QUEENSLAND resources COUNCIL

Working together for a shared future

15 August 2014

Mr Ian Rickuss MP
Chair
Agriculture, Resources and Environment Committee
Parliament House
George Street
BRISBANE QLD 4000
via email: arec@parliament.qld.gov.au

Dear Ian,

Thank you for the opportunity to appear at the Committee hearing on 6 August as part of your inquiry into the *Mineral and Energy Resources (Common Provisions) Bill 2014* (the Bill). QRC welcomes the chance to make a supplementary submission to the Committee.

As you know, the Queensland Resources Council (QRC) is the peak representative organisation of the Queensland minerals and energy sector. QRC's membership encompasses minerals and energy exploration, production, and processing companies, and associated service companies. The QRC works on behalf of members to ensure Queensland's resources are developed profitably and competitively, in a socially and environmentally sustainable way.

Even by the standards of modern omnibus legislation, this Bill is a highly complex one; which must pose a challenge for the Committee, particularly given the tight reporting deadline. Many of the amendments are technical in nature and they have a highly varied policy pedigree. Some amendments are the culmination of long-running consultative processes; whereas the rationale for other amendments remains recent and raw. Further complicating the task is that much of the detail of the amendments will be fleshed out in regulations, which are not yet available

Reviewing the 283 submissions that the Committee has received, none of them successfully provide the policy context for all of the amendments proposed in the Bill. The decision regulatory impact statement (RIS) from the Department of Natural Resources and Mines does a good job of setting out the context, but unfortunately wasn't made available until the evening of the public hearing. This has resulted in a lot of confusion and concern expressed through submissions, which had to be finalised a month before the hearings.

Many of these policy objectives do affect existing statutory rights of Queenslanders, so it is important that these amendments are considered carefully by the Committee.

Any change in statutory rights is intrinsically a source of concern, which merits careful scrutiny from Parliament. Unfortunately, such a change can form a productive basis for a public scare campaign, rapidly generating a spate of pro-forma submissions.

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There is no doubting the genuine concerns of the individuals making the effort of providing submissions to the Committee; but it would be difficult not to be concerned when drawing information from alarmist sources which stridently proclaim:

> "...*proposed outrageous removal of your rights*[1]";
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> "*.. by hiding the decision from public scrutiny the Government invites doubts about its trustworthiness.*"[2]; and
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> *"The system is already stacked against landholders and communities and this will make it even worse.*[3]*"*
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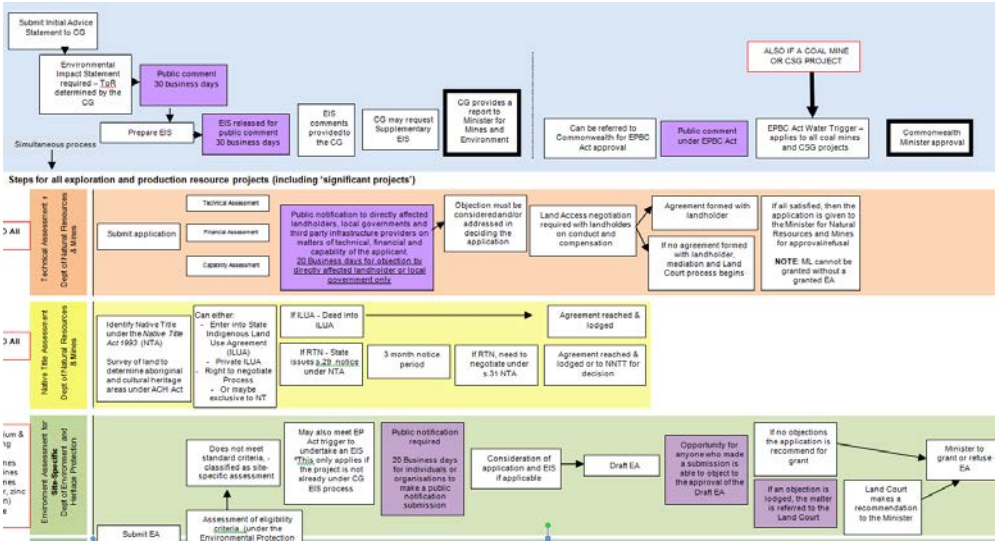
> *"...this will lead to the absurd situation where up to 90% of mines can go ahead without any transparency or accountability whatsoever"*[4]*.*

Given the membership reach of many of the organisations presenting such emotive claims, the only surprise is that the Committee has not received many more submissions.

It is incorrect for the Environmental Defenders' Office (EDO) to claim that mines can be approved without "*any transparency or accountability*". QRC has examined EDO's submission, (which to their credit is carefully referenced), and the only way their figure of 90% is credible is to count all mining applications including opal, gemstones, alluvial gold, and dimension stone.

The use of standard conditions for these environmental authorities are clearly only for carefully defined small-scale, low-risk mining activities (eg opal, gemstones, alluvial gold, and dimension stone), which do not apply to the environmental authorities of larger coal, uranium or metalliferous mining projects. To be eligible for these standard conditions requires a total area of disturbance of under 10 hectares, employing 19 or fewer people and not affecting environmentally sensitive areas. Furthermore, the environmental authority is just one stage in a long and complex approval chain. EDO have mischievously sought to characterise the environmental authority as if it is the only approval decision.

At Attachment one, QRC has set out a simplified schema of the approval process for a mining project. What the schema sets out are the multiple opportunities for public consultation and input (in purple). It is difficult to reconcile EDO's alarming claims with the regulatory reality (below).



[1] Environmental Defenders Office Queensland, submission 5, page 8
[2] Landholder services, submission 191, page 1
[3] Lock the Gate Alliance, submission 71, page 1
[4] Environmental Defenders Office Queensland, submission 5, page 8

The schema (attachment 1) also sets out the three parallel approval processes, each of which must conclude before any operations can commence:

- Technical assessment associated with applying for tenure (shown in pink),
- Native Title approval process (shown in yellow).
  (What is not shown is the additional process, governed under a separate Act, of applying for Cultural Heritage approvals.)
- Environmental assessment for conditioning the activities through the environmental authority (EA) (which is shown in green).

In seeking to present the facts about the claims from EDO, QRC also seeks to correct an error from our own evidence to the Committee. When presenting to the Committee on 6 August, Andrew Barger answered a question about *standard conditions* with details relating to *model conditions*. Subsequent evidence from the Department of the Environment and Heritage Protection corrected this mistake, but QRC seeks to correct the record in writing.

A **standard condition** for an environmental authority is subject to EM 586 a code of environmental compliance for low risk or low impact activities made under the *Environmental Protection Act*. This code specifically excludes uranium mining (page 3). Being regulated by the code requires the project to demonstrate that the total area of disturbance is less than 10 hectares, will employ 19 or fewer people and does not affect environmentally sensitive areas. It is the appeal rights around granting the environmental authority for these standard conditions projects which are the subject of the Bill.

By contrast, **model conditions** for an environmental authority are subject to guideline EM 944, a different compliance approach which seeks to provide a set of general environmental protection commitments for mining activities. This guideline, imposed under the *Environmental Protection Act 1994,* is a starting point for regulator/proponent negotiations on the conditions of an environmental authority. While these conditions are not exhaustive, they establish an agreed set of conditions to provide suitable environmental protection across areas such as dust, noise, land rehabilitation, sewerage etc. It is these model conditions which provide a baseline for coal and metalliferous mines. Those projects which present risks of additional impact will have additional conditions attached to their environmental authority.

Once again, QRC apologises for this error and will seek to correct the transcript when it is made available.

QRC welcomes the invitation to make a supplementary submission. This follow-up submission aims to:

1. Provide brief context for the set of 10 major areas of reform presented in the Bill;
2. Address the Committee's question about the merits of a standard buffer zone around all mining projects; and
3. Address the Committee's question about the vexatious use of appeals in Queensland and to provide some industry examples.

1. Context for the Bill

The Bill's Explanatory Notes describe the following set of 10 major policy objectives:

1. Modernise and harmonise Queensland's resources legislation through the *Modernising Queensland's Resources Acts* Program (MQRA Program);
2. Give effect to the recommendations of the Land Access Implementation Committee requiring legislative amendment to improve the land access framework relating to private land (Land Access – Private Land);
3. Implement a consistent restricted land framework across all resource sectors (Land Access – Restricted Land);
4. Establish a new overlapping tenure framework for Queensland's coal and CSG industries (Overlapping Tenure Framework – Coal and Petroleum (CSG));
5. Repeal the *Coal and Oil Shale Mine Workers' Superannuation Act 1989* (Repeal of Coal Super Act);
6. Reduce the regulatory burden for small scale alluvial miners specifically, and the mining sector generally (Mining Applications);
7. Remove redundant requirements imposed on holders of a mining tenement, an authority to prospect or petroleum lease (Amendments to Petroleum and Mineral Legislation);
8. Enable greater use of CSG produced as a by-product of coal mining (Incidental CSG);
9. Amend the *Mount Isa Mines Limited Agreement Act 1985* to reflect the transition of its environmental provisions to the *Environmental Protection Act 1994* and restructure reporting requirements (*Mount Isa Mines Limited Agreement Act 1985*); and
10. Support government and industry action to deal with uncontrolled gas emissions from legacy boreholes (Uncontrolled Gas Emissions from Legacy Boreholes).

To try to furnish the Committee with some context for these reforms, QRC has set out a brief table of the origins of each issue.

Context of MER(CP) Bill policy objectives

MER(CP) Bill 2014 ***Policy objective***	**Scope** ***– who is affected?***	**Consultation process** ***– who has been involved?***	**QRC's position** ***– what is industry's view?***	**Information available –** ***have these changes been explained?***	**Complexity –** ***do the amendments work with other regulatory instruments?***
1. Modernising Queensland Resource Act (MQRA).	Industry – (migrating provisions) and landholders (reform)	• Initiated November 2012 • Broad stakeholder involvement • Very thorough and open consultation process.	• QRC strongly supports MQRA goals and processes. • This is the first year of what is planned as a multi-year legislative translation to a Common Resource Act.	• Detailed information in discussion papers. • Government's broader streamlining/ red tape agenda.	Some amendments are technically complex to harmonise rights, but the changes largely stand alone.
2. Land Access	Industry and landholders	• Independent review in 2012 • Implementation Committee in August 2013 • Extensive peak body engagement	QRC supports these amendments, but also supports the Queensland Law Society's queries over the practicality of the definition of "occupier".	• Extensive information available • Overlaps with *Regional Planning Interests Act* to some extent	The land access process remains complex; with some of the strongest lobbying coming from legal companies who profit from creating an adversarial environment as they provide advice to landholders which is funded by the resource proponent.
3. Restricted Land	Industry and landholders	• Followed on from land access (#2) • RIS in March 2014	QRC supports these amendments. The amendments reflect a government position that open cut coal mining cannot exist with other land uses. This position is consistent with that outlined in the *Strategic Cropping Land Act 2011*.	• A discussion paper was issued, but the proposal seems to be misunderstood.	• It is vital to understand that any activities <u>still</u> need an environmental authority which will limits activities. • Restricted land is not the sole protection for landholders.
4. Overlapping tenures	Only coal and CSG	An industry-lead process	QRC strongly supports this framework, but is concerned that not all aspects of the statutory framework are yet in place. We recommend removing some problematic drafting until this can be fine-tuned.	Standalone reform.	Technically complex drafting to give effect to the agreed industry position.

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5. Coal Super-annuation Act	Only coal	Peak bodies, unions, AusCoal.	The Act is redundant, so QRC supports the removal.	• Information limited to the explanatory memorandum • Standalone reform	Straight repeal of an Act which has become defunct.
6. Mining applications objections and appeals	Industry and landholders	• Initial alluvial discussion paper • Second discussion paper as part of the consultation RIS • Decision RIS	QRC supports this change to streamline notification processes to provide clearer avenues for public comment and objection. These amendments will remove a duplication in the objection process that has been used to delay and frustrate applications.	• There has been insufficient rebuttal of the scaremongering. • It is a shame that the (very good) decision RIS was only released on the eve of the Committee hearings.	Seen in isolation from the larger approval process, the duplication of appeals is not clear.
7. Redundant tenure requirements	Industry	Industry	QRC supports this change	Information limited to the explanatory memorandum	Standalone reform
8. Incidental CSG use	Only coal	Industry	QRC supports this change.	Information limited to the explanatory memorandum	Standalone reform
9. Mount Isa Agreement Act	One company	The company and Government	Has not been involved.	Information limited to the explanatory memorandum	Standalone reform
10. Uncontrolled gas emissions from legacy boreholes.	CSG, coal and landholders.	A small industry working group has been meeting for 18 months	QRC supports this change	Information limited to the explanatory memorandum	Standalone reform

2. Standard buffer zones

During the Committee hearing on 6 August, the Committee asked QRC if a solution to addressing community concerns on the issue of who has standing to appeal to the grant of tenure might be to simply apply a buffer, perhaps 2 kilometres, around the mining lease and allow all landholders within that extended area the same standing to appeal.

While time didn't allow a full discussion of the issues, QRC does not support the concept. As discussed with the Committee, the grant of tenure is granting a right to extract the Crown's resources. The issue for neighbours should be the manner in which those resources are to be extracted and a concern to minimise the impacts on their property. That is a subject for the environmental authority, which conditions activities, rather than the tenure itself.

Recently, Queensland's assessment system has demonstrated how impacts can be considered well beyond the boundaries of the mining lease. A good example here are the recent decisions from the Land Court (Alpha project) and Coordinator General (Carmichael project) where both require an up-front make good agreement with landholders whose existing groundwater rights are likely to be affected by production.

Many projects already seek to incorporate a setback within their mining lease. Rather than strictly delineate the area of their operational footprint, they apply for a mining lease which incorporates a degree of setback from any neighbouring property and design the operations on their leases to stay well away from neighbours. New Hope Groups New Acland Stage 3 Project, cited at the 6 August Committee hearing, is a case in point. The buffer proposal would disadvantage such mines.

Further, the appropriate size of the buffer would need to be considered with some care. Rather than a fixed distance, QRC would suggest a better policy would consider the size of surrounding properties. A 2 km buffer is a very small area in comparison to North Queensland cattle properties, whereas in the context of 640 acre soldier resettlement blocks, 2 km would seem too extensive. The size of the buffer perhaps also needs to consider the size of the lease too. A small opal mine would not need the same buffer for objections as a large open cut mine.

While QRC understands the Committee's interest in avoiding a sharp "boundary effect", it is difficult to see that pushing the boundary of the right to appeal past the limits of the mining lease boundary by 2 km would provide any greater satisfaction for the community or for project proponents.

3. Vexatious use of appeals

At the Committee hearing, it became clear that QRC was talking slightly at cross purposes with the advice the Committee had received from the Parliamentary Library. QRC's references to vexatiously-made appeals were intended to capture appeals motivated by a desire to disrupt and delay the project as opposed to appeals with the aim of minimising impacts of the project (constructive appeals).

QRC suspects that the advice from the Parliamentary Library relied on the strict legal definitions under the *Vexatious Proceedings Act 2005* or the tests of having the Land Court reject an appeal. QRC is not surprised to hear that their analysis did not produce evidence of vexatious appeals under those two strict legal definitions.

QRC suggests that a better phrase for industry to put forward would have been "vexatious use of appeals" to capture appeals where the intent was mischievous rather than constructive. A vexatiously-made appeal is one designed to slow, frustrate and delay resource projects. The anti-coal strategy puts it very well (page 6)

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> *'We will lodge legal challenges to the approval of all of the major new coal ports, as well as key rail links (where possible), the mega-mines and several other mines chosen for strategic campaign purposes.*
>
> *By disrupting and delaying key projects, we are likely to make at least some of them unviable. Delaying some projects will also help to delay others. We are confident that, with the right resourcing for both legal challenges and public campaigning, we can delay most if not all of the port developments by at least a year, if not considerably longer, and may be able to stop several port projects outright or severely limit them."*
> *[Footnote to the anti-coal strategy document]*

QRC reminds the Committee that the Land Court rules were amended in December last year to reduce delays in hearing matters. These changes enable the Court to make directions where a party, usually the objector, is being obstructive. Further the Land Court was given new powers to award costs. Both of these changes suggest that the Land Court has recent experiences of struggling to deal with frustrating appeals.

What are some examples of vexatiously-made appeals?

1. Objections may be lodged and then withdrawn before the hearing date.
2. Where the objector brings no evidence to put before the court and as a result the Court is making recommendations on information brought solely by the applicant.
3. Where application is made to the Court to dismiss due to lack of evidence, but the Court doesn't have the power to decide that the objection should not proceed.
4. The same appeal being lodged for both the tenure and for the environmental authority, to test the same objections under the two different Acts.
5. Delaying the provision of information or obstructing the progress of the hearing (vexatious behaviours)

Regrettably there are many examples of vexatious behaviour, for instance Zaborszczyk v Struber; or Donavan v Struber. These cases resulted in the Department of Justice and Attorney General (DJAG) amending the Land Court Rules (section 36A) to provide for the Land Court to take action to expedite a hearing *despite the actions of one party*. The Zaborszczyk case was lodged in 2009 and wasn't issued until 2012. QRC suggests that the fact that the DJAG has taken action to address these situations is evidence that it was a problem.

Recent examples of appeals which display some of these characteristics include:

- Rio Tinto Weipa Mine disruption - *RTA Weipa Pty Ltd v The Wilderness Society (Qld) and Department of Environment and Heritage Protection* [2014] QLC 2[5]

An amendment to an existing EA was objected to by The Wilderness Society on grounds that it provided:

- Insufficient analysis of environmental impacts
- Inadequate specification of key environmental management strategies
- Inadequate conditions in relation to particular activities

The Land Court found that the application for the amendment to the EA was properly made by the Applicant and that the application properly complied with the requirements of the *Environmental Protection Act 1994*.

The application was referred to Court on 20 November 2012 and the land court decision was issued on 3 Feb 2014. The land court recommended the EA be issued with no changes.

[5] http://www.landcourt.qld.gov.au/documents/decisions/EPA875-12.pdf

- Xstrata Coal Wandoan Project disruption - *Xstrata Coal Queensland Pty Ltd & Ors v Friends of the Earth – Brisbane Co-Op Ltd & Ors* [6]

Objections to the Mining Lease applications and draft Environmental Authority by nine landholders adjacent to or within the proposed mining leases, with those objections based around potential impacts from dust, noise, groundwater and flooding (all which had been dealt with in the EIS approved by the Coordinator-General).

The Friends of the Earth separately made an objection to the draft Environmental Authority solely on the grounds of climate change, arguing the mine, if approved, would contribute to global climate change and this should be prevented. This rationale to this objection was not really specific to the mine, but was a broader objection opposing coal mining generally.

The Land Court rejected the Friends of the Earth objection on climate change (nevertheless, the same climate change grounds were again pursued in the recent Alpha Coal Mine case for the Galilee Basin). In this case, the court pointed out that the nature of the objection from Friends of the Earth was entirely political or philosophical. However, as these issues had never been tested in the Court previously the Court didn't order cost against the objector. There are many examples of where costs have been awarded where the objector has failed to consider the weight of evidence against them (see for example Dunn v Burtenshaw).

This Land Court process took 13 months from the last day of objections in February 2011 to the Court's recommendation in March 2012

- QCoal Jax Coal Mine Project disruption - *Jax Coal Pty Ltd v Garry Reed and Mackay Conservation Group and Whitsunday Regional Council and Chief Executive, Department of Environment and Heritage Protection* [2013] QLC 39[7]

The only grounds for objection to the mining lease application appears to be a matter of opinion of the reputation of the company. Under typical mining lease assessment the Department of Natural Resources and Mines must assess the proponent's technical and financial capability to develop the resource. As the States steward of resources, it is QRC's view that only the State should determine these matters, not an objector or the Land Court.

All other grounds for objection outlined above are matters relating to the EA. The Jax Mine case is a key example that highlights the unnecessary duplication objection pathway for a mining lease which is held at the same time as the EA. Mr Reed's key issue relates to water quality and creek damage. After the delay of this Land Court case the Land Court recommended the mining lease be approved without amendment and the EA be approved with amendment to include extra water monitoring stations along the creek.

The objections were lodged 25 October 2011 and the decision was delivered on 4 July 2013.

- Ian Wilson Mareeba Mining Lease - *Wallace v Anson Holdings Pty Ltd & The Environmental Protection Agency* [2009] QLC 0063[8]

In the case the objection was on the grounds that the mining lease application was not signed properly. The Land Court recommended the mining lease be approved, albeit for a lesser term applied for. The EA was also approved without amendment. It is QRC's understanding that the objector in this case was subsequently subject to a costs order for raising trivial issues.

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[6] http://www.landcourt.qld.gov.au/documents/decisions/MRA305-12%20etc.pdf

[7] http://www.landcourt.qld.gov.au/documents/decisions/MRA726-11_Jax.pdf

[8] http://www.landcourt.qld.gov.au/documents/decisions/AML00096-2008etc.pdf

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In conclusion
QRC congratulates the Committee on holding a further round of public hearings. Given the breadth of the issues covered by the Bill, QRC would welcome the opportunity to discuss any of the issues raised in our original submission or this supplementary submission with the Committee.

The QRC contact on this submission is Andrew Barger, who can be contacted on 3316 2502 or alternatively via email at andrewb@qrc.org.au

Yours sincerely

Michael Roche
Chief Executive

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Queensland's Resource Project Approval Process

*There are some differences in the approval process depending on commodity, classification of environmental disturbance or whether it is declared a coordinated project by the Coordinator General. This is intended as a guide only of the main processes and should not be taken in absolute confidence of the various approval processes in Queensland for resource projects.

Acronyms

ACH Act	*Aboriginal & Cultural Heritage Act 2003*	EPBC Act	*Environmental Protection, Biodiversity and Conversation Act 1999* (Cth)
CG	Coordinator General	ILUA	Indigenous Land Use Agreement
CSG	Coal Seam Gas	ML	Mining Lease
EA	Environmental Authority	NNTT	National Native Title Tribunal
EIS	Environmental Impact Statement	NTA	*Native Title Act 1993* (Cth)
EPA	*Environmental Protection Act 1994* (Qld)	RTN	Right to Negotiate
		ToR	Terms of Reference

Additional Steps for a 'Coordinated Project' declared under the *State Development and Public Works Organisation Act 1971* (Qld)

APPLIES TO all complex, integrated resource projects requiring coordination. Also applies to **ALL uranium mining projects**

Coordinator General's Department

Submit Initial Advice Statement to CG

Environmental Impact Statement required – ToR determined by the CG

Public comment 30 business days

Prepare EIS

EIS released for public comment 30 business days

Simultaneous process

Can also be referred to Commonwealth for EPBC Act approval

Public comment under EPBC Act

EIS comments provided to the CG

CG may request Supplementary EIS

CG provides a report to Minister for Mines and Environment

ALSO IF A COAL MINE OR CSG PROJECT → EPBC Act Water Trigger – applies to all coal mines and CSG projects

Commonwealth Minister approval

Steps for all exploration and production resource projects (including 'significant projects')

APPLIES TO All MINES

Technical Assessment + Dept of Natural Resources & Mines

Submit application

- Technical Assessment
- Financial Assessment
- Capability Assessment

Public notification to directly affected landholders, local governments and third party infrastructure providers on matters of technical, financial and capability of the applicant.
20 Business days for objection by directly affected landholder or local government only

Objection must be considered and/or addressed in deciding the application

Land Access negotiation required with landholders on conduct and compensation

- Agreement formed with landholder
- If no agreement formed with landholder, mediation and Land Court process begins

If all satisfied, then the application is given to the Minister for Natural Resources and Mines for approval/refusal

NOTE: ML cannot be granted without a granted EA

APPLIES TO All MINES

Native Title Assessment Dept of Natural Resources & Mines

Identify Native Title under the *Native Title Act 1993* (NTA)

Survey of land to determine aboriginal and cultural heritage areas under ACH Act

Can either:
- Enter into State Indigenous Land Use Agreement (LUA)
- Private LUA
- Right to negotiate Process
- Or maybe exclusive to NT

If ILUA - Deed into ILUA → Agreement reached & lodged

If RTN - State issues s 29 notice under NTA → 3 month notice period → If RTN, need to negotiate under s.31 NTA → Agreement reached & lodged or to NNTT for decision

Other legislation potentially triggered:
- Water Act
- Aboriginal Cultural Heritage Act or Torres Strait Island Cultural Heritage Act
- Plant Protection Act
- Nature Conservation Act

APPLIES TO medium & high risk mining activities:
- All coal mines
- Uranium mines
- Mineral mines (gold, copper, zinc and so on)
- Oil shale

Environment Assessment for **Site-Specific** Dept of Environment and Heritage Protection

Submit EA application

Assessment of eligibility criteria (under the Environmental Protection Regulation 2008)for standard application

Does not meet standard criteria, - classified as site-specific assessment

May also meet EP Act trigger to undertake an EIS
*This only applies if the project is not already under CG EIS process
*May also trigger EPBC Act.

Public notification required
20 Business days for individuals or organisations to make a public notification submission

Consideration of application and EIS if applicable → Draft EA → Opportunity for anyone who made a submission is able to object to the approval of the Draft EA

If no objections the application is recommend for grant → Minister to grant or refuse EA

If an objection is lodged, the matter is referred to the Land Court → Land Court makes a recommendation to the Minister → Minister to grant or refuse EA

APPLIES TO low risk mining activities:
- Opal mining
- Gemstone mining
- Alluvial gold mining
- Dimension stone mining

Environment Assessment for **NON-Site-Specific** Dept of Environment and Heritage Protection

Does meet standard eligibility criteria, - classified as non site-specific assessment

DEHP assess application through standard criteria

EA issued or refused

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Chair
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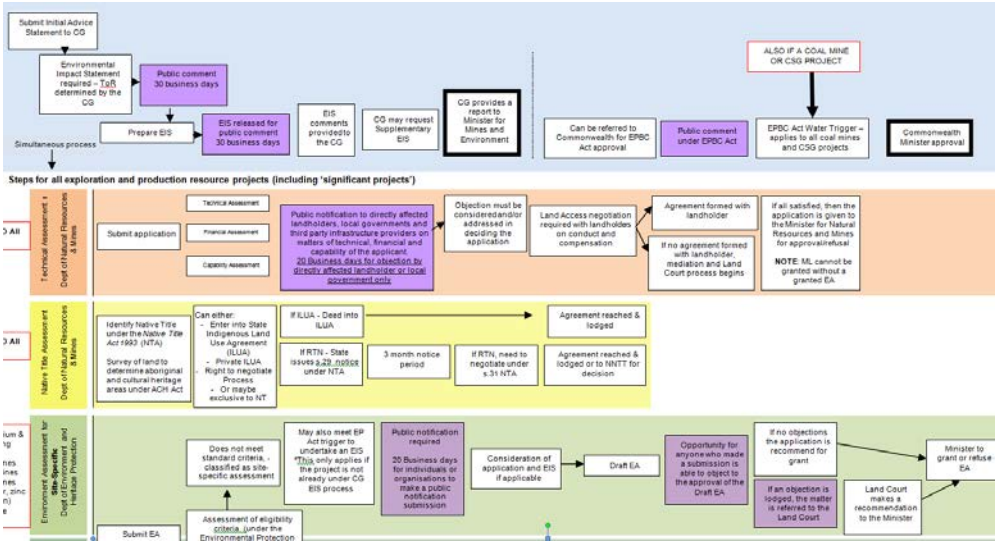

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  (What is not shown is the additional process, governed under a separate Act, of applying for Cultural Heritage approvals.)
- Environmental assessment for conditioning the activities through the environmental authority (EA) (which is shown in green).

In seeking to present the facts about the claims from EDO, QRC also seeks to correct an error from our own evidence to the Committee. When presenting to the Committee on 6 August, Andrew Barger answered a question about *standard conditions* with details relating to *model conditions*. Subsequent evidence from the Department of the Environment and Heritage Protection corrected this mistake, but QRC seeks to correct the record in writing.

A **standard condition** for an environmental authority is subject to EM 586 a code of environmental compliance for low risk or low impact activities made under the *Environmental Protection Act*. This code specifically excludes uranium mining (page 3). Being regulated by the code requires the project to demonstrate that the total area of disturbance is less than 10 hectares, will employ 19 or fewer people and does not affect environmentally sensitive areas. It is the appeal rights around granting the environmental authority for these standard conditions projects which are the subject of the Bill.

By contrast, **model conditions** for an environmental authority are subject to guideline EM 944, a different compliance approach which seeks to provide a set of general environmental protection commitments for mining activities. This guideline, imposed under the *Environmental Protection Act 1994,* is a starting point for regulator/proponent negotiations on the conditions of an environmental authority. While these conditions are not exhaustive, they establish an agreed set of conditions to provide suitable environmental protection across areas such as dust, noise, land rehabilitation, sewerage etc. It is these model conditions which provide a baseline for coal and metalliferous mines. Those projects which present risks of additional impact will have additional conditions attached to their environmental authority.

Once again, QRC apologises for this error and will seek to correct the transcript when it is made available.

QRC welcomes the invitation to make a supplementary submission. This follow-up submission aims to:

1. Provide brief context for the set of 10 major areas of reform presented in the Bill;
2. Address the Committee's question about the merits of a standard buffer zone around all mining projects; and
3. Address the Committee's question about the vexatious use of appeals in Queensland and to provide some industry examples.

1. Context for the Bill

The Bill's Explanatory Notes describe the following set of 10 major policy objectives:

1. Modernise and harmonise Queensland's resources legislation through the *Modernising Queensland's Resources Acts* Program (MQRA Program);
2. Give effect to the recommendations of the Land Access Implementation Committee requiring legislative amendment to improve the land access framework relating to private land (Land Access – Private Land);
3. Implement a consistent restricted land framework across all resource sectors (Land Access – Restricted Land);
4. Establish a new overlapping tenure framework for Queensland's coal and CSG industries (Overlapping Tenure Framework – Coal and Petroleum (CSG));
5. Repeal the *Coal and Oil Shale Mine Workers' Superannuation Act 1989* (Repeal of Coal Super Act);
6. Reduce the regulatory burden for small scale alluvial miners specifically, and the mining sector generally (Mining Applications);
7. Remove redundant requirements imposed on holders of a mining tenement, an authority to prospect or petroleum lease (Amendments to Petroleum and Mineral Legislation);
8. Enable greater use of CSG produced as a by-product of coal mining (Incidental CSG);
9. Amend the *Mount Isa Mines Limited Agreement Act 1985* to reflect the transition of its environmental provisions to the *Environmental Protection Act 1994* and restructure reporting requirements (*Mount Isa Mines Limited Agreement Act 1985*); and
10. Support government and industry action to deal with uncontrolled gas emissions from legacy boreholes (Uncontrolled Gas Emissions from Legacy Boreholes).

To try to furnish the Committee with some context for these reforms, QRC has set out a brief table of the origins of each issue.

Context of MER(CP) Bill policy objectives

MER(CP) Bill 2014 ***Policy objective***	**Scope** ***– who is affected?***	**Consultation process** ***– who has been involved?***	**QRC's position** ***– what is industry's view?***	**Information available –** ***have these changes been explained?***	**Complexity –** ***do the amendments work with other regulatory instruments?***
1. Modernising Queensland Resource Act (MQRA).	Industry – (migrating provisions) and landholders (reform)	• Initiated November 2012 • Broad stakeholder involvement • Very thorough and open consultation process.	• QRC strongly supports MQRA goals and processes. • This is the first year of what is planned as a multi-year legislative translation to a Common Resource Act.	• Detailed information in discussion papers. • Government's broader streamlining/ red tape agenda.	Some amendments are technically complex to harmonise rights, but the changes largely stand alone.
2. Land Access	Industry and landholders	• Independent review in 2012 • Implementation Committee in August 2013 • Extensive peak body engagement	QRC supports these amendments, but also supports the Queensland Law Society's queries over the practicality of the definition of "occupier".	• Extensive information available • Overlaps with *Regional Planning Interests Act* to some extent	The land access process remains complex; with some of the strongest lobbying coming from legal companies who profit from creating an adversarial environment as they provide advice to landholders which is funded by the resource proponent.
3. Restricted Land	Industry and landholders	• Followed on from land access (#2) • RIS in March 2014	QRC supports these amendments. The amendments reflect a government position that open cut coal mining cannot exist with other land uses. This position is consistent with that outlined in the *Strategic Cropping Land Act 2011*.	• A discussion paper was issued, but the proposal seems to be misunderstood.	• It is vital to understand that any activities still need an environmental authority which will limits activities. • Restricted land is not the sole protection for landholders.
4. Overlapping tenures	Only coal and CSG	An industry-lead process	QRC strongly supports this framework, but is concerned that not all aspects of the statutory framework are yet in place. We recommend removing some problematic drafting until this can be fine-tuned.	Standalone reform.	Technically complex drafting to give effect to the agreed industry position.

Context of MER(CP) Bill policy objectives

MER(CP) Bill 2014 ***Policy objective***	**Scope** ***– who is affected?***	**Consultation process** ***– who has been involved?***	**QRC's position** ***– what is industry's view?***	**Information available –** ***have these changes been explained?***	**Complexity –** ***do the amendments work with other regulatory instruments?***
5. Coal Super-annuation Act	Only coal	Peak bodies, unions, AusCoal.	The Act is redundant, so QRC supports the removal.	• Information limited to the explanatory memorandum • Standalone reform	Straight repeal of an Act which has become defunct.
6. Mining applications objections and appeals	Industry and landholders	• Initial alluvial discussion paper • Second discussion paper as part of the consultation RIS • Decision RIS	QRC supports this change to streamline notification processes to provide clearer avenues for public comment and objection. These amendments will remove a duplication in the objection process that has been used to delay and frustrate applications.	• There has been insufficient rebuttal of the scaremongering. • It is a shame that the (very good) decision RIS was only released on the eve of the Committee hearings.	Seen in isolation from the larger approval process, the duplication of appeals is not clear.
7. Redundant tenure requirements	Industry	Industry	QRC supports this change	Information limited to the explanatory memorandum	Standalone reform
8. Incidental CSG use	Only coal	Industry	QRC supports this change.	Information limited to the explanatory memorandum	Standalone reform
9. Mount Isa Agreement Act	One company	The company and Government	Has not been involved.	Information limited to the explanatory memorandum	Standalone reform
10. Uncontrolled gas emissions from legacy boreholes.	CSG, coal and landholders.	A small industry working group has been meeting for 18 months	QRC supports this change	Information limited to the explanatory memorandum	Standalone reform

2. Standard buffer zones

During the Committee hearing on 6 August, the Committee asked QRC if a solution to addressing community concerns on the issue of who has standing to appeal to the grant of tenure might be to simply apply a buffer, perhaps 2 kilometres, around the mining lease and allow all landholders within that extended area the same standing to appeal.

While time didn't allow a full discussion of the issues, QRC does not support the concept. As discussed with the Committee, the grant of tenure is granting a right to extract the Crown's resources. The issue for neighbours should be the manner in which those resources are to be extracted and a concern to minimise the impacts on their property. That is a subject for the environmental authority, which conditions activities, rather than the tenure itself.

Recently, Queensland's assessment system has demonstrated how impacts can be considered well beyond the boundaries of the mining lease. A good example here are the recent decisions from the Land Court (Alpha project) and Coordinator General (Carmichael project) where both require an up-front make good agreement with landholders whose existing groundwater rights are likely to be affected by production.

Many projects already seek to incorporate a setback within their mining lease. Rather than strictly delineate the area of their operational footprint, they apply for a mining lease which incorporates a degree of setback from any neighbouring property and design the operations on their leases to stay well away from neighbours. New Hope Groups New Acland Stage 3 Project, cited at the 6 August Committee hearing, is a case in point. The buffer proposal would disadvantage such mines.

Further, the appropriate size of the buffer would need to be considered with some care. Rather than a fixed distance, QRC would suggest a better policy would consider the size of surrounding properties. A 2 km buffer is a very small area in comparison to North Queensland cattle properties, whereas in the context of 640 acre soldier resettlement blocks, 2 km would seem too extensive. The size of the buffer perhaps also needs to consider the size of the lease too. A small opal mine would not need the same buffer for objections as a large open cut mine.

While QRC understands the Committee's interest in avoiding a sharp "boundary effect", it is difficult to see that pushing the boundary of the right to appeal past the limits of the mining lease boundary by 2 km would provide any greater satisfaction for the community or for project proponents.

3. Vexatious use of appeals

At the Committee hearing, it became clear that QRC was talking slightly at cross purposes with the advice the Committee had received from the Parliamentary Library. QRC's references to vexatiously-made appeals were intended to capture appeals motivated by a desire to disrupt and delay the project as opposed to appeals with the aim of minimising impacts of the project (constructive appeals).

QRC suspects that the advice from the Parliamentary Library relied on the strict legal definitions under the *Vexatious Proceedings Act 2005* or the tests of having the Land Court reject an appeal. QRC is not surprised to hear that their analysis did not produce evidence of vexatious appeals under those two strict legal definitions.

QRC suggests that a better phrase for industry to put forward would have been "vexatious use of appeals" to capture appeals where the intent was mischievous rather than constructive. A vexatiously-made appeal is one designed to slow, frustrate and delay resource projects. The anti-coal strategy puts it very well (page 6)

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> *'We will lodge legal challenges to the approval of all of the major new coal ports, as well as key rail links (where possible), the mega-mines and several other mines chosen for strategic campaign purposes.*
>
> *By disrupting and delaying key projects, we are likely to make at least some of them unviable. Delaying some projects will also help to delay others. We are confident that, with the right resourcing for both legal challenges and public campaigning, we can delay most if not all of the port developments by at least a year, if not considerably longer, and may be able to stop several port projects outright or severely limit them."*
> *[Footnote to the anti-coal strategy document]*

QRC reminds the Committee that the Land Court rules were amended in December last year to reduce delays in hearing matters. These changes enable the Court to make directions where a party, usually the objector, is being obstructive. Further the Land Court was given new powers to award costs. Both of these changes suggest that the Land Court has recent experiences of struggling to deal with frustrating appeals.

What are some examples of vexatiously-made appeals?

1. Objections may be lodged and then withdrawn before the hearing date.
2. Where the objector brings no evidence to put before the court and as a result the Court is making recommendations on information brought solely by the applicant.
3. Where application is made to the Court to dismiss due to lack of evidence, but the Court doesn't have the power to decide that the objection should not proceed.
4. The same appeal being lodged for both the tenure and for the environmental authority, to test the same objections under the two different Acts.
5. Delaying the provision of information or obstructing the progress of the hearing (vexatious behaviours)

Regrettably there are many examples of vexatious behaviour, for instance Zaborszczyk v Struber; or Donavan v Struber. These cases resulted in the Department of Justice and Attorney General (DJAG) amending the Land Court Rules (section 36A) to provide for the Land Court to take action to expedite a hearing *despite the actions of one party*. The Zaborszczyk case was lodged in 2009 and wasn't issued until 2012. QRC suggests that the fact that the DJAG has taken action to address these situations is evidence that it was a problem.

Recent examples of appeals which display some of these characteristics include:

- Rio Tinto Weipa Mine disruption - *RTA Weipa Pty Ltd v The Wilderness Society (Qld) and Department of Environment and Heritage Protection* [2014] QLC 2[5]

An amendment to an existing EA was objected to by The Wilderness Society on grounds that it provided:

- Insufficient analysis of environmental impacts
- Inadequate specification of key environmental management strategies
- Inadequate conditions in relation to particular activities

The Land Court found that the application for the amendment to the EA was properly made by the Applicant and that the application properly complied with the requirements of the *Environmental Protection Act 1994*.

The application was referred to Court on 20 November 2012 and the land court decision was issued on 3 Feb 2014. The land court recommended the EA be issued with no changes.

[5] http://www.landcourt.qld.gov.au/documents/decisions/EPA875-12.pdf

- Xstrata Coal Wandoan Project disruption - *Xstrata Coal Queensland Pty Ltd & Ors v Friends of the Earth – Brisbane Co-Op Ltd & Ors* [6]

Objections to the Mining Lease applications and draft Environmental Authority by nine landholders adjacent to or within the proposed mining leases, with those objections based around potential impacts from dust, noise, groundwater and flooding (all which had been dealt with in the EIS approved by the Coordinator-General).

The Friends of the Earth separately made an objection to the draft Environmental Authority solely on the grounds of climate change, arguing the mine, if approved, would contribute to global climate change and this should be prevented. This rationale to this objection was not really specific to the mine, but was a broader objection opposing coal mining generally.

The Land Court rejected the Friends of the Earth objection on climate change (nevertheless, the same climate change grounds were again pursued in the recent Alpha Coal Mine case for the Galilee Basin). In this case, the court pointed out that the nature of the objection from Friends of the Earth was entirely political or philosophical. However, as these issues had never been tested in the Court previously the Court didn't order cost against the objector. There are many examples of where costs have been awarded where the objector has failed to consider the weight of evidence against them (see for example Dunn v Burtenshaw).

This Land Court process took 13 months from the last day of objections in February 2011 to the Court's recommendation in March 2012

- QCoal Jax Coal Mine Project disruption - *Jax Coal Pty Ltd v Garry Reed and Mackay Conservation Group and Whitsunday Regional Council and Chief Executive, Department of Environment and Heritage Protection* [2013] QLC 39[7]

The only grounds for objection to the mining lease application appears to be a matter of opinion of the reputation of the company. Under typical mining lease assessment the Department of Natural Resources and Mines must assess the proponent's technical and financial capability to develop the resource. As the States steward of resources, it is QRC's view that only the State should determine these matters, not an objector or the Land Court.

All other grounds for objection outlined above are matters relating to the EA. The Jax Mine case is a key example that highlights the unnecessary duplication objection pathway for a mining lease which is held at the same time as the EA. Mr Reed's key issue relates to water quality and creek damage. After the delay of this Land Court case the Land Court recommended the mining lease be approved without amendment and the EA be approved with amendment to include extra water monitoring stations along the creek.

The objections were lodged 25 October 2011 and the decision was delivered on 4 July 2013.

- Ian Wilson Mareeba Mining Lease - *Wallace v Anson Holdings Pty Ltd & The Environmental Protection Agency* [2009] QLC 0063[8]

In the case the objection was on the grounds that the mining lease application was not signed properly. The Land Court recommended the mining lease be approved, albeit for a lesser term applied for. The EA was also approved without amendment. It is QRC's understanding that the objector in this case was subsequently subject to a costs order for raising trivial issues.

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[6] http://www.landcourt.qld.gov.au/documents/decisions/MRA305-12%20etc.pdf

[7] http://www.landcourt.qld.gov.au/documents/decisions/MRA726-11_Jax.pdf

[8] http://www.landcourt.qld.gov.au/documents/decisions/AML00096-2008etc.pdf

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In conclusion
QRC congratulates the Committee on holding a further round of public hearings. Given the breadth of the issues covered by the Bill, QRC would welcome the opportunity to discuss any of the issues raised in our original submission or this supplementary submission with the Committee.

The QRC contact on this submission is Andrew Barger, who can be contacted on 3316 2502 or alternatively via email at andrewb@qrc.org.au

Yours sincerely

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Queensland's Resource Project Approval Process

*There are some differences in the approval process depending on commodity, classification of environmental disturbance or whether it is declared a coordinated project by the Coordinator General. This is intended as a guide only of the main processes and should not be taken in absolute confidence of the various approval processes in Queensland for resource projects.

Acronyms

ACH Act	*Aboriginal & Cultural Heritage Act 2003*	EPBC Act	*Environmental Protection, Biodiversity and Conversation Act 1999* (Cth)
CG	Coordinator General	ILUA	Indigenous Land Use Agreement
CSG	Coal Seam Gas	ML	Mining Lease
EA	Environmental Authority	NNTT	National Native Title Tribunal
EIS	Environmental Impact Statement	NTA	*Native Title Act 1993* (Cth)
EPA	*Environmental Protection Act 1994* (Qld)	RTN	Right to Negotiate
		ToR	Terms of Reference

Additional Steps for a 'Coordinated Project' declared under the *State Development and Public Works Organisation Act 1971* (Qld)

APPLIES TO all complex, integrated resource projects requiring coordination. Also applies to **ALL uranium mining projects**

Coordinator General's Department

Submit Initial Advice Statement to CG

Environmental Impact Statement required – ToR determined by the CG

Public comment 30 business days

Prepare EIS

Simultaneous process

EIS released for public comment 30 business days

EIS comments provided to the CG

CG may request Supplementary EIS

CG provides a report to Minister for Mines and Environment

Can also be referred to Commonwealth for EPBC Act approval

Public comment under EPBC Act

ALSO IF A COAL MINE OR CSG PROJECT

EPBC Act Water Trigger – applies to all coal mines and CSG projects

Commonwealth Minister approval

Steps for all exploration and production resource projects (including 'significant projects')

APPLIES TO All MINES

Technical Assessment + Dept of Natural Resources & Mines

Submit application

- Technical Assessment
- Financial Assessment
- Capability Assessment

Public notification to directly affected landholders, local governments and third party infrastructure providers on matters of technical, financial and capability of the applicant.
20 Business days for objection by directly affected landholder or local government only

Objection must be considered and/or addressed in deciding the application

Land Access negotiation required with landholders on conduct and compensation

- Agreement formed with landholder
- If no agreement formed with landholder, mediation and Land Court process begins

If all satisfied, then the application is given to the Minister for Natural Resources and Mines for approval/refusal

NOTE: ML cannot be granted without a granted EA

APPLIES TO All MINES

Native Title Assessment Dept of Natural Resources & Mines

Identify Native Title under the *Native Title Act 1993* (NTA)

Survey of land to determine aboriginal and cultural heritage areas under ACH Act

Can either:
- Enter into State Indigenous Land Use Agreement (LUA)
- Private LUA
- Right to negotiate Process
- Or maybe exclusive to NT

If ILUA - Deed into ILUA → Agreement reached & lodged

If RTN - State issues s 29 notice under NTA → 3 month notice period → If RTN, need to negotiate under s.31 NTA → Agreement reached & lodged or to NNTT for decision

Other legislation potentially triggered:
- Water Act
- Aboriginal Cultural Heritage Act or Torres Strait Island Cultural Heritage Act
- Plant Protection Act
- Nature Conservation Act

APPLIES TO medium & high risk mining activities:
- All coal mines
- Uranium mines
- Mineral mines (gold, copper, zinc and so on)
- Oil shale

Environment Assessment for **Site-Specific** Dept of Environment and Heritage Protection

Submit EA application

Assessment of eligibility criteria (under the Environmental Protection Regulation 2008)for standard application

Does not meet standard criteria, - classified as site-specific assessment

May also meet EP Act trigger to undertake an EIS
*This only applies if the project is not already under CG EIS process
*May also trigger EPBC Act.

Public notification required
20 Business days for individuals or organisations to make a public notification submission

Consideration of application and EIS if applicable → Draft EA → Opportunity for anyone who made a submission is able to object to the approval of the Draft EA

If no objections the application is recommend for grant → Minister to grant or refuse EA

If an objection is lodged, the matter is referred to the Land Court → Land Court makes a recommendation to the Minister → Minister to grant or refuse EA

APPLIES TO low risk mining activities:
- Opal mining
- Gemstone mining
- Alluvial gold mining
- Dimension stone mining

Environment Assessment for **NON-Site-Specific** Dept of Environment and Heritage Protection

Submit EA application

Assessment of eligibility criteria (under the Environmental Protection Regulation 2008)for standard application

Does meet standard eligibility criteria, - classified as non site-specific assessment

DEHP assess application through standard criteria

EA issued or refused