure. (i.e. costeans and or pits, blasting/ and buffer zones as well as hauling, camping, roads and/or tracks.)

This new type Mining Claim tenure is a "progressive step" by the government and the department.

It acknowledges small scale gemstone operations are a low impact activity which should be separated from the mainstream mining lease operations where a low level of disturbance and operations is to occur.

The QSMC support the idea of this new type "Mining Claim" where machinery can be utilised as it provides an affordable alternative tenure type for small scale operators to utilise.

This will be critical for the redevelopment of these industries, providing a new, affordable entry level tenure for machinery operators, which will suit most hobbyists, new chums and part-time operators who, by and large, at present represent the greatest number of participants in small scale gem mining.

This will allow opal and gemstone miners to take advantage of the simpler administrative processes and lower fees attached to this tenure type. Currently there is no requirement to pay rent on mining claims. By providing the option for tenure holders to transition into the new mining claim framework, these types of operations would also not be required to pay rent.

The proposed legislation does not limit the small scale gem miners from utilising the existing Mining Lease tenure/s should they deem they require the Mining Lease tenure structure to be more suitable option for their investment.

(i.e. An opal miner who locates an opal resource during exploration that covers 60 hectares can still peg a Mining Lease over the resource; however, the opal miner will have to comply to the requirements of the MRA and apply for an Environmental Authority under the EP Act.)

Environmental

Eligible small scale opal and gemstone mining operations on a new type mining claim will not be required to hold an environmental authority.

Additionally, eligible small scale exploration activities for minerals other than coal will not be required to hold an environmental authority. Eligibility criteria will limit environmental risk, negating the need for the additional rigour of an environmental authority.

Removing the environmental authority requirement will benefit small scale opal and gemstone miners as they will no longer need to make an application for an EA, pay annual fees for EAs or comply with ongoing administrative requirements for this **"new Mining Claim tenure"** option.

The EA Annual Fee was wrongfully introduced by the Labor Party to the Small Scale miners and currently continues to be applied to these operators who are not able to convert to the new tenure system unless they comply.

The EA Annual Fees and penalties for non- compliance by the the EPA/DERM/ DHP should be abolished by the LNP as they were deemed unfair by the Ombudsman which investigated this Labor introduced legislation.

This would provide a clean slate for all to move forward.

Estimated costs for government implementation

The State guestimates in its brief that the estimated total cost of the small scale mining reforms in lost revenue to the State will be in the order of $800,000 – $1,400,000 per annum as a result of red and green tape reduction initiatives.

Whist this may be the case, the State would lose this money anyway if the same number of tenure surrenders continue at the same rate under the existing regime.

There has been little, if any, investment in small scale mining in recent years given the over-regulation and recently inflated costs ordered by the then "broke Labor Party government" which ordered departments to come up with new fees and increases.

Approximately one third of this projected loss will come from the EP Act which wrongfully introduced increased Application for Environmental Authority fees (150%) and introduced Annual Fees in 2008-2009. Recent fee increases by the Department of Mines for tenure applications of up to 500% also contributed to the demise.

As a direct result, the State is progressing to lose tens of thousands of dollars in rental each year and application fees in recent years with small scale miners abstaining from taking on new exploration permits, which directly caused reductions in the number of new tenure applications for leases and mining claims.

The real loss to the state has been the amount of money lost on exploration investment because of the increased fees and over-regulation, which in turn led to the lack of product coming out of the ground because of this lack of investment.

This had adverse effects on investment in small mining and employment for downstream processors like opal and gem cutters, jewellers and setters, gem merchants and dealers (who once exported over $120m annually of Queensland's "boulder opal" alone, let alone sapphires and other gems).

The hundreds of opal shops which once lined the tourist strips of Queensland have now gone and the number of tourists who once flocked to these rural mining towns where gem mining takes place is now dismal to say the least.

QSMC accept the State's position that it can absorb the costs of using existing departmental resources, and that reduced interactions with the government over the long term will offset the short-term additional processing burden for government.
(The introduction by the State of new technology and /or "on line" tenure applications support the claims by the State in ways that can assist in reducing these costs.)

The direct losses to the State will be offset by a gain in regional employment and investment with increased production of these gem commodities and increased investment in exploration and production, which in turn will have positive outcomes for downstream processors.

QSMC's Priority Concerns

Disturbance

One of the points agreed upon at the forum with representative industry bodies and the State's Regulators is that each miner would be allowed the following:-

Two (2) claims of up to twenty hectares but whereon only ten (10) hectares maximum could be disturbed at any one time in total on this combination on a single Mining Project (combination of two "new mining claim" tenures).

This is not accurately reflected in the Draft legislation.

This is a very important plank of our agreement as most miners wish to work one lease at a time but need one (1) tenure in reserve to go to when the first is completed and/or if the tenure is inaccessible.

Additionally, existing mining lease holders may not be able to transfer their existing tenures to the "New Mining Claim" even if their total disturbance on their mining leases are less than 10 hectares as a tenure may exceed the 5ha limit now incorrectly apportioned in the new legislation.

Wild Rivers

Another glaring discrepancy is the exclusion of Small Mining Claims in *all* Wild River areas.

see **Amendment of s 62 (Amendment of sch 4 (Dictionary))** **page 21**
(ii) it is not, or will not be, carried out in a wild river area or on strategic cropping land or potential SCL under the *Strategic Cropping Land Act 2011*; and is also in the "exploration conditions" point (i) as well

Just about all Opal production in the State is in "Wild River Areas", so as it stands the proposed legislation will shut down 80% of all opal mining.

QSMC trust this is a simple typing error or oversight and should read 'Wild River High Preservation Area"

Tenure Size and Shape

Other additions to the new legislation not agreed upon is an insistence that leases changed to the "New Type Mining Claims" have to be exactly the same size.

Surely this is unnecessary in that it will disqualify many of the existing miners it is supposed to benefit.
There is already provision to handle reducing areas held. If the proposed new claim is proposed to include a new area, surely the standard application rules can cover this possibility.

Further to the above paragraph, why should the new claim need to have the same expiry date as the original lease?

A transfer from a mining lease or claim to the a new type "Mining Claim Tenure" is an application for a new tenure over the same area!

Certainly the term of the new tenure should be for the term sought by the applicant unless there are native title issues that *may* affect this outcome.

QSMC believe this could be reflected in the legislation.

The Requirements :- "Keeping it Real" as the devil's in the detail!

Whilst the QSMC where involved with the State in negotiating the principles of this legislation, we have not been privy or provided input into the final design of some of the detail which include the following:

submit a work program every five years;

A work program historically for small mining is rhetorical, that an applicant can put together to satisfy the application.

In reality, you are preparing a document you will likely breach from day one, so it is questionable at least to ask "what is the value of this documentation?" and is it "bureaucracy for bureaucracy sake" and just to keep another desk jockey employed to review.

It is questionable if it is of any real practical value.

For example, a prospector can only determine the limitations of the resource when pegging a mining lease from a prospecting permit from either gut feeling or field-based knowledge, as the prospector doesn't have X-ray vision.

Even if a prospector utilises an Exploration Permit to determine a resource is on the locality within an area they wish to peg, it is impossible to gauge the extent and quality of the resource simply because of these reasons.

> *1. The limitations of explorations set by "Exploration Grant document" Annexure C "Specific conditions' which is ordinarily set by the Technical Staff within DME, which limits and explores excavations and/or drill holes to certain sizes and distances between disturbances, to deter explorers from illegally mining!*
>
> *2. Unlike gold, gemstones are not assayable, that is to say, even if one drilled or trenched their way in accordance with the Specific Conditions and were lucky to find a resource in each location, it is not likely to estimate the quantity of an occurrence of a resource let alone the quality between the two points and estimate this value.*

From experience, the likelihood of the resource's not being directly geologically connected to the next location within the tenure has more than likely been deposited in many paleo-systems throughout the area and the quality of the resource for both opal and sapphire is indeterminable.

Therefore, and without exception, an explorer who pegs a tenure over a resource for gemstones can only presume the resource is viable. Sometimes they are right!

The point.....it is impossible by and large to know when a gem resource will start and fade out, whether it will head north or south, deep or shallow, as a prospector can only determine the resource within the limitations described above, and as stated, the prospector doesn't have X-ray vision!

Additionally whether the market price and/or demand will peak or slide, the latter being the experience since the Global Financial Crisis, all provide impediments for a tenure applicant providing a detailed report on where you intend to mine over the next five years .....!

Given the small size of these tenures, and the even smaller area of disturbance that a miner can create in these tenures, QSMC propose the following.

1. ***Documentation required should be minimalistic and state the facts only; i.e. what machinery, when and possibly whom. Anything more than this only fails to "reduce the administrative and regulatory burden on the miner" which is the aim of the legislation.***

2. ***That a sketch map of disturbances/rehabilitation is provided of the new mining claim upon transfer or grant and then an updated version of this map is provided every 5 years.***

3. ***QSMC member groups are offered the opportunity for input into the final design of this Work Program criteria, as the criteria may exert appreciable costs on the applicant if poorly designed.***

☐comply with a new Small Scale Mining Code under the Mineral Resources Act

The QSMC has only just received the copy of the Draft Mining Code (received 08/02/13) which has caused delay in finalising the QSMC submission.

Given the frequency that this is mentioned in the bill and the content that these points may have to the position of the QSMC - In particular as Clause 134 adds provisions to the Mineral Resources Act 1989 that provides for a regulation to apply a code for managing the impacts of small scale mining activities carried out under a mining claim or an exploration permit.

???Under this provision mandatory conditions which will Mining and Other Legislation Amendment Bill 2012 apply to holders of mining claims and exploration permits are proposed.
Under the Mineral Resources Act 1989, non-compliance with a mandatory condition may lead to cancellation of the claim or permit, or a penalty.

It is noted that potential sanctions for non-compliance are significant, and mandatory conditions will be stated in a regulation as opposed to being stated only in a document prepared by the department. This will ensure that the exercise of delegated legislative power is subject to the scrutiny of the Legislative Assembly.

We will formally advise the State of any concerns by 20 February 2013 so the proposed "mandatory" conditions which are subject to drafting by the Office of Parliamentary Counsel can be finalised.

QSMC recommendations and Queries to changes in the EP Act

'Subdivision 6 Prescribed conditions

'Subdivision 6 Directions about rehabilitation

A new section 307A is being inserted so that if the administering authority decides to refuse an application to discharge financial assurance for a small scale mining activity, the administering authority may give the holder of the small scale mining tenure a written direction to carry out rehabilitation within a stated reasonable period.

This is required because the discharge of the financial assurance is only refused when rehabilitation requirements have not been met.

The direction must be given to the holder with the notice of refusal required under section 305(1)(b) and the notice of refusal must also include an information notice about the decision to give the direction.

Q. Who decides that rehabilitation is inadequate and what experience will they have to substantiate their decision and what recourse does the tenure holder have to appeal a decision.

'21A Meaning of *prescribed condition*

'(2) Without limiting subsection (1), a prescribed condition **may** require the holder of a mining tenure for carrying out a small scale mining activity (a ***small scale mining tenure***) to give the administering authority financial assurance of an amount prescribed under a regulation—
(a) before the relevant activity is carried out under the mining tenure; and
(b) as security for—
(i) compliance with other prescribed conditions for carrying out the small scale mining activity; and
(ii) costs or expenses, or likely costs or expenses, mentioned in section 298.

Q. Who determines the costs or expenses or <u>likely</u> expenses, mentioned in section 298, if it is the authorised officer they may not skilled and what recourse does the tenure holder have to appeal these costs if they think that these costs are not correct.

Clause 20 Amendment of s 62 (Amendment of sch 4 (Dictionary))
Section 62(2)(b)

(vii) does not, or will not, at any time cause more than 1000m2 of land to be **disturbed**; or

For clarity for both the applicant/tenure holder and the administering authority, "disturbed" should be defined to state that "rehabilitated disturbed areas" within the EPM are not included in this section

Amendment of s 62 (Amendment of sch 4 (Dictionary))

Clause 20 amends section 62 of the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* which amends the Dictionary in Schedule 4 of the *Environmental Protection Act 1994* to insert the definitions of "riverine area" and "watercourse" which have been relocated from the *Environmental Protection Regulation 2008* and new definitions of "a prescribed condition", "small scale mining activity" and "small scale mining tenure.

(a) in a natural channel, whether artificially improved or not; or
(b) in an artificial channel that has changed the course of the watercourse.
2 *Watercourse* includes the bed and banks and any other element of a river, creek or stream confining or containing water.'.

***watercourse*—*watercourse*—**
1 *Watercourse* means a river, creek or stream in which water flows permanently or intermittently—
(a) in a natural channel, whether artificially improved or not; or
(b) in an artificial channel that has changed the course of the watercourse.
2 *Watercourse* includes the bed and banks and any other element of a river, creek or stream confining or containing water.'.

If a Watercourse means a river, creek or stream in which water flows intermittently, then the whole of Queensland can be deemed off limits to mining.

Otherwise any half-baked dry pond, gully, creek or stream situated in the Great Artesian basin which runs once or twice during a good rainfall year or when an isolated scud (storm) which luckily hits the area makes the area off limits!
Any disturbance therefore in a dry stream/creek could be deemed by an inexperienced "authorised officer" as a breach of the prescribed conditions
"*intermittently*" should be defined better by defining creeks and streams in this section to have "significant and/ or continual water flows during periods without drought conditions".

Amendment of s 36 (Amendment of s 452 (Entry of place – general)

Clause 15 amends section 36 of the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* which amends section 452 of the *Environmental Protection Act 1994* so that an authorised person has powers to enter a place if it is a place to which a prescribed condition for a small scale mining activity relates and the other conditions of entry as outlined in the section are satisfied.

Q. Under what circumstances are foreseen that this would be required?

What are the current shortfalls and rules of the current legislation and what is beneficial to the tenure holder and or the State to seek these proposed amendments?

"Should this not be restricted to a prescribed condition for a small scale mining activity which is "reported or reasonably suspected" to be in breach of a prescribed condition!

Amendment of s 37 (Amendment of s 458 (Order to enter land to conduct investigation or conduct work))

Clause 16 amends section 37 of the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* which amends section 458 of the *Environmental Protection Act 1994* so that an authorised person may apply to a magistrate for an order to enter land to carry out work on the land to secure compliance with a prescribed condition for a small scale mining activity.

Q. Under what circumstances are foreseen that this would be required?

What are the current shortfalls and rules of the current legislation and what is beneficial to the proposed amendments!?

How does applying to a magistrate secure compliance with a prescribed condition !!?

Can this access to the land by an authorised officer not be facilitated by Amendment section 36 above?

QSMC queries and recommendations to changes in the MRA's 1989

'64B Applicant's obligations for mining claim application certificate

An applicant for a mining claim must take certain action within 5 days (or a longer period as specified by the chief executive) of being given the mining claim application certificate. **The applicant must post a copy of the mining claim application certificate on the datum post** and durably engrave or mark the datum post of the area the subject of the claim.
The applicant must also give the application certificate for the mining claim and any additional documents about the application given by the applicant to the chief executive, to each owner of relevant land and the relevant local government. The applicant must include with the specified material a copy of the small scale mining code if the mining claim is for carrying out of small scale mining activities.
The application must also ensure that the copy of the certificate remains posted on the datum post until the end of the last objection day.
In this section, "relevant land" means both the land subject of the proposed mining claim or other land necessary for access to that land.

As the land owner, local authority and any native title parties receive a copy of this certificate, the value of this protocol is questionable. As stated previously by the State, ordinarily it is only the Landowner who objects (see **Consistency with Fundamental Legislative Principles page 9)**
Many mining tenures are located in isolated places where inspection of these certificates by third parties has never taken place.

Additionally, currently a miner must return to these isolated tenures after receiving the CPN (now mining claim application certificate), which sometimes isn't received upon lodgement at the Mining District, to have to return to the application area and place this notice on the datum post.

This is a costly exercise with applicants having to travel great distances, sometimes thousands of kilometres, to facilitate this outdated protocol.

QSMC recommend that the CPN is placed on the noticeboard at the Mining District by the Mining registrar, which is the likely place any third party other than those already in receipt of a CPN notice would become aware of the applicants tenure application.

The identity number of the tenure could be durably engraved by the applicant at a later date, or it may be even more practicable for it to be done by the field officer, who checks and records the location of the tenure posts as part of the application process prior to grant.

Amendment of s 131 (who may apply)

Clause 49 inserts a new subsection 131(2), **which provides that an application for an exploration permit cannot be made for an area that is the subject of a call for tenders for an Exploration Permit (non-coal)** i.e. for an area that the Minister has already moved to release via a competitive tender process. This clarifies the interplay between the two processes by which exploration permits for minerals other than coal may be allocated; via an application process or if the Minister considers it in the State's best interests, via a competitive tender process (refer to section 136A).

QSMC are very concerned of this new process particularly given the blanket exploration that this state is experiencing and given that QSMC have had no consultation with regard to this matter.

Small scale miners will unlikely be the winning competitor in an area in a competitive process against other types of mining.

Given this valid point, what endeavours by the State are being undertaken to ensure that areas are available to small scale miners to invest and conduct exploration by:-

1. Conserving gemstone "Restricted Areas" (RAs)

   Are RA's excluded from these competitive tender process areas to preserve areas for gemstone exploration?

2. Plan to design a "separation of minerals legislation" as proposed in the MRA Review 2008 so that explorations for different minerals could occur over the same area.

   This would assist in providing the explorers not only areas to operate in areas that have blanket exploration applications or permits which is currently inhibiting investment in this State.

   Particularly when many of these exploration tenures are not being utilised either

   through failures to address or achieve native title outcomes and/ or utilised to prop up prospectus portfolios for companies that hold these tenures.