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Committee Secretary
Economics and Governance Committee
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By email: egc@parliament.qld.gov.au

Dear Committee Secretary,

Thank you for the opportunity to make a submission to the Economics and Governance Committee ("the Committee") as part of its detailed consideration of the *Mineral and Energy Resources (Financial Provisioning) Bill 2018* ("the Bill").

We would like to thank the Queensland Treasury and Department of Environment and Science ("DES"), who made significant efforts to inform and engage industry stakeholders on the proposed policy framework, often within short timeframes.

There are a number of amendments which have been made to the Bill since its initial introduction into the Legislative Assembly on 25 October 2017. As the Committee will be aware, this version of the Bill lapsed when the 2017 State Election was called and the 55th Parliament was dissolved. The submission deadline set by the Committee was short and we have endeavoured to provide feed-back on the Bill within the timeframe provided. We invite engagement with the Committee to further discuss our perspective on the Bill as well as its operational implications.

We wish to express our concerns with the Queensland Government's implementation timeframe of 1 July 2018. It will take mine operators time to properly assess the impact of this framework, which is rendered more difficult by the fact that significant detail will be contained in regulations and guidelines which have yet to be developed. We would ask that the Queensland Government provide more workable implementation timeframes to allow sufficient assessment and consultation with industry.

As a member of the Queensland Resources Council ("QRC"), we are aligned with the analysis and feedback on the Bill contained in the QRC's submission. In addition, we have provided detailed feedback in Annexure 1 (Financial Assurance) and Annexure 2 (Rehabilitation and Closure).

About BHP

BHP is a leading resources company. Our purpose is to create long-term shareholder value through the discovery, acquisition, development and marketing of natural resources.

We extract and process minerals, oil and gas, with more than 60,000 employees and contractors, primarily in Australia and the Americas. Our products are sold worldwide and our global headquarters are located in Melbourne, Australia.

In everything we do, we are guided by our BHP Charter Values of sustainability, integrity, respect, performance, simplicity and accountability.

BHP's Queensland Coal operations comprise of the BHP Billiton Mitsubishi Alliance (BMA) and BHP Mitsui Coal (BMC) assets in the Bowen Basin.

BMA is Australia's largest supplier of seaborne metallurgical coal. BMA is owned 50:50 by BHP and Mitsubishi Development. BMA operates seven Bowen Basin mines — Goonyella Riverside, Broadmeadow, Daunia, Peak Downs, Saraji, Blackwater and Caval Ridge — and owns and operates the Hay Point Coal Terminal near Mackay. Two BMA mines — Gregory Crinum and Norwich Park — are currently in care and maintenance.

BMC owns and operates two open-cut metallurgical coal mines in the Bowen Basin — South Walker Creek and Poitrel. BMC is owned by BHP (80 per cent) and Mitsui and Co (20 per cent).

Our Approach to Rehabilitation and Closure

BHP supports the intent of the Bill and is aligned with the Queensland Government in its desire to ensure effective rehabilitation outcomes across Queensland. We appreciate that standards and community expectations for rehabilitation and closure have evolved over time and the policy framework should meet those expectations.

We are committed to working with the Queensland Government to ensure the new legislative and regulatory framework delivers the standard for rehabilitation and closure planning across Queensland.

Rehabilitation is critical to managing the environmental impacts of our operations and forms a crucial component of our license to operate. Our assets implement rehabilitation plans that support life of asset and closure plans, and rehabilitate disturbed areas that are no longer required for operational purposes.

Until mid-2016, BHP's company structure was aligned by commodity type. BHP has since transitioned its business structure from this commodity-centric model to a regional model; forming Minerals Australia and Minerals America. This has presented significant opportunity for further sharing of practices and approaches to rehabilitation across regions.

Best practises have been developed and adopted across Western Australian Iron Ore, Nickel West and Olympic Dam, including a set of Mine Closure and Rehabilitation Principles which have been integrated into our Queensland operations.

Across four BMA mines — Saraji, Norwich Park, Gregory Crinum and Blackwater — there are approximately 2000 hectares of land which BHP believes have met rehabilitation obligations. At the time of writing, we are working with the DES to confirm this rehabilitation through certification. The significance of this progressive rehabilitation process for the State of Queensland is that only three mining companies have had certified rehabilitation to date and this has been a total of less than 700 hectares.

We see our current work with the DES on progressive rehabilitation certification as a way of helping both BHP and the DES better test and understand the rehabilitation certification process as a whole. The knowledge gained through this process will lead to a deeper understanding of rehabilitation across both industry and government, which in turn will enable better rehabilitation outcomes in Queensland.

We wish to reiterate that we are supportive of the Bill's intended outcome of providing clear rehabilitation guidance, as industry, the Queensland Government and the communities of Queensland will benefit from clear rehabilitation expectations. It is vital that mine operators are provided clear criteria for rehabilitation as, without these, it is difficult to invest with certainty on our long-term investments.

In a previous submission on this proposed policy framework, we highlighted that the Queensland Government needs to provide flexibility to mining companies in relation to timeframes and criteria to allow them to reach appropriate rehabilitation outcomes. We wish to reiterate the need for flexibility in this submission, because the exact quantity and location of rehabilitation that can be undertaken will vary over time due to the variability inherent in the mining industry.

Any requirement for mine operators to adhere to rigid rehabilitation areas (hectares) and timeframes is incompatible with the variable nature of the mining industry and mine planning practices. The timeframe within which a mine plan progresses — and therefore the timeframe within which rehabilitation outcomes can be reached — can vary depending on a number of factors, including commodity prices, geotechnical considerations and development costs.

Forcing Queensland's mine operators to adhere to rigid rehabilitation areas and timeframes will make it considerably more difficult for them to operate in Queensland, which, in turn, could inhibit future investment in Queensland's mining industry.

Annexure 2 (below) contains detailed feedback on our concerns with specific rehabilitation provisions in the Bill, including the definition of land available for rehabilitation, the PRCP schedule amendment process and the notification process for PRC plans.

Financial Assurance

We note that the Queensland Government's primary policy objective in establishing a pooled rehabilitation fund is to mitigate financial risk to the State of Queensland. As the former Treasurer and Minister for Trade and Investment the Hon. C. Pitt MP noted when the Bill was first introduced into the Queensland Parliament on 25 October 2017, *"Unfortunately, in a small number of cases, mines or other resource projects close earlier than projected for a variety of reasons, leaving the state and Queensland taxpayers to pick up the tab for environmental management and site rehabilitation".*[1]

We also note that the intended purpose of the pooled rehabilitation fund is to provide the Queensland Government with financial assurance to use as a last resort when a company does not meet its environmental or rehabilitation obligations.

However, we are concerned that there are moral hazards with a pooled rehabilitation fund. This arrangement may make certain mine operators less motivated to pursue high-standard environmental and rehabilitation outcomes due to the assumption that the associated costs will be absorbed by the fund in certain circumstances.

This is underscored by the fact that the fund will be comprised, in the main, of contributions from larger, low-risk mine operators. Under this arrangement, Queensland's mine operators are essentially being asked to pay for rehabilitation twice: once for their own operations and again for the entities which draw upon the fund. This would be an unfair arrangement and if implemented, would make Queensland a less attractive and less competitive jurisdiction for investment in mining projects. On this basis, if the Queensland Government proceeds with the establishment of the fund, we would submit that companies that can demonstrate adequate financial assurance should have the option of opting out of participation.

The cost implications of the proposed financial assurance scheme will be significant for Queensland's mine operators. However, it is not yet possible to quantify the costs of participating in the fund or the increase in costs for those participants outside the fund because the Queensland Government has yet to release the detail necessary to enable modelling. Mine operators would benefit from the timely provision of the necessary detail.

Surety Providers

Another pathway the Queensland Government should consider for mitigating the financial risk associated with rehabilitation liabilities is to recognise the strength of existing regulatory arrangements for surety providers. Under Section 36 of Queensland's *Financial and Performance Management Standard 2009*, a contract performance guarantee can be accepted from an insurance company provided that the insurance company is authorised under the *Insurance Act 1973* (Cth) and that the insurance company has a rating of at least 'A-' from Standard & Poor's.[2]

An insurer must be licensed by the Australian Prudential Regulatory Authority (APRA) to meet these the objective standards. As the Committee will be aware, the degree of regulation of insurers by APRA in Australia is arguably higher than in most other jurisdictions.

A scheme that enables the broadest possible range of low-risk, well-regulated surety providers, ensures that the Queensland Government minimises the risk of default. These objective regulatory criteria protect against the risk of rehabilitation liabilities, as insurers which meet the aforementioned standards can provide rehabilitation bonds to the Queensland Government as a low-risk form of surety.

We encourage the Committee and the Queensland Government to recognise the strength of insurers which meet these criteria as providers of rehabilitation bonds to the Queensland Government and to factor this into the rehabilitation and financial assurance policy framework.

[1] http://www.parliament.qld.gov au/documents/tableOffice/BillMaterial/171025/Mineral.pdf
[2] *Financial and Performance Management Standard 2009* (Qld), s 36

Conclusion

In conclusion, BHP supports the Queensland Government's objectives in reforming the rehabilitation requirements for Queensland's mining operations and wishes to collaborate to ensure that Queensland has an effective, workable and low-risk rehabilitation framework.

The industry and environment will benefit from a clear set of guidance on appropriate rehabilitation, and closure outcomes and standards. However, the imposition of rigid timeframes and standards for rehabilitation and closure, which do not account for the inherently variable nature of the mining industry, will be impractical and will make Queensland a less attractive jurisdiction for mining investments.

On financial assurance, we wish to reiterate our concerns with the pooled fund and ask that companies that can demonstrate adequate financial assurance be given the option of opting out of participation. We also wish to reiterate our concerns regarding the lack of detail released by the Queensland Government at this point in time, as the Bill does not provide mine operators with enough information to properly understand the potential cost implications of this framework.

We invite further engagement with the Committee and the Queensland Government on this Bill as well as the proposed policy framework.

Rag Udd
Asset President BMA

James Palmer
Asset President BMC NSWEC

BMA
BHP Billiton Mitsubishi Alliance

Annexure 1 – Feedback and Recommendations on the Bill's Financial Assurance Provisions

No.	Concept	Issue	Section of the EP Act (new numbering)	BHP Response and Feedback	Recommended Solution
1	Surety	Forms of surety / prescribed insurers	S 56	We note that s 56 expressly permits the use of insurers, which we welcome. However, it leaves open for determination by regulations as to which insurers (or categories of insurer) would qualify. As we have previously outlined to the Queensland Treasury, surety issued by onshore, APRA-licensed insurers with an independent credit rating of A- or above should provide suitable protection for the Queensland Government (and set a high water mark). These criteria are also consistent with current requirements for FA. As these requirements include objective controls and criteria, which are assessed and enforced by independent third parties, there should not be any need to distinguish (or preclude) captive insurers if they meet these criteria. We wish to reiterate this position. There also remains an issue about how the approved form of security will work in terms of any requirement to name all holders on the surety. An Unincorporated Joint Venture (UJV) is typically structured on the basis of several, rather than joint and several, liability, potentially with no cross-indemnities. BHP has collaborated extensively with the Queensland Government to develop a suitable form of surety that enables two or more UJV participants to provide a single joint surety instrument involving two, or more, issuers (banks/insurers). This approach should be retained as an option when considering approved forms of surety.	For consideration in development of Regulations.
2	Fund	Determination of requirement to contribute to fund, application of fund threshold for holder with multiple authorities across different JVs.	Ss 49, 53 and 54	A key issue is the lack of clarity on whether and when a holder will contribute to the fund or provide surety under s 49 and s 53 and s 54. ***Concern with moral hazard of pooled fund*** We have previously expressed our concerns to the Department regarding the moral hazard of pooled funds (it is in effect a compulsory State-administered insurance scheme, which results in large, low risk participants subsidizing the risk of smaller, higher risk participants; and also has potential to create a perception for some participants that they can walk away from their rehabilitation obligations because the fund will cover the costs). We would prefer to minimize our participation in the fund and instead provide surety (bank/insurance guarantees) - which we believe also puts the State in a "safer" position, as surety will cover the full estimated rehabilitation cost, not just a percentage of it. We submit that the default $450 million "fund threshold" is too high (on a per JV or holder basis, much less on a per EA basis). We also believe there should be more flexibility for proponents to determine the extent that they participate in the fund (as opposed to providing surety). ***Application of fund threshold across multiple authorities*** The drafting of the Bill does not adequately deal with how the fund threshold is applied across multiple EAs held within a corporate group. All consultation with the Department indicated that each corporate group would only be required to contribute to the pooled fund up to the fund threshold, for all EAs/authorities held by the corporate group. However, the Bill is not drafted this way. *Drafting of section 49* As drafted, the starting position under s 49 is a holder must contribute to the fund for up to the full fund threshold amount for <u>each authority</u>. Therefore, the first [$450 million - being the default fund threshold] under <u>each</u> EA would fall under the fund, and only amounts in excess of the fund threshold would fall to surety. Most individual EAs will not exceed $450 million. For holders with multiple EAs, this means the default position would likely result in <u>all</u> of their financial assurances coming under the fund (in BHP's case, this would result in participation in the fund up to multiples of the fund threshold). The better approach would be for the Bill to start with the position under s 49 (1) that the section applies if the estimated rehabilitation costs (ERC) for <u>all authorities</u> held by the holder's corporate group is more than the fund threshold.	Amend the default position in s 49 to be that the fund threshold is applied across all authorities held by the holder's corporate group, rather than applied separately to each authority. Amend s 53 to: • Provide that the scheme manager "must" have regard to the matters in s 53 (a), (b); • Clarify application of the total ERC cost calculation in the context of joint ventures (JVs) - and in particular 50:50 JVs; • Require consideration be given to holders' submissions on the matters addressed by s 53; • Require consideration to be given to guidelines detailing how the "financial viability of the fund" is to be determined in the context of s 53 (b).

No.	Concept	Issue	Section	BHP Response and Feedback	Recommended Solution
2	Fund	**Continued from above** Determination of requirement to contribute to fund, application of fund threshold for holder with multiple authorities across different JVs.	Ss 49, 53 and 54	**Continued from above** The obligation in s 49 (3) would then be to contribute the amount under s 49 (2) (this could be in respect of nominated authorities), with the balance (for all remaining authorities) to be covered under a surety. *Drafting of sections 53 (b) and 54* The current drafting of the Bill attempts to address this issue through s 53 (b) and s 54, by giving the scheme manager a discretion to require security rather than contribution to the fund if the fund manager decides that this is necessary to "preserve the financial viability of the scheme fund". Then, under section 54, the Scheme Manager may, when exercising that discretion, have regard to whether a holder, or a holders' corporate group, has estimated total rehabilitation costs in excess of the [$450 million] fund threshold. There are several concerns with this approach (most of which would be resolved if the amendment to s 49 proposed above were made): • First, the Scheme Manager has a broad discretion to determine whether (and how much) of a corporate group's total estimated rehabilitation costs must be under the fund as well as the amount of surety. To address this, the requirement in section 54 (2) should be that the scheme manager "must" consider (rather than "may" consider) the matters in s 54 (2)(a) and (b). • Second, the application of s54 (2)(b) and how the concept of "relevant holder" will work in the context of joint ventures is unclear. For example, in the context of a 50/50 unincorporated joint venture such as BMA: ○ As drafted, the scheme manager would have regard to the total estimated rehabilitation costs for only one of the JV partners – in effect disregarding the rehabilitation costs of authorities outside of the JV held by the other JV partner – which has potential to significantly underestimate the fund's exposure to the JV participants (this is because the other JV participant in an unincorporated JV will not be a related entity, and will not be controlled by a common parent per the Corporations Act definitions); ○ Further, companies which are owned by a 50/50 JV (whether incorporated or unincorporated) will not be "controlled" by either JV participant (per the definition in s 50AA of the Corporations Act), which would exclude them from the calculation of the total estimated rehabilitation cost. It is also unclear where the obligation to pay into the fund alongside the obligation to provide surety sits, depending on which entity has been selected as the Relevant Holder. For example, in an 80:20 JV, if the 80% participant has been identified as the Relevant Holder, would it have to contribute to the fund up to the $450 million threshold, or would the contribution to the fund be split between the two JV participants? If this is the case, there is potential to engender competition between JV partners over which partner is the Relevant Entity in order to determine which partner has to participate in the fund. This will require negotiation and agreement between existing JV participants, which adds unnecessary commercial tensions, cost and complexity, and potentially the reopening of long-established JV agreements. These issues require clarification for the Bill to be workable. • Third, there is currently no requirement in s 53 (c) or s 54 to have regard to the views or preferences of the authority holder in terms of either how the total ERC should be calculated in their case, or whether contribution to the fund or provision of surety is determined (some holders may prefer to provide surety than to participate in the fund). • Fourth, there should be a requirement (similar to that contained in s 27 (2) and (3)) for the scheme manager to have regard to the guidelines for determining what is necessary "to preserve the financial viability of the fund". At present, s 70(1)(c) provides for the making of such guidelines, but there is not a corresponding requirement to have regard to those guidelines.	**As above** Amend the default position in s 49 to be that the fund threshold is applied across all authorities held by the holder's corporate group, rather than applied separately to each authority. Amend s 53 to: • Provide that the scheme manager "must" have regard to the matters in s 53 (a), (b); • Clarify application of the total ERC cost calculation in the context of joint ventures (JVs) - and in particular 50:50 JVs; • Require consideration be given to holders' submissions on the matters addressed by s 53; • Require consideration to be given to guidelines detailing how the "financial viability of the fund" is to be determined in the context of s 53 (b).

No.	Concept	Issue	Section	BHP Response and Feedback	Recommended Solution
3	Fund	Definition of "fund threshold"	S 11	In recommending a prescribed amount for the fund threshold under s 11 (2), the Minister should also be required to have regard to the views or recommendations of the Advisory Committee established under s 83. In addition, the default figure for the fund threshold [$450 million] is too high, and results in low risk companies having a high exposure to the risks of other fund participants. Consider reducing this figure (the original proposal was $400m).	Amend the definition of fund threshold in s 11.
4	Authority Holders	Determination of "relevant holder" of an authority	S 27 (5)	As drafted, if there is more than 1 holder of an authority (which would be the case with most large mining projects in Queensland, which are typically unincorporated JVs), the Bill now gives the scheme manager the ability to "assign the authority" to only 1 holder, defined as the "relevant holder". It is unclear what "assign the authority" means, as the definition in s 27 (5) applies much more broadly than just in the context of risk category allocations under Part 3, Division 1. As noted above, this definition has potentially significant implications under sections 49, 53 and 54. At the very least, there should be criteria contained in s 27 (5) for how the scheme manager determines the "relevant holder". Further, it is noted that s 70 (1)(b) provides for the development of guidelines for the "assigning of authorities to a relevant holder" however, there is no requirement under s 27 (5) to have regard to the guidelines when making the assignment decision.	Add criteria for determination of "relevant holder" in s 27 (5). This should include consideration of submissions made under s 28 (see below) and having regard to guidelines prepared under s 70 (1)(b).
5	Risk Allocation	Criteria for assessment of risk category allocation	S 27 (3)(b)(i) and (ii)	The criteria under s 27 (3)(b)(i) and (ii) should be mandatory criteria.	Move the criteria under s 27 (3)(b) (i) and (ii) to sit under s 27 (3)(a) as mandatory assessment criteria.
6	Decision-Making	Requirement to consider submissions when making certain decisions	Ss 27-30	There is currently an obligation on the scheme manager to provide an opportunity for the holder to make submissions to the scheme manager in respect of matters including the identity of the "relevant holder", and whether a contribution to the fund or a surety should be required. However, there is no requirement to have regard to the submissions when making the decision on those matters. The Bill should be amended to require the scheme manager to have regard to the holder's submissions when deciding any/all the matters which about which the holder may make submissions under s 28.	Amend Bill to require consideration of s 28 submissions by holders when deciding matters that may be covered by the submissions under s 28 (e.g. the decision in s 27 (5) (c)).
7	Timeframes	Short timeframes for the provision of surety	S 55 (3)	30 business days is too short for arrangement for provision of surety and will present difficulties, particularly when the large amounts and the complexity of financial arrangements are considered (negotiating bank guarantees worth hundreds of millions of dollars across a number of banks is not a simple or quick process, nor are the timeframes within the control of the holders – holders are in the hands of the banks' processes). While it is acknowledged that there is a discretion for the scheme manager to provide an extension to this timeframe, that does not provide certainty to holders – it would be greatly preferable to start with a realistic timeframe. This is particularly significant in the context of the proposed EP Act amendments which as currently drafted would mean a mine would have to cease operations if it could not meet the timeframes. Extending the timeframe 90 business days will make this more workable for industry as the starting position; however the discretion to extend timeframes should also be retained.	Expand the timeframes for the provision of surety under s 55 (3) to 90 business days.
8	Advisory Committee	Advisory Committee representation	S 83	Given the very different rehabilitation considerations, there should be 2 representatives of the mineral and energy resources sector, with 1 representing each of the mining and petroleum/gas industries.	Amend s 83 (3) to change requirements for advisory committee representation.

Annexure 2 – Feedback and Recommendations on the Bill's Rehabilitation and Closure Provisions

No.	Concept	Issue	Section of the EP Act (new numbering)	BHP Response and Feedback	Recommended Solution
1	Definitions	"post-mining land use"	S 112, definition of post mining land use and s 126D	Post-mining land use is defined as: "…for land the subject of a PRC plan, means the purpose for which the land will be used after all relevant activities for the PRC plan carried out on the land have ended." Linking the definition of post mining land use to actions under the PRC plan implies that a post mining land use can only be achieved once rehabilitation is undertaken. However, section 126D provides that post mining land use may apply in the absence of rehabilitation (i.e. in respect of non-management areas (voids)). Specifically, section 126D provides that land will not be "available for rehabilitation" if the land contains "permanent infrastructure identified in the proposed PRCP schedule as remaining on the land for a post-mining land use."	Redefine post-mining land use as follows: "Post-mining land use, for an area of land, means the purpose for which the land will be able to be used after mining activities under the tenure have been carried out." Further, we consider that the definition of post-mining land use should not apply in ascertaining whether a 'stable condition' has been achieved in respect of a void. Please see our further comments at section 3 of this submission.
		"PRC Plan"	S 112	PRC plan is defined as the PRC plan for land 'the subject of a mining lease'. This definition requires clarification. The PRC plan is required to accompany a site specific application made under the EP Act. Site specific applications for environmental authorities may relate to activities being conducted on multiple mining leases. The definition of PRC plan indicates that each PRC plan will apply to a single mining lease, as opposed to the land the subject of the site-specific application.	Our preference is for a consolidated process to apply where the holder of several environmental authorities can utilise one PRC plan for multiple environmental authorities. See our further comments at section 2 of this submission. Whether or not this preference is accepted by the Committee, the definition of PRC plan should be amended as follows: *"PRC plan, for land the subject of ~~a mining lease~~ the site-specific application, means a progressive rehabilitation and closure plan for the land that consists of—* *(a) The rehabilitation planning part of the plan; and* *(b) The PRCP schedule for the plan, including any conditions imposed on the schedule."* This amendment should also be carried through to the drafting of a new section 125 (1)(n).
2	Proposed PRC Plan	General	Multiple sites	For operators who have multiple sites managed and operated by the same operating entity (each under a different environmental authority), the 'rehabilitation planning part' of the proposed PRC plan will be substantially the same for each site. It is sensible in these circumstances for there to be one 'rehabilitation planning part' that applies to all sites operated and managed by that holder, with a PRCP schedule for each environmental authority. This model is used successfully by BHP in Western Australia. The model prevents the operator having to replicate the same 'rehabilitation planning part' for each site, and reduces the workload of the Regulator in having to review the same 'rehabilitation planning part' multiple times. It also avoids a situation where the operator must give multiple copies of the same change to the 'rehabilitation planning part' if an amendment is made and avoids the Regulator having to amend the register for the same change multiple times.	Provision should be made in the Bill for the holder to utilise one 'rehabilitation planning part' for multiple environmental authorities (which are held by the same holder), while maintaining the status quo that each environmental authority must have its own PRCP schedule.

No.	Concept	Issue	Section of the EP Act (new numbering)	BHP Response and Feedback	Recommended Solution
		General	Information Requests	Given that the 'rehabilitation planning part' of the PRC plan is not enforceable, we have concerns about requests for information in respect of the material forming part of the 'rehabilitation planning part'. This is particularly the case when the entire PRC plan will be on the public record. There is the possibility that this could result in an unworkable administrative burden for operators and, perhaps more importantly, it could result in commercial in confidence material being required to be disclosed, having unnecessary and unintended consequences for operators.	The Bill should be drafted so as to limit the Regulator's right to request information in relation to matters which are not directly relevant to the PRCP schedule. Further, operators should be expressly exempt from having to provide commercial in confidence material to be placed on the public record
		Main purpose of the PRC Plan	S 126 B	Section 126BA (a) is factually inaccurate – the purpose of a PRC plan is not to provide for the way in which environmentally relevant activities under a mining lease will be carried out. In particular, this is inaccurate in respect of existing operations which have already established mine plans based on a number of factors including environment/accessibility. Generally, this section is unnecessary and does not serve a helpful purpose.	This provision should be deleted in its entirety. In the alternative, section 126B (a) should be deleted.
		Content of the Proposed PRC Plan	S 126C	There is information required in the draft provisions for the PRC plan which is already provided in the environmental authority. This includes, for example, tenure and relevant activities. We do not agree that duplication of information is necessary. The reference to 'relevant activities' in section 126C (1)(b)(ii) is too broad and could be interpreted to mean all activities authorised under the environmental authority. We do not agree that all activities should be referenced in the PRC plan – it should be limited to rehabilitation. Further, requiring a detailed description of how such activities, under section 126C (1)(c)(i), are to be carried out limits the flexibility for operators and will trigger continual amendments to the PRC Plan which is burdensome and unworkable for both operators and the Regulator. For example, as technology advances, new methods for rehabilitation are becoming available and restrictions on method will restrict such advancement. It is relevant only that rehabilitation activities are undertaken – not how they occur.	Remove all information which is provided under the environmental authority from the PRC Plan content requirements in s126B. The reference to "relevant activities" in section 126B (c)(i) should be expressly limited to activities relevant to rehabilitation. No prescriptive details of how rehabilitation activities are proposed to be carried out should be required to be included in the PRC Plan.
		Content of the Proposed PRC Plan	S 126C (1)(d)	Section 126C (1)(d) requires the operator to demonstrate that each non-use management area and post-mining land use area are consistent with both the outcome of consultation with the community and any strategies or plans for the land decided by local government. This is impractical and unachievable. Community consultation can result in many different suggestions regarding post-mining land uses, and those suggestions may be both impractical and economically unviable, as well as in conflict with government strategies. Different community groups may also have conflicting suggestions. The above process does not facilitate flexibility nor is it practically achievable. Further, it is possible that outcomes from consultation are inconsistent with plans and strategies decided by local government.	Section 126C (1)(d) should be deleted. In the alternative, section 126C (1)(d)(i) should be deleted. Otherwise, the wording of the Bill should be amended such that the post-mining land use/non-use management areas is to be 'informed' by community consultation and government strategies as opposed to being 'consistent' with.

No.	Concept	Issue	Section of the EP Act (new numbering)	BHP Response and Feedback	Recommended Solution
		Consultation on the Proposed PRC Plan	S 126C (1)(c)(iii)	There is no guidance currently provided in respect of what will constitute adequate consultation in the development of the proposed PRC Plan.	Guidance material is required to be provided to operators in respect of consultation. Specifically, we think guidance is required in relation to: • Who must be consulted; • The timing and duration of consultation; and • The content of the consultation.
		Information and Notification Stages	S 139 (1)(b) and 150 (1)(c)	The same concepts applying to the amendment provisions (refer to section 4 below) should apply to the re-application of the information and notification stages under the application process.	The triggers for reapplying the information and notification stages should be amended to include a materiality threshold.
3	PRCP Schedule	Requirements for proposed PRCP schedule "non-use management areas"	S 126D (2)	An area is not required to be rehabilitated if it is a "non-use management area". Land may only be a non-use management area if: • Carrying out rehabilitation of the land would cause a greater risk of environmental harm than not carrying out the rehabilitation; or • Both of the following apply— ○ The risk of environmental harm as a result of not carrying out rehabilitation of the land is confined to the area of the relevant resource tenure; ○ Failing to rehabilitate the land to a stable condition is justified, having regard to the costs of rehabilitation and the public interest in the resource activity being carried out. In some circumstances, environmental harm cannot be contained exclusively to the resource area. For example, where operators have connecting resource areas (i.e. adjacent MLs) and there is an impact on groundwater across those MLs or where there are minor ongoing impacts which cannot be contained to a single resource area (i.e. minor dust emissions for a decommissioned tailings dam). Where environmental harm cannot be contained to a single resource area, operators should take all reasonable and practicable steps to implement measures to control and minimise any harm. The cost/public interest test in section 126D (b)(ii) of is not clear. In particular, it is not clear: • What is meant by 'public interest in the resource activity being carried out'; • How the level of public interest in the resource activity be assessed (i.e. will the regulator base the level of 'public interest' on previous community consultations? Will there be a submission/notice period?); and • How the test will be applied - what level of public interest will override financial/costs constraints? This is particularly an issue for those projects where environmental authorities are silent on the requirements of rehabilitation because, in those instances, existing projects have been pursued with an understanding of the final rehabilitation liability and a lack of clarity around the costs/public interest test could contradict the financial basis upon which investment has been made.	Section 126D(2)(b)(i) should be amended as follows: *"the risk of environmental harm as a result of not carrying out rehabilitation of the land is confined to the area of the relevant resource tenure <u>or where it cannot be contained to the area of the relevant resource tenure, the operator has implemented all reasonable and practicable controls to minimise the risk of environmental harm".</u>* Further consultation with existing environmental authority holders is required in respect of what constitutes a reasonable cost test for the purposes of section 126D (b)(ii), and to better understand the impact of the potential retrospective operation of this definition.

No.	Concept	Issue	Section of the EP Act (new numbering)	BHP Response and Feedback	Recommended Solution
		Requirements for proposed PRCP schedule “non-use management areas”	S 126D (3)	The Bill stipulates that a final void on a floodplain cannot be a non-use management area. This should be strictly limited to have prospective application, as to do otherwise could significantly impact the financial viability of existing projects. It is not clear what constitutes a flood plain under the Bill and this needs to be further clarified. Additionally, it is not clear how a void will be able to sustain a “post-mining land use” (which is a requirement of achieving a stable condition).	Transitional provisions should operate to ensure that section 126D (3) does not have retrospective effect. Additionally, existing operations should be able to grandfather voids in flood plains to the non-use management area standard of best practice management of the area and minimises risks to the environment. A definition of “floodplain” should be included into the legislation. Any definition of this term should fix the area of the floodplain by reference to a stipulated flow severity (e.g. annual exceedance probability). The term “void” in section 126D (3) needs to be re-defined to be limited in its application to mining excavations. The test for “stable condition” as it applies to voids should exclude a requirement for the void to be able sustain a “post-mining land use”.
		Land available for rehabilitation	S 126D (5)	The Bill requires that the PRCP schedule must provide for each rehabilitation milestone to be achieved as soon as practicable after the land to which it relates becomes 'available for rehabilitation'. The Bill provides that land is 'available for rehabilitation' if the land is not being 'mined', unless— • the land is being used for operating infrastructure or machinery for mining, including, for example, a dam or water storage facility; or • the land is identified in the proposed PRCP Schedule or the application for an environmental authority for relevant activities to which the Schedule relates as containing a resource to be mined within 10 years after the land would otherwise have become available for rehabilitation; or • The land contains permanent infrastructure identified in the proposed PRCP Schedule as remaining on the land for a post-mining land use. BHP has a number of concerns with the definition of ‘available for rehabilitation’, these are as follows • There is no definition in the Bill of the term “operating infrastructure or machinery for mining”. The term “operating” is unclear and potentially misleading. • The reference to a resource being identified for extraction within 10 years is unworkable. The timeframe within which reserves are scheduled for extraction in long-life assets varies depending on a multitude of factors included various attributes of the resource, customer product specifications, geotechnical considerations, commodity prices, exchange rates and development costs. In this context, the resource which is identified for extraction will change constantly. On the current wording of the Bill, this would trigger continual amendments to the PRCP schedule, which would be burdensome and unworkable for both operators and the Regulator.	The term “operating” should be deleted. A definition for the term “infrastructure or machinery for mining” should be included in the Bill. Any definition for this term must be broad enough to include all infrastructure required now or in the future to support mining operations. Section 126D (5)(b) should be amended to delete the reference to the 10 year time horizon and instead exclude any land from the definition of ‘available for rehabilitation’ which is identified in the proposed PRCP schedule or the application for an environmental authority as; • A proven resource identified as viable for extraction in the PRCP schedule; or • An area necessary to support future mining of the resource. If reference to a time horizon is to remain, the Bill should include a transitional provision to ensure that the existing operations are exempt from this provision.

No.	Concept	Issue	Section of the EP Act (new numbering)	BHP Response and Feedback	Recommended Solution
				Continued from above • If rehabilitation is required to be carried out on areas which are to be the subject of further resource extraction at a time which is more than 10 years in the future, this could have the impact of making it economically unviable to extract resources which would otherwise have been mined, thereby unintentionally sterilising resources. As many mining leases in Queensland have been granted on the basis of an 'acceptable level of development and utilisation' (refer section 271 of the *Mineral Resources Act*), the sterilisation of resources would erode significant value for operators and the State, and could potentially jeopardise compliance with already agreed and implemented mining lease conditions. The rehabilitation discussion paper contained a definition that referred to being 'viable for extraction', which BHP saw as a workable solution. • Additionally, there is a risk that operators may be required to commence rehabilitating areas where it is not presently mining a resource (and do not plan to within the next 10 years), and then potentially seek to re-open those areas for mining in response to changed economic conditions. • It is not only areas 'overlaying a probable or proven resource identified for extraction in the PRCP schedule within 10 years' which need to be carved out from area available for rehabilitation, but also all areas necessary to support the future extraction of a proven and probable reserve identified for extraction. For example, areas for waste rock disposal, dams and other infrastructure which will be required to support future mining activities should not be required to be rehabilitated now, only to be re-used for operations at a time in the future. This is economically unviable, and does not ultimately achieve the rehabilitation obligations which are intended by the Bill. It is noted for completeness that these concepts may also impact on sites which are in care and maintenance. However, as we have not yet seen the relevant provisions relating to care and maintenance, we are unable to comment on this aspect at this time.	
		Conditions for PRCP schedules	S 206A (1)	The requirement to comply with the EA is already mandated by the *Environmental Protection Act*, so this provision is unnecessary.	Section 206A (1) should be deleted.
		Conditions for PRCP schedules	S 206A(3), S 431B and S 431C	The Bill provides that the PRCP schedule must, among other things: • Specify when each rehabilitation milestone is to be achieved for each proposed post-mining land use; and • Specify when each management milestone is to be achieved for each non-use management area (e.g. a void). Section 431B and 431C of the Bill make it an offence to contravene a condition of a PRCP schedule. This will have the effect of requiring operators to amend the PRCP schedule in order to reflect changes to operations/plans to ensure milestones and deadlines remain current. In light of the requirements around the obligation to publicly notify amendments, this can result in costly and administratively burdensome outcomes. Please see section 4 of Annexure 2 for further commentary on this point.	A new test for publicly notifying amendments to the PRCP schedules should be introduced (see section 4 of this submission for more information).

No.	Concept	Issue	Section of the EP Act (new numbering)	BHP Response and Feedback	Recommended Solution
4	Amendment to PRCP Schedule	Major amendment thresholds	Amendment requirements generally and s 160 (2)(b)	Based on the definition of minor amendment (PRCP threshold) there are a number of circumstances where amendments to the PRCP schedule which trigger a public notification process and will give rise to objection rights. This can result in costly and burdensome outcomes. For example, BHP will be required to go through a public notification period, with objection rights, if any of the following are triggered: • A change to a post-mining land use or non-use management area to reflect a better post-mining land use in response to new technological innovations will require public notification. For example, ○ Where a large site has multiple post-mining land uses for different areas of the site, a minor change to the boundaries of the areas to which each post-mining land use applies should not be a material change. ○ Where a PRCP schedule requires 5000ha of grazing land in the final landform, changes to the specific areas of the site on which this grazing land is situated should be immaterial. ○ A post mining land use is dictated by changes to the local government plans and strategies, the resultant amendment to the PRCP schedule should not trigger a major amendment requiring public notification. Substantial public notification and consultation is provided for under the relevant planning laws and processes. • A change to when a rehabilitation milestone or management milestone will be achieved by more than 5 years after the time stated in the schedule when it was first approved; having regard to the cyclical nature of mining activities, such changes may well be necessary. • Extending the day by which rehabilitation of land to a stable condition will be achieved. • Again, given the nature in which the commodity cycle moves, the date by which a stable condition will be achieved may well vary significantly as resources become more or less economic to mine. • In addition, factors which confirm that land is in a 'stable condition' such as 'the land can sustain a post-mining land use' are not wholly in control of BHP. E.g. factors such as drought can significantly impact when these outcomes will be achieved. The Bill provides that the regulator will have a limited discretion not to require public notification in circumstances where: • The operator has 'undertaken adequate consultation with the community in relation to the proposed amendment'; and • The regulator is satisfied the proposed amendment would not be likely to attract a submission objecting to the thing the subject of the amendment, if it was publicly notified. As mentioned previously, what constitutes ‘adequate consultation’ under the Bill is not clear. Additionally whether the amendment is likely to attract a submission is subjective and gives no certainty to operators.	Paragraph (a) of the definition of ‘minor amendment (PRCP threshold)’ should be amended to include a materiality threshold. Major amendments should be triggered only by a material change to community expectations or the environmental outcome of rehabilitation activities. For example, a materiality test similar to the materiality test applied to environmental authorities under the current s 230 of the EP Act could be applied. Under section 230, the regulator may require public notification for a major environmental authority amendment where it is satisfied that: • There is likely to be a substantial increase in the risk of environmental harm under the amended environmental authority; and • The risk is the result of a substantial change in— ○ The quantity or quality of contaminant permitted to be released into the environment; or ○ The results of the release of a quantity or quality of contaminant permitted to be released into the environment. We would welcome the opportunity to discuss with the Committee, on a more specific basis, the application of a materiality test/threshold.

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			S 223	Paragraph (c) of the definition of 'minor amendment (threshold)' relates to rehabilitation and should not be a consideration for amendments to the environmental authority.	Delete paragraph (c) of the definition of 'minor amendment (threshold)'.
		Interactions of EA and PRCP amendments	--	While the Bill does not expressly deal with the interaction of an environmental authority amendment and a corresponding PRCP Schedule amendment, it is available to operators under the current drafting to keep the two amendment applications independent of each other. However, practically, the Regulator may wish to combine related applications and treat these as a single process. This raises concerns for operators in respect of timing and could potentially fetter the discretion currently afforded to the Regulator in respect of whether to mandate public notification for major amendments to environmental authorities.	From a practical perspective, amendments to environmental authorities and amendments to PRCP Schedules (whether related in content or not) should be kept entirely independent of each other.
5	Auditing	Requirements of Audit Report	S 286 (b) and (c)	Sections 286 (b) and (c) require an auditor to make recommendations about actions the holder should take to ensure rehabilitation milestones are achieved or conditions are complied with, and to include an assessment of whether the post mining land uses are likely to be achieved. As an audit is, by definition, against a standard, including these requirements on an auditor is unreasonable and impractical. Requesting an auditor to express an opinion about potential future outcomes, in respect of which they have not observed any evidence, is not an audit and is outside the remit of most auditors' experience and expertise and is therefore impractical. There are adequate measures in the Bill to incentivise and ensure compliance by operators. The requirement to have an auditor speculate on future compliance is unnecessary and adds no substantive benefit.	Sections 286(b) and (c) should be deleted. In the alternative, if the Regulator requires a forward looking statement on the matters addressed in sections 286 (b) and (c), it is the holder who is best placed to provide this prediction.
6	ERC Decisions	Conditions about ERC decision	S 297	Section 297 is unworkable in its current form. Section 297 (a) and (b) provide that it is a condition of an environmental authority that the holder must not carry out, or allow the carrying out of, a resource activity under the authority unless: • An ERC decision is in effect for the resource activity ; and • The holder has paid a contribution to the scheme fund or given a surety for the authority under the MERFA Act 2018. Throughout the term of an environmental authority, operators will have to reapply for ERC decisions. If a new ERC decision is made, and a new amount of a contribution or surety is required, then under the Assurance Bill, the operator will have (under our recommended timeframes) 60 or 90 days (as applicable) to pay the contributions. However, section 297 (b) provides that during this 60 to 90 day period, before the contribution or surety has been paid, the operator will either be in breach of section 297 (b) or will have to cease resource activities (i.e. mining operations will have to shut down every time a new ERC decisions is made). It is our understanding that this is not the intention of the Bill (and is inconsistent with the timelines in the Bill which allow operators time to pay a contribution or give a surety). Instead the requirement should be for the holder to pay the contribution to the scheme fund or provide the surety by the time frames stated under the MERFA Act.	Section 297(b) should be amended as follows: *"(a) The holder has paid a contribution to the scheme fund or given surety for the authority by the relevant due dates as set out under the MERFA Act 2018."*

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7	Transitional Provisions	BHP Transition	-	BHP complies with existing requirements and sufficient notice must be given to make the necessary changes.	The Government must provide early confirmation to industry of the commencement date of the new legislation.
		Timeframes	S 754 (1)(b)	Given the number and size of BHP operations, it is critical that adequate time is provided to respond to the notice from the Regulator. It is equally important that over-consultation with local communities during the transitional period is avoided.	The timeframe stipulated under section 754 (1)(b) should be agreed in consultation with the operators. Provision should be made to permit group consultation with communities during the transitional periods (rather than each operator carrying out community consultation concurrently with the same community).
		Notification	S 755	The transitional provision states that the requirement to notify the PRC plan will not apply if: (a) An EIS for the activities has been completed or a proposed post-mining land use for the land is stated in the environmental authority or plan of operations; and (b) Since the EIS process was completed or environmental authority was issued, a post-mining land use or non-use management area for the land has not changed. The Explanatory Notes provide the following example: *For example, public notification for an existing site will not be required where the rehabilitation outcomes proposed in the PRC plan are the same as those approved in the environmental authority. However, public notification will be required if, for example, in the environmental authority the post-mining land use for an area was approved as forestry, but in the PRC plan the post-mining land use for the same area is being proposed as grazing.* Many of BHP's operations in Queensland were not required to complete an EIS at the time of approval, being approved under the *Central Queensland Coal Associates Agreement Act*. In addition, many of BHP's environmental authorities do not stipulate a post-mining land use or identify non-use management areas. This means that BHP is now required to publically notify each of its proposed PRC plans.	Section 755 should be amended to not apply the notification stage to any PRC plans for existing operations transitioning into the new regime. The notification stage should only apply to new operations commencing after the commencement date. In the alternative, section 755 (4)(a)(ii) should be broadened to not only refer to an environmental authority, but also to any studies, plans or other work done by the operator in respect of rehabilitation that has been previously submitted to the Regulator for review and comment. In addition, the trigger for notification should resemble the recommendations set out in 4 above.
		Transition of EA conditions into PRC Plan	-	We understand that a Guideline is to be developed which will provide for existing provisions in environmental authorities concerning rehabilitation to be transitioned over to PRC plans. It is currently unclear what will occur for operations whose environmental authorities are currently silent on rehabilitation obligations or otherwise do not comprehensively set out obligations for rehabilitation. In the case of many of BHP's operations in Queensland, while the environmental authority may not comprehensively deal with rehabilitation obligations, there are requirements for plans, studies and other works to be completed in respect of rehabilitation. It is BHP's expectation that this work will be transitioned over to PRC plan under the proposed Guideline.	The proposed Guideline must provide for environmental authority conditions, plus plans, studies and other works in respect of rehabilitation, to be transitioned over to the PRC plan.