Mineral and Energy Resources and Other Legislation Amendment Bill 2024

Submission No: 5

Submitted by: Queensland Small Miners Council

Publication:

Attachments: No attachment

Submitter Comments:

Queensland Small Miners Council
C/- The Secretary
PO Box 210 Quilpie Q 4480
mail@qsmc.org.au
www.qsmc.org.au`

Clean Economy Jobs, Resources and Transport Committee 02/05/24
Parliament House
George Street
Brisbane Qld 4000

QSMC Submission to the Mineral and Energy Resources and Other Legislation Amendment Bill 2024

Thankyou for providing the opportunity to submit to this MEROLA Bill 2024 albeit facilitated by our organisations under duress, given the short time frame of 7 working days from notification and receipt of these documents to the closing date.

The QSMC member groups have only just received some consultation from the State at *"1 minute to midnight*" and just the day before for the closing date for submissions.

With regard to these matters contained now in the Bill and QSMC delegates are all quite shocked to see content that pertain to small scale mining being subject in this Bill despite the State not conducting any previous consultation with the small scale mining representative groups with matters raised herein, which will have significant impact on our industries.

This Consultation paper, *Improved Regulatory Efficiency* which in part makes up these MEROLA Amendments, was open for consultation at the same time as the "*Legislative Enhancements for Mining Claims,"* with the two consultations papers operating concurrently, even with the same closing dates for submissions both due on the 8th of December 2023.

This "Improved Regulatory Efficiency" Consultation paper after introduction, acknowledgements and background information, is merely a "3 page simplistic document" which revealed only minor amendments which may affect the Small scale mining sector, these issues being "*Tidy surfaces of Mining Leases"* and to a much lesser degree of impact *"Co-coordinated fossicking permissions."*

Naturally given what appears to be "straightforward and uncomplicated" issues identified above, the QSMC Industry representatives, who volunteer their time and services, largely focused on the most pressing matters contained in the submission "*Legislative Enhancements to Mining Claims,"* as this was the most imperative submission so as to have our efforts save our industry from the proposals being pushed by the policy section of the Department, which in part has been achieved.

The QSMC delegates and our members are now shocked,.. no.. mortified ...and bewildered ..how in Gods name did a 3 page light-weight Consultation Paper which wouldn't even help start a camp fire, turn into this 134 pages of Explanatory Notes, with 313 pages of amendments that are tabled in this MEROLA Bill monstrosity ***!***

The department could have easily slotted these proposed amendments into the 18 page Legislative Enhancement's for Mining Claims and the Exposure draft proposals thereby alerting the SSM Industry to the content of the MEROLA Bill instead of springing it all upon us now, as has been the case!

The QSMC delegates are shocked now to see the actual contents of this MEROLA Bill 2024, *which sounds and acquits itself like a constipating muesli bar*, as the range of amendments sought are so divergent from the content of the provided consultation paper "*Improved Regulatory Efficiency,*" as it is proposing a rather large obstruction to the whole of the Mining Industry!

There is reams of content in the MEROLA bar which have never been revealed by the Department's Policy team to the Small Scale Mining Associations, and there is no valid excuse why not!

The department not only should have consulted but could have, as there was enough opportunity for the Department and their Policy team to raise these proposed MEROLA amendments during the poorly run consultation for Legislative Enhancements for Mining Claims.

Regardless the QSMC delegates volunteers now find themselves in the unfortunate position to yet again drop everything they have planned, and again scramble to cater for yet another impromptu submission, this time for this MEROLA Bill which was only revealed days ago and which is a longer read than book "War and Peace," with 7 days to read and respond!

The QSMC member organisations have done there utmost, particularly given the very short period which has been allotted, to provide this collective submissions made by our volunteers who had to decipher the intent of this 315 page Bill and the 134 page explanatory notes and are not confident we have caught all the issues given the short period we have had to peruse and deliver our findings to this parliamentary Committee

Therefore the QSMC tender this submission as an interim submission and reserve the right to provide extra material during the Parliamentary hearing process should more information be available to our QSMC delegates.

We now place our trust in this Parliamentary Committee Team and the parliamentary process to discover the contents of the QSMC submission and provide opportunity for further QSMC representation to the committee so as you may adjudicate a fair and responsible recommendation to parliament.

The QSMC delegates would like like the opportunity to present face to face to the CRTC committee in support of this submission and any other matters that may arise when an appropriate time is available

Kindly

[redacted]

Kev Phillips
QOMA Secretary
QSMC Delegate/Secretary
[redacted]

Queensland Small Miners Council
C/- The Secretary
PO Box 210 Quilpie Q 4480
mail@qsmc.org.au

02/05/24

QSMC Submission to the Mineral and Energy Resources and Other Legislation Amendment Bill 2024

Improved Regulatory Efficiencies –

Fossicking -Permissions

QSMC recommendations

The QSMC is generally supportive of the intent of the proposed amendments for fossickers to seek permission from Mining Lease Applicants, *however, the QSMC believe that this could be extended to Exploration Permit (EPMs) and EPM Applications as well.*

The QSMC also believe that whilst an exploration permit is a non-exclusive from of tenure, the investment made by applying for an Exploration Permit and the surface traces available to be exploited by third parties including fossickers. Once a tenure application is lodged the areas should be subject to the same level of requirements as proposed for a mining claim or lease and for permission to be sought by the holder or applicant of an Exploration permit, a common provision if you will!

The removal of mineral traces from the surface of an Exploration Permit or Mining lease or claim application can diminish the geological information and surface and shallow subsurface dispersion which can provide lead to a deposit.

Fossickers would still have other areas not under exploration availed to them and during any moratorium after the expiry of an Exploration Permit or alternatively report all finds located and report to the applicant &/or Department of Resources which information is a made available to the Exploration permit applicant

Fossicking -definitions

***Part* 3 – Amendment of Fossicking Act 1994**
Act amended
Amendment of s 3 (Definitions)

QSMC refer to the MEROLA 24 explanation notes which state " Clause 7 amends section 3 to insert a new definition of 'licensee' for the part. 'Licensee' is defined to mean both the holder of a fossicking licence and, for part 3, division 2, the definition found in section 24 of the Fossicking Act.

QSMC recommendation :- Clause 8 24 - Meaning of licensee

For clarity it is proposed to also insert as (a) an individual that holds a licence; and

QSMC note and express concern that the amendments does not seem to be consistent with the holder of a fossicking licence to be an individual. This matter requires addressing.

MR Act

The proposed amendments to the MR Act include

:-introducing a new mandatory condition requiring mining lease holders to keep the surface area of a mining lease tidy to ensure tenure holders are maintaining organised operations, equipment, and stores, to manage hazards that can lead to injuries, fires, and harm;

Retrospectivity - The proposed amendments to the MR Act potentially depart from the principle that legislation operates prospectively rather than retrospectively under section 4(3)(g) of the Legislative Standards Act.

The Bill includes amendments that mandate that the surface of the area of a mining lease be kept in a tidy state during the term of the lease as a condition of holding the mining lease (resource authority). Introducing a new mandatory condition for mining leases mirrors the condition already imposed on mining claims and ensures resource authority holders are maintaining organised operations, equipment, and stores to manage hazards that can lead to **injuries, fires, and harm.**

QSMC comment MRAct

Mandatory conditions

The QSMC strongly dispute that the new mandatory conditions for Mining Leases are required and that they mirror the existing conditions for mining claims as stated in the MEROLA explanatory notes extract above !

The mandatory conditions for mining claims were made for mining claims under the MRA section 391c which imposed mandatory conditions under a code so as to assure mining claims were operating under mandatory conditions in lieu of not having to require an Environmental Authority as amended under the EPAct and EPOLA Act 2012.

In stark contrast, Mining Leases operated under the EP Act 1994, and do require Environmental Authority's and already have a hierarchy of conditions and penalties being able to be imposed under the EPAct and the Mining and Quarrying Safety and Health Act 1999 as well as the MRA's 1989.

There is already a high level of existing and effective governance!

The QSMC position would also query whether the State once again will take over the responsibility from the Site Senior Executive with regard to safety and will the Department assesses safety and sign off with regard to the safety items and issues raised by the Department, or is this just departmental overreach.

Additionally, "tidy" is very subjective and as this is proposed to now to be a mandatory condition the subjectivity of any condition should be removed.

The QSMC object to including Mandatory Conditions on Mining Leases as there is already a high level of effective governance!

Clarifying when and how mining leases become Prescribed Mining leases;

The QSMC note that the explanatory notes and MEROLA legislation 2024 are both elusive to what quantifies a Prescribed Mining Lease and QSMC contest any legislation without the relevant information being consulted and provided. The QSMC reserve comment on this matter until information it is available and cannot identify why there is a need at all for Mining leases to become Prescribed Mining Leases.

***MERCP Act* Part 9 –**

Amendment of the Mineral and Energy Resources (Financial Provisions) Act 2018 Act amended

Amendments proposed to the MERCP Act include

Rent management

Enhancing Queensland's rent management and collection powers to allow the Minister to defer or approve alternative rent arrangements to support industry and respond effectively to exceptional circumstances, such as natural disasters or emergencies of adverse economic conditions; and

QSMC MERCP comment

Interest on Security

As far as Modernising the financial provisioning scheme goes, in our context the QSMC supports this refinement of this scheme to to allow the Minister to defer or approve alternative rent arrangements to support industry

And since we have caught the Minister in such good and generous spirits the QSMC recommend that he also reintroduce interest earnings on Security Bonds and Sureties lodged by the Miner/Explorer / Holder

The QSMC recommended this in our recent submission to "Legislative Enhancement Mining Claims and it must have been misplaced or overlooked when the department were drafting this legislation.

These amendment below will be seen as positive changes to once again earn monies through interest to allow bond and sureties to keep up with inflation which are tied up in Bonds and Surety in particular give the quite substantial bond which are being dictated by the departments for these funds.

(insert) 416AA Interest on security

After section 416—
insert—

The annual interest on security shall be paid and accumulated with the security held on behalf of the holder at comparable bank rates over the term of the tenure.

This interest shall be calculated from the date of deposit and on the anniversary day of the deposit be paid to be included with any other security held on behalf of the holder by the department.

QSMC note that he primary function of a security deposit is to provide a means of incentive for the miner to clean up after themselves. This of course implies that any interest earned on the deposit must remain as part of the security.

This QSMC proposal will ensure that the bond held on behalf of the holder by the State keeps pace with the CPI & will also minimise demands for further upgrading of security caused by inflation, which is in the Public Interest to ensure the security held is able to keep pace with the disturbance identified in the miners work program.

Naturally QSMC would anticipate this interest be applied to FA's across all tenure types and include FAA's under the Environmental Protection Act.

Correcting minor and technical errors

The QSMC are uncertain of where and where this detail lies within the MEROLA Bill and given the very short time span to provide a submission the QSMC can only pray that future consultation may help to realise where to locate these amendments, and hope the departments amendment are actually limited to drafting errors to ensure the regulatory framework is operating as intended, and not going freelance!

Coexistence reforms – Landuser Rights and incompatibilites

In our context, the QSMC are not satisfied that the process proposal for utilising the Land Access Ombudsman (LAO) which purports to "seeks to independently resolve disputes between landholders and ***"CSG companies in relation to CCAs and MGAs"*** *and yet seek to apply levies on Prescribed Mining Lease's*

It is unlikely that these amendments meet the principle objectives of the MRA's 1989 (version Sept 23) as per the extracts objectives below

> ***2 Objectives of Act***
> *The principal objectives of this Act are to—*
>
> *(f) provide an administrative framework to expedite and regulate prospecting and exploring f mining of minerals;*

**** QSMC note :- QSMC perceive there is a high level of doubt that this process will expedite any processes for the exploring and mining minerals and in fact is likely to exacerbate delay and productivity!***

It is also uncertain whether this LAO & ADR process is to be extended to be fully imposed on prescribed miners and also even on mining lease and claims as is often the case, by later commuting small scale mining tenure and to the same expensive and laborious process.

The Department of Resources after being lobbied extensively by AgForce, are attempting now under the guise of *"Co- existence,"* too extend the rights of Landholders above and beyond the rights agreed to by the land Owner in their "*Deed of Grant"* and the *"Reservations"* held by the State.

Additionally, the authority granted to explorers and miners under the Reservations and clarified in the "*Deed of of Grant,"* will be diminished by these MERCP proposals. Landholders entitlements, should not exceed those rights for which they are granted & entitled (particularly on Leasehold lands owned by the State, and merely rented by these Landowners). This was clearly expressed to Agforce's representative, Dr. Greg Leech by the Land Court President, Fleur Kingham, who furthermore added that "*landowners were ascribing themselves more rights than to which they were entitled"* during a meeting of the Land Courts - Land Users Group in 2022 which was well attended by Small Scale Mining representatives.

The QSMC perceive that these Co-existence proposals will now only exacerbate the legal conflict which has been brewing and as, as yet there has been no determination made on the conflicting points of law between "the States Reservations made of the Instruments of Lease's and the Mineral Resources Act 1989", with the Departments policy with CCA's & Compensation Agreements and now this legislative proposals!

QSMC position- Land User rights and compatibility

The QSMC perceive that these proposals in the Bill will now only add to a conflict which has not been determined regarding what is the leading point of law, between those of the Deed of Grant, the States Reservations (MRAct), Compensation Agreements & CCA agreements.

This matter needs to be reconciled by Crown Law and if need be by the Courts

***QSMC members have sought information from the department regrading the conflict between Deed of Grant, reservations held by the State, Compensation agreements and Code and Conduct Agreements (CCA's) and d*despite the QSMC members organisations raising this matter with the Department through the Policy section on numerous occasions, as yet no response or reply on this matter has been responded to, let alone investigated to find resolve.**

The QSMC believe this matter needs to be reconciled by Crown Law and the Industry before any further Co-existence laws and ADR's are even introduced.

Now the QSMC hope is that with the support of a Parliamentary Committee, that this matter can finally be brought into the light and addressed!

QSMC position- LAO's

Under this Legislative proposal many small scale miners will be easily priced out of the option as the "LAO" and industry levy and subsequently wearing the costs of any recalcitrant landowner/s and leaseholder/s may merely manipulate and exacerbated and delay by a timely settlement causing unnecessary additional costs to small and indeed large mining companies.

In the MEROLA explanatory notes (Coexistence reforms page 17 para graph 2) the department admit that submissions from the peak bodies representing the resources sector felt there was not enough detail provided on the proposed funding model for the LAO to be able to provide detailed comment or support.

Furthermore, the Peak bodies also requested more information on the expansion of OGIA's levy to support the subsidence management framework, particularly if the levy methodology would be fair, equitable and affordable across tenure holders. These peak bodies also enquired about the timing and implementation of the levy and noted that this would impact business operations.

In regard to the GFCQ, many stakeholders supported the expanded remit to extend to renewable energy projects. Some submitter's did not support the proposed removal of GFCQ's oversight function.

The QSMC do not support these amendments either as there has been now follow up consultation with the QSMC or the individual member groups which make up this Council.

Alternate Dispute Resolutions (ADR's)

Mining Claims Mining Leases and new Prescribed Mining Claims

Part 10 – Amendment of the Mineral Resources Act 1989

Mining Claims ADRs and Mining Leases ADR's Section 281 to 283

The new Chapter 7A states its intended to provide a set of common provisions pertaining to ***Alternate Dispute Resolution*** (ADR) and arbitration for various disputes under the MER (Common provisions) Act 2014.

***QSMC note- The QSMC are more than curious how *"Alternative"* this ADR process is, particularly for our Gold Mining – Miners, who may be now prescribed mining leases and given the costs and levies proposed, it is likely that Small Scale miners would alternatively rather use the Land Court if required at every opportunity available.**

Proposed legislative change- 85AA Party may seek ADR

Section 85AA provides for a non-binding alternative dispute resolution (ADR) process, including, for example, a case appraisal, conciliation, mediation, or negotiation.

The "purported intent" of this section is to provide **partie**s with an alternative pathway to resolve disputes relating to compensation agreements for mining claims, however seeking ADR under this section is intended to be voluntary and does not limit the ability of parties to apply directly to the Land Court to resolve the matters

QSMC Note :- there is no definition for Party/parties in the MRA and then the amendments notes at Clause133 say "interested party" to add to the confusion

Miners have recently been informed that Native Title Parties must be advised when miners facilitated Mining Notices processes for Mining tenures as under the Human Rights Act, 2019 and that in some instances that Aboriginal groups may now an interested party.

The QSMC seek clarification on whether its is the owner/occupier of the Land which is the interested party/ party (which is a rather loose term nowadays as its used across a variety of Acts) for which the intent of this LOA and ADR processes are intended or can anyone join the party

Clearing up the confusion around "Party" would be a nice start so we can understand who we are dealing with with ADRs

QSMC Position ADR's – Mining Claims & Mining Lease's

QSMC are most supportive of a the Land Court Process and are totally dismissive of the ADR process legislation where costs are awarded against the tenure holder for not only the interested party "whatever they are" but also the ADR facilitator and any other costs as afforded in 84AC and a party does not attend a scheduled meeting and must pay the other party's costs for attending, and no allowance for force majuere!

In the small scale mining context, the QSMC are not at all confident that the Departments ADR model for mining claims or leases as designed in this legislation, is well thought through or even appropriate!

From our collective standpoint the ADR proposals lack credibility and it does not fit the scope of most small scale mining project disputes. Instead this process would randomly commit costs to a miner that they could unlikely afford and only to find out this process is non- binding, leaving the miner out of pocket and back at square 1.

This can be a treacherous opening for a game of snakes and ladders with the Minister eventually opting to exercise his discretionary powers to cancel the application for the tenure!

The QSMC believe that co-existence between land owners and miners and explorers would be improved if each party was made abundantly aware of their own existing rights and they were actually supported by their own separate departments and ultimately the Land Court, if agreements cant be settled between the landowner /occupier and the tenure holder/applicant.

QSMC strongly recommends the deletion of all these clauses - Section 85 Mining Claims ADRs and Mining Leases ADR's Section 281 through to 283 and the development of the Department of Resources to separate individual entities of Mines and Land departments.

Clearing up the confusion around "Party" would be a nice start so we can understand who we are dealing with with ADRs

Prescribed Mining leases :-

The QSMC are concerned that this clause may effect our affiliated organisation's members in the North Queensland Gold fields and other small gold miners in the State.

Whilst the Prescribed Minerals determine that gold is now to become a prescribed mineral, for whatever rationale that may be, the following clause describes that a gold lease must mine over a certain threshold before it is to be considered a Prescribed Mining Lease.

These values are illusive to find and it is not known if this is a dollar value or a weight value ?

> **Amendment of s 317C (What is a *prescribed mineral mining lease*) extract Merola**
>
> *Clause 139* amends section 317C is purportedly to clarify the process by which a mining lease becomes a prescribed mineral mining lease.
>
> The clause inserts a new definition of, 'excluded year' to ensure there is no retrospective application of the clarified process when prescribed thresholds in the MRR are amended or new minerals are added.
> An 'excluded year' is a project year or lease year for the mining lease that began before the mineral was added to the MRR or the prescribed thresholds are changed.
>
> **This means when the prescribed thresholds in the MRR are changed, a mining lease would not become a prescribed mineral mining lease until they have mined a mineral to the new threshold** during a full threshold year that begins after the commencement of the new prescribed threshold.

QSMC position – Prescribed Mining lease's

The QSMC, given the time restraints to draft and circulate this submission to our member organisation, as yet cannot seem to find any threshold values which trigger up sizing of Mining Leases to a Prescribed Mining Lease.

Could we please be advised of these thresholds if they exist! And from there the QSMC is likely to determine whether this part of the legislation will adversely affect our members, additionally the amount proposed by the LOA levy

Prescribed Mining leases :- Levies

The Departments legislative proposals state -

> ***In relation to the LAO levy and supplementary fee, the expanded remit of the LAO will be fully funded by the resources sector.***
>
> *Any potential impingement on this FLP is justified on the basis that allowing for the particulars of the levy and supplementary fee to be prescribed by regulation recognises the difficulty of predicting with any certainty what the demands might be on the LAO going forward.*
>
> *Additionally, fluctuation costs are likely to occur which makes subordinate legislation the most appropriate vehicle for these matters*

****QSMC note :- it seems that the departments policy team are quite liberal when spending and committing someone else's money in particular when no consultation has been made with small scale miners regarding this levy!***

31B Annual levy for performance of functions

The performance of the functions of the Office of the Land Access Ombudsman will be funded by an annual levy payable by each prescribed holder of a resource authority

The annual levy seeks to cover the costs of the functions of the Office of the Land Access Ombudsman throughout the financial year and will be apportioned among prescribed resource authority holders. The levy is intended to cover the day-to-day operating costs of the office, including for instance, office accommodation, amenities and facilities, and staff salaries.

QSMC comments Levy

The Legislative proposal of the LAO and funding are not detailed, and as yet provides no costings nor even estimates. The proposal empowers the LOA to levy amounts which are undefined, unrefined and are unable to be contested and yet the proposal defines who will be impacted and without explanation….and why?

"Should a miner who has a good relationship with a landowner earned by years of developing and investing in that relationship be subject to an unspecified amount of money dictated by an unaccountable organisation as a "levy", even though the miner will not likely utilise this ...well lets call it a service, and if they do, will likely have to dip again into their pockets and pay more?"

This is called an "Excise tax" ..not a levy!
Additionally there is no supporting costings in any draft regulation! The costs will only be exacerbated having a board, no doubt on excellent exorbitant remuneration, to run this "unproved and tested" charade.

There seems little value in replacing section 9 or amending 9A or the replacement of Section 10 (Eligibility for appointment as a commissioner) and include also now a with a board that looks top heavy and costing more money to the Industry and the People of Queensland.

This QSMC position naturally then precludes any other proposed clause which transfers the position and powers of the "Commissioner" to the LOA.

The QSMC do not support the format proposed in this Bill for the introduction of this LAO. It is ill conceived and as the department itself states "unpredictable fluctuating costs are likely to occur."

The Department of Environment already charge a levy on tenure which is money for jam for the department to assess a two page Audit statement. This EA Annual Levy purportedly for facilitating EA Annual returns could be halved to $350.00 p.a and it would still be seen by the mining industry as stealing!

QSMC's Position to Levies

If there was to be a levy imposed on small scale mining then we would rather a levy which helps to rebuild and promote our Industry after the departmental negligence and bullying which has been inflicted on our industries by the Department in recent years and since the Moratorium on Mining Claims.

Any new level of levy to be introduced by government would be as welcomed by Small Scale Miners as was the case when EPAct Levy excise tax was introduced, not at all!

The QSMC does not support the separation of the LOA and advisory council and supports an Independent Commissioner under the instruction and supervision of the Land Court, with funding provided by the State.

QSMC's Alternative to a levy

The State should redirect some of the monies from Royalties and whats being wasted on consultants- *similar to the "Synergies Cost Benefit Analysis into Mining Claims"*- and redirect this mostly wasted money into a properly funded Commissioner to run this service under the instruction and supervision of the Land Court.

This is not surreal, the people of Queensland directly benefit from Mining and therefore the comparative small costs to run the Commissioner where practical still provides a massive nett benefit to the People of Queensland.

The States oversight is imperative as they will limit the funding of budgetary requirements as prepared by the Commissioner, and not provide a gravy train!

The QSMC believe that the State already earns a "Kings Ransom" and then some from Royalties contributed from Coal and Gas and it wouldn't hurt to put some of that money back in as an investment for mining, not only to land Court and determinations but to the Department!

The current Labor Government have undoubtedly spent a fortune promoting Coal Royalties, with television and radio adverts from the State professing the benefits for Queensland, and have plagued our television screens since the inception of this Royalty windfall legislation!

This money would be perhaps better spent to fund the Land Court and a Commissioner which in turn would increase productivity and hence mining revenue, which would help remedy all the homeless People in the State.

Kindly

[redacted]

Kev Phillips (author)
QOMA Secretary
QSMC Delegate/Secretary
[redacted]

** Prepared and signed as authorised by the following QSMC member associations*

Qld Small Miners Council	**Contact details**	**mail@qsmc.org.au**
Qld Opal Miners Association Inc	Secretary Kevin Phillips President Rob White	mail@qoma.org.au
Yowah Opal Mining Community	President Ben Stoverink	[redacted]
Qld Boulder Opal Association Inc	President Alison Summerville	qboa@bigpond.com
Qld Sapphire Miners Association	Secretary Carol Graham	[redacted]
North Qld Miners Associations Inc	President Graham Byrne	info@nqma.com.au

Clean Economy Jobs, Resources and Transport Committee

QUEENSLAND PARLIAMENTARY SERVICE

Parliament House Ph: 07 3553 6621
Cnr George and Alice Streets, Brisbane Q 4000
Mailto: trc@parliament.qld.gov.au