Mineral and Energy Resources and Other Legislation Amendment Bill 2024

Submission No:	9
Submitted by:	North Queensland Miners Association
Publication:	
Attachments:	No attachment
Submitter Comments:	

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Queensland Resources Industry Development Plan

Submission lodged on behalf of

North Queensland Miners Association (NQMA)

The NQMA acknowledges the Queensland Resources industry development plan ('the plan') that was released by the Department of Resources in November 2021. This submission is based on the Associations concerns with some key issues on future regulation and where this regulation may also fall short in protecting regulation of individual and family operations.

The plan sets out several important subjects that will impact the industry into the future. The wording seems to reflect the inclusion of all levels of mining, and it is good to see there are a few statements that seem to cover all. However, the language of the plan relates to Resource Companies, there is more to mining then just companies and our focus on this submission relates to individuals and family run operations.

In the Executive Summary on page x it states that *'the industry currently represents 8 per cent of the state's economic output overall and is the dominant industry in many of Queensland's regional centres*'.

Further on at page 4 the plan sets out the long-term objectives that includes, among others, growing our regions and investing in skills.

The two main areas that have some impact to the NQMA membership base include Key Focus area 3 – Foster coexistence and sustainable communities and Key Focus area 6 – Improve regulatory efficiency. These two Key focus areas go together regarding the areas of NQMA's concerns.

The concern that impacts the immediate future of the individual and family run operations is action item 40 – Implement reforms for small miners. The Action proposed is to remove mining claims from the *Mineral Resources Act 1989*. The plan states that the proposal is based on the results on a recent cost-benefit analysis.

It is the observation that there is no connectivity from this Action item to the Key Focus area of regulatory reform. There is no explanation as to why, if this action item is based on cost-benefit, it relates to regulatory reform. If it is the intention of the department to rid Queensland of mining claims due to holders not abiding by regulatory conditions, why is this not stated in the plan and information provided on the status of these concerns.

The cost-benefit analysis (CBA) is severely deficient in supporting the reason by the Queensland Government to remove mining claims. The CBA is conducted over what is the SMALL-SCALE MINING INDUSTRY. It is NOT a report on Mining Claims, with nearly all data collected based on the overall mining industry of the opal fields and the gem fields.

The CBA highlights the fact that the small mining industry of opal and gem fields has an estimated annual turnover of approximately $13 million (page 5 Results of cost-benefit under 'industry consultation' scenario), with employment (labour cost) at approximately $7 million. This is not an insignificant contribution to the industry or regional communities. The Government administration and regulatory costs are stated at approximately $1 million. This is not a figure that is a direct result of administrating

mining claims, it is related to all mining administration in these areas. A small amount for a significant area. In both result charts (DNRME production data and Industry consultation data) the Benefit cost ratio is in positive figures. The CBA can only be taken as a tool for the Department to implement item 40, however it is not clear if this is the only reason the Department is targeting mining claims.

Wording in item 40 states clearly that consultation with stakeholders will be held to **develop** transitional provisions. This is a different message that the Associations have been given in meetings with government staff. The message delivered in these meetings is that no decision has been made on the removing of mining claims. The NQMA is expressing their confusion between what the plan is saying and what Departmental staff are saying.

NQMA notes that the Queensland Government sets out both government and industry obligations (page 74) 'to ensure the efficiency of Queensland's regulatory processes.'

One of the Government commitments is stated as follows:

- Ensure any regulatory change with a material impact is subject to a 12-week consultation process, consistent with Queensland Government's Guide to Better Regulations.

Item 40 clearly states that the Queensland Government has **implemented an immediate moratorium on accepting new mining claim applications.** There has been NO consultation process regarding implementing of the moratorium based on the CBA. This is a regulatory change with definite material impact to the mining industry.

<u>The NQMA strongly suggests that the Moratorium be removed until such time as consultation is undertaken based on CLEAR direction from the Department of Resources in relation to mining claims in Queensland.</u>

There are many reasons as to why Mining Claims should not be removed from the *Mineral Resources Act 1989* (MRA). The reasons for the introduction of prescribed mining claims to the MRA are well documented through the Mining and Other Legislation Amendment Bill 2012. The primary object of this bill and enacted legislation was to *'reduce red and green tape for small scale miners of opal and gemstones*'. Therefore, it must be seen that the current Government has the objective to **increase** red and green tape for the small-scale miners of opal and gemstones.

This increase can only lead to more financial burden on the Queensland Government by way of further consultation, drafting of legislation policy and procedures, legal advice on proposed changes, changes to MyMinesOnline to adapt, and additional staff to implement all and regulate MORE mining leases. Further burden will also put on the Department of Environment to draft transitional provisions, consultation and extra staff. The cost increase to the opal and gem fields will be significant in ways that will not benefit the Queensland government, this would include an additional cost to rates that will go to Local Councils and compensation that will go to Landowners and fees that will go to Mining Consultants to navigate transitional provisions. This will ultimately lead to many individuals and families leaving these communities and taking with them any financial support provided to the regional towns.

The thought process of the Department of Resources in relation to removing mining claims based on the CBA does not make any sense! This leads to mistrust by the industry and the need to know what the real reason is. This must be communicated to the industry to have a full and open discussion on the topic. There is an assumption that the change is being directed by Ag-Force and the need for more regulation

required. If this is the case, the ability for regulation of mining conditions is already available to the Department of Resources in current legislation. This is not going to change by removing MINING CLAIMS, the same regulation issues will remain if transitioned to a mining lease. Removing mining claims and transitioning to mining leases is going to be a multi-million-dollar exercise that is not needed for the purpose of regulation.

Caution on rushed solutions to resolve the mining claims from the MRA

History on changing legislation in unresolved way shows us there is a very strong need for ongoing industry consultation with mining representatives right through this process. The Alternate State Provisions was an example of the State Government not consulting with the miners to achieve long term solutions. Many miners had renewals already in place in their Native Title Agreements, however the State never included renewals in the Act. This resulted in miners and Native Title parties having to renegotiate at great cost to both parties.

In addition to the above there are other concerns of the NQMA that related to industry regulation. This can be seen as area specific to North Queensland, however it is a strong topic of conversation amongst our members, and it is included in this submission to be identified as needing attention.

Fossicking on Production Mining Lease Applications (PMLA)

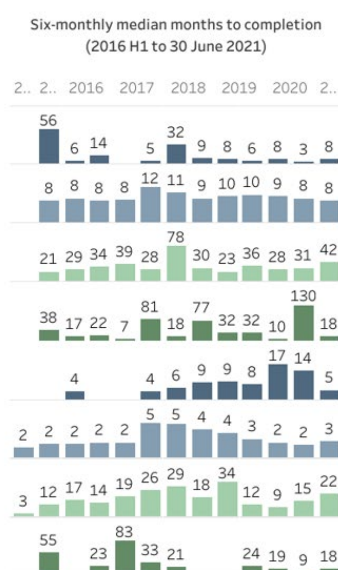
The State needs to change the Act so that fossickers are unable to access a production mining lease application area (PMLA):

Issue:

As soon as a production mining lease (PML) application is lodged a miner must then seek a Compensation Agreement with the background landholder and Native Title Agreement with the relevant Native Title Party. On average, it takes 42.5 months for the permit to be granted by the State as referred to *Permit Application* in the below graph.

Performance for 1 July 2020 to 30 June 2021

			Applications completed	75% of applications completed in X months	Median application duration (months)
Permit Application	Exploration	ATP	8	10.8	5.9
		EPC & EPM	259	10.2	8.0
	Production	ML	30	54.8	42.5
		PL	8	130.0	130.0
Renewal	Exploration	ATP	14	8.2	5.5
		EPC & EPM	412	3.4	2.3
	Production	ML	66	37.1	19.4
		PL	9	20.0	18.3



Glossary
ATP - authorities to prospect for petroleum
EPC - exploration permits for coal
EPM - exploration permits for minerals
ML - mining lease
PL - petroleum lease

Source: [Resources permit and renewal applications KPIs | Tableau Public]: Published: **Jul 15, 2020** Updated: **Jul 13, 2021**

The above metrics are produced by Department of Resources (DoR), providing industry with indicative time frames for major permit application types. It is pertinent to note that the exact time taken for each individual application will depend on its complexity and may be influenced by tasks outside the control of the Department, such as native title and environmental assessments (Resources permit and renewal applications KPIs | Tableau Public.

It is imperative for the State to understand that when an application is submitted to the DoR, this permit area becomes publicly advertised. And visible. For 42.5 months or greater, depending on its complexity, this information is now available to fossickers.

Miners can pay significant amounts of money to secure ground that has been explored and applied for through a lengthy process. A fossicker may pay no more than $56.25 (*Purchasing a fossicking licence Online*: https://www.qld.gov.au>fossicking) for the right to exploit, i.e detect, this ground.

The following table illustrates the comparative monetary expenditure outlaid by a PML applicant as opposed to a fossicker.

Table 1. comparison of fees paid by a production mining lease applicant and a fossicker

	Miners Costs ($)	Fossickers ($)
i) licence to fossick	-	Up to 56.25 for 1 yr
ii) Application lodgement fee (DoR)	849	-
iii) Application fee for EA permit (DES)	688	-
iv) Security (DoR)	1500	-
v) preparation of Native Title compensation agreement – can include legal fees for NT Tribunal	Dependent upon complexity can be: Range from 0 (ILLUA) to > 40,000 ♦	-
vi) preparation of Land holder compensation agreement (include legal fees for Land Court process)	Dependent upon complexity can be: = to 0 or > 100,000 ♦	
vii) EA permit fee (DES)	712 annually	-
viii) Financial Assurance (DES)	Dependent upon operation = or > 2500	
ix) Land holder (LH) comp	Depend on agreement or LC determination ♦	-
x) Native title party (NTP) comp	Depend on agreement or NT Tribunal determination ♦	-
xi) Rates	~ 680	-

xii) Rent eg 30ha	64.00 / ha -1920	-
xiii) Royalty	> 100,000 x 5% ♦	>100,000 x 5% [1]
xiv) ‘season passes’ for fossicking provided by pastoral lessee [2]	-	Dependent on individual landholders♦
TOTAL (based on highest figures) NB annual LH and NTP comp NOT included	8,849	56.25

♦ figure has not been included due to variations in amounts

[1] Royalties are payable on fossicking material that are the property of the Crown, but threshold exemptions of $100,000 means that generally most fossickers are not liable (Fossickers Rules and responsibilities: Sale and trade of collected material, https://www.qld.gov.au/recreation/activities/areas-facilities/fossicking/rules :5 Feb 2022)

[2] Some landholders operate commercial operations that involve selling the rights to fossick on their pastoral lease. ‘Passes’ can range from weekly to season passes. The landholder has the information (having been supplied by the PML applicant) to identify viable ground and direct his/her paying customers (fossickers) to this PMLA area.

While the comparative total figure in Table 1 appears to be conservative, it is clearly obvious there is a marginally higher investment, albeit cost, for the mineral permit holder.

Fossicking on Exploration Permit for Mineral (EPM)

Issue:

The State Government states that ‘*Exploration is critical*’ and that ‘*It all starts with exploration*’ (page 23). An EPM holder pays for the right to explore an area of land with the hope of finding ground that can be viably worked. One of the indicators of the presence of the mineral gold asset is free gold on and below the surface, as well as gold present in situ, that is, within rock. As a result of land holders selling the rights or signing off on fossicker’s licences, the mineral gold asset is being removed. Presently it is not a legal requirement for the fossicker to divulge the location and the amount of gold ‘won’. No reporting data is provided to the EPM holder or lodged with the relevant departments, a requirement which an EPM holder must do under *section 178A* (MRA1989). This ultimately impacts the ability of the EPM holder to find the valuable resource and develop a future mine which ultimately the community receives a fair return.

Table 2 illustrates the comparative monetary expenditure outlaid by an Exploration Permit Holder and a fossicker.

Table 2 Comparative monetary expenditure outlaid by a permit holder for an Exploration permit as opposed to a fossicker accessing the same land

	Miners Costs ($)	Fossickers ($)
i) licence to fossick	-	Up to 56.25 for 1 yr
ii) Application lodgement fee (DoR)	1360	-
iii) Application fee for EA permit (DES)	688	-
iv) preparation of Native Title compensation agreement	Dependent upon complexity can: range from 0 (ILLUA) to > 40K ♦	-
v) preparation of Land holder Access	Dependent upon complexity can be: = to 0 or > 100K ♦	
vi) EA permit fee (DES)	712 / yr	-
vii) Financial assurance (DES)	2500 (greater dependent of works carried out)	-
vii) Native title party Administration Fee	Dependent on agreement or NT Tribunal determination ♦	-
viii) Rent	~ 168 / sub block	-
ix) Royalty	-	>100,000 x 5%
x) 'season passes' for fossicking provided by some pastoral lessees	-	Dependent on individual land holders ♦
Work program expenditure	Dependent on Work Program ♦	-
Total	5,428	56.25

♦ figure has not been included due to variations.

The comparative total figures in Table 2 appear to be conservative, not unlike those in Table 1. Though once again, it is obvious there is a marginally higher investment, albeit cost, for the mineral permit holder.

The bona fide explorer and or miner invests heavily to develop a future mine. It is clear the fossicker pays little in comparison, with no return to the State.

The advances in detector technology enables fossickers to 'win' extremely large amounts of the mineral asset gold without any of the overheads set out in the above tables. Miners believe this is not the intent of the fossickers licence. The perception of a fossicker does not match up with the fossicker of today due to the technological advances of the tools used, i.e the detectors. To appreciate the quantum leap in

technology the last three models released by Minelab are extremely sensitive to fine gold and have the capacity to detect specimen gold in rock where previous detectors would have trouble detecting this.

They are now an important tool in field exploration electronically loaming the ground to find the source. Fossickers/hobbyists have now become professional full time detector operators/miners.

To state that "generally most fossickers are not liable (relative to the royalty threshold)(Fossickers Rules and responsibilities: Sale and trade of collected material, https://www.qld.gov.au/recreation/activities/areas-facilities/fossicking/rules :5 Feb 2022) demonstrates that the regulatory bodies do not comprehend the situation on the ground. Bona fide miners and EPM holders have been provided images of gold weighing up to 1000 ounces while others have been told of detector operators discovering amounts of gold that would require the fossicker to pay the royalty threshold upon selling it.

NQMA notes one of the Government commitments under Key Focus Area 6 (page 71) is stated as follows:

- Improve regulatory efficiency
  » Queensland will be benefiting from risk-based, efficient, effective and transparent regulation that ensures the state's resources are explored and developed in the public interest.
  » Regulation will be contemporary, insights-driven and the community will be confident that the resources industry is well regulated.

The rights of the landholder to sell the right to fossick on the property or sign off on fossickers licences has manifested to what could be perceived as a loophole, allowing exploitation of the State's wealth without a fair return to the community.

Further-more private fossicking rights sold by landholder are a huge disincentive for legal mining activity, whereby some fossickers are known to gravitate to already granted mineral production leases. Not only is this theft from the mineral permit holder, the ability of the Queensland Government to raise revenue is detrimentally impacted, as is the fair return to the community.

These practices could be interpretated as major challenges to the Government's commitment to 'improve regulatory efficiency'.

They also could be viewed as a hindrance to the objectives set out on page 53, Action item 22 of the Government' plan – *Principles for strong relationships between resource companies and landholders*

While '*understanding*', '*engaging early*', '*providing up-to date information and science*', '*communicating*' and '*negotiating*' (page 53) are achievable objectives, showing '*compassion*' and '*acting like an invited guest*' while the mineral asset gold is being removed from one's sub-blocks or PMLA permit area can prove to be a greater challenge.

According to section 36 (*Fossicking Act 1994)* (2) A licensee must not –

(a) in trade or commerce, sell the material; or

(b) use the material in the production of something else for sale in trade or commerce.

It is naïve to believe that the professional detector operators limit their findings to amounts whereby they remain as 'hobbyists' and as such, be adhering to section 36 of the *Fossicking Act* (*1994*).

The plan states the following:

A resource royalty is a dividend paid to Queenslanders for the use of the state's non-renewable resources. These resources are finite, and royalties help compensate current and future generations for their extraction (page 51).

While no regulatory framework exists pertaining to the present legal entry by fossickers on to EPM's and PMLA's, Queensland government is not receiving the resource royalty for the use of the state's non-renewable resources.

Landowners that are promoting and conducting fossicking tours on their land are relying on tourists to provide their own fossicking licences, however it should be regulated that tours are conducted subject to section 30 of the *Fossicking Act 1994*.

Possible part of Solution

(a) EPM holder's signatures need to be included with the land holder's signature to fossick on the area of the holder's EPM

(b) upon signing, the fossicker agrees to provide the EPM holder with a map of where and how much gold was found. This information is then provided to the State via the required reporting obligations of the EPM holder

Alternatively, the State Government creates a defined fossicking area that does not impact EPM holders and PML applicants and holders.

Land Court Costs

Issue:

The Queensland State Government has expressed concern that it costs the State for matters to be resolved in the Land Court.

While no quantifying figures were included within the Cost Benefit Analysis it was pointed out that the Land Court Registry incurs costs associated with managing disputes between small scale miners and landholders. Relative to compensation agreements, it is pertinent to point out that the miner must first initiate court proceedings if no compensation agreement has been finalised within a certain time frame. Miners in general do not wish to proceed down this legal mine field. However, that is the process they must follow if they do not sign a compensation agreement that, in effect, does not deal with those compensable items listed in the MRA (1989).

Solution:

Stocking rates need to be defined on lease hold lands. This would provide a defined figure for both the miner and the landholder to refer to, to begin realistic negotiations. It would pre-empt the need for 'expert witnesses' which translate to costly and drawn-out Land Court proceedings.

On page 46 the Queensland State government expects industry to '*negotiate in good faith and seek to understand the needs of landholders and communities to build social licence through legitimacy, transparency, credibility and trust*'.

NQMA believes this expectation needs to be reciprocated.

Having the equivalent board as that that exists in Western Australia, i.e the WA Pastoral Lands Board (the PLB), would be beneficial in negotiating realistic compensation agreements and pre-empting any need to argue about the stocking capacity of the pastoral lease.

"The PLB's functions with respect to land management are outlined in section 95 of the Land Administration Act 1997 (LAA). Those functions include:

- To ensure that pastoral leases are managed on an ecologically sustainable basis; and
- To develop policies to prevent the degradation of rangelands; and
- To develop policies to rehabilitate degraded or eroded rangelands and to restore their pastoral potential; and
- To monitor the numbers and the effect of stock and feral animals on pastoral land.

Source: Western Australian Pastoral Lands Board Policy No. 7 Pastoral Lease Stocking Policy (https://www.wa.gov.au/system/files/2021-07/PLB_Policy_No.7_Stocking.pdf)

If stock numbers are not managed to the PLB's satisfaction, it may, under section 111 of the LAA, determine minimum and maximum numbers and the distribution of stock to be carried from time to time, based on its assessment of the sustainable carrying capacity of the land.

This third-party assessment of the lands carrying capacity would assist to alleviate the need for the Queensland Government to incur more costs associated with managing disputes with all miners and landholders. It also brings to light the onus on the landholder to be ecologically and sustainably managing their pastoral lease. In many of the mining districts the land is marginal, potentially improving with a 'good season' or at risk of being severely degraded in a 'bad season'.

As co-lessees, long term mining lease holders have observed these fluctuations in the 'quality' of the land.

Biosecurity

Issue

On EPM's and PMLA fossickers are at present legitimately able to traverse these areas without notification and consent of the holder of the EPM or PMLA. Land holders have used biosecurity as a compensable item relative to the miner, without the land holder demonstrating to the mining permit holder they are enforcing biosecurity measures when carrying out their own business ventures on the same land.

The miner's biosecurity obligations are compromised by fossickers being allowed on production mining lease applications and the exploration permit area. This can result in the holder and or PML applicant becoming responsible for biosecurity problems they did not cause.

Once again NQMA notes that the Queensland Government as part of its Expectations of Government and Industry collaboration (pg 46) expects industry to "demonstrate best practice engagement and adherence to coexistence principles to create long-standing mutually beneficial relationships". There is a disparity between the landholder's biosecurity practices and the biosecurity expectations being placed on mining lease holders. A disparity which the Land Court has failed to recognise.

NQMA points out once again, the Queensland State Government expects industry to "negotiate in good faith and seek to understand the needs of landholders and communities to build social licence through legitimacy, transparency, credibility and trust" (pg 46).

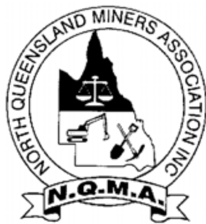
While this disparity between biosecurity practices continues, allowing a co-lessee, the landholder, to police the biosecurity management practices of a miner, those expectations cannot be achieved.

Solution:

NQMA acknowledges that everyone has a biosecurity obligation and as such the miner carries out the measure's he or she is required to do so that this obligation is met.

While EPM's and PMLA's continue to be accessed by whoever the landholder permits, the landholder must provide to the EPM holder, PML applicant, signed statements and photographic evidence from those who are traversing the land that a washdown procedure has occurred before the fossicker proceeds onto the land.

NQMA calls upon the Queensland State Government to allow the department - Biosecurity Queensland, to regulate this area just as the Department of Environment and Science regulates the environment.



NORTH QUEENSLAND MINERS' ASSOCIATION

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6th May 2024

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NQMA Submission

Ref: Mineral & Energy Resources and other Legislation. Amendment Bill 2024

To Whom it May Concern.

Regarding the latest Legislation changes, NQMA strongly objects to the Association being excluded from any consultation into these proposed changes. Members have only just been made aware of this proposal on the 24th April. A coincidence that the Anzac Day holiday break followed, a public holiday on the 25th, a long weekend and a deadline for submissions due on 2nd March.

As there is a considerable amount of information to consider and comment on, NQMA proposes all concerned groups be granted another 8 weeks (July 2024) to prepare for a submission.

We cannot understand why groups like NQMA (an organisation that has been active for over 25 years) consisting of working miners, are not included in any form of notification or consultation, and are not included as part of the groups affected by these changes and invited to put together a submission.

Who actually are the groups contacted to decide on the changes that affect the Miners and their Industry?

NQMA also asks the question as to why our local Mineral Hub in Townsville does not inform us about these important changes in our industry.

A major concern is Prescribed Mining Leases. What does this mean for miners/what exactly is the Prescribed Mining Leases definition of the term/ how will it be implemented? / how will it affect Mining Leases currently operating treating gold?

There was mention of a fee for a levy on a Prescribed Mining Lease. What fees are applicable?

How can an organisation put forward a proposal when the information is not provided and questions cannot be answered. Hopefully our comments will be taken into consideration.

Graham Byrne (President NQMA) on behalf of Executive Committee.

From:	
To:	Clean Economy Jobs, Resources and Transport Committee
Subject:	Re: NQMA Submission as lodged
Date:	Monday, 6 May 2024 3:21:23 PM

We are re-submitting the following as we did not provide sufficient details as required.

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Postal Address: PO Box 900 Atherton QLD 4883
Telephone Contact:
Graham Byrne (President)

Lyn Byrne (Secretary
North Queensland Miners Association

On Thu, 2 May 2024 at 10:56, Lyn Byrne <info@nqma.com.au> wrote:

> North Queensland Miner's Association Submission MEROLA
> NQMA's position is that fossicking and granting of prospecting permits on granted EPMs should not be allowed unless the holder grants written permission. Our position was outlined in a detailed submission of 2022. We will re-submit it for your consideration
>
> Graham Byrne (President) on behalf of Executive Committee.
> North Queensland Miners Association