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Committee Secretary
Economics and Governance Committee Parliament House
Sent via email only: egc@parliament.qld.gov.au

Dear Committee,

Submission: Mineral and Energy Resources (Financial Provisioning) Bill 2018 (Bill)

Thank you for the opportunity to make a submission on the Bill. This submission is made on behalf of Brisbane Residents United, Brisbane's peak body for community resident actions groups. The charter of the BRU group is:

- Represent Brisbane and surrounding district residents and provide them with a united voice to Governments on matters pertaining to urban planning and development – the concept of united we might be heard, divided we are simply ignored and
- Act as a resource centre, facilitating information sharing across established and start-up local resident associations.

The mining industry in Australia is given a degree of governmental support and social license that is afforded virtually no other industry. With that support and license comes an unwritten contract that they must do the best they can to protect and repair the environment that is necessarily disturbed by their industry. This environment repair and repatriation must be considered as part of the usual costs of doing business for the mining industry.

We support the Queensland Governments much needed improvements to the management of the risks posed by financial failure in the mining sector. For too long Queenslander's have either been forced to pay to clean up after mines have been abandoned, or have had to tolerate the approval of final landforms that have resulted in serious on-going environmental risks, in particular impacts on surface and groundwater resources. These environmental outcomes and imposts on the taxpayer purse should no longer be tolerated.

The Queensland Audit Office raised this issue in 2014 reporting that Queensland has 15,000 abandoned mines and a debt of approximately $1 billion.1 An internal Department of Environment and Heritage Protection report cited a $3.24bn deficit for financial assurance held by the State against coal mine rehabilitation costs.2 The Queensland Treasury Corporation (QTC) confirmed the significance of the mine rehabilitation issue in their Review of the Queensland's Financial Assurance Framework in 2017.3

This Bill does not move us sufficiently beyond the status quo.

This Bill as drafted still allows for mines to leave un-rehabilitated final voids as well as providing for extremely broad exemptions from the requirement to fully rehabilitate land on the grounds of cost and that any environmental harm and risk is localised (see non-use management areas point 1 summary of recommendations below). These loopholes effectively undermine the entire reform package because they allow the continuation of the current situation that the QTC has identified poses a significant material risk to the Queensland taxpayer. Unless mine rehabilitation outcomes are updated to both reflect public expectations and give the industry certainty, this entire exercise will have been fatally compromised.

If they can afford to mine the area they can afford to clean it up. Who judges the risks and the amount of acceptable environmental harm for a local area? As the community has already witnessed the failures in other environmental jurisdictions, what is the proposed effective oversight and compliance mechanism?

There is little doubt that the mining industry wants to see its social licence to operate protected and certainty in regards to what is expected in terms of acceptable final landforms which would allow mining leases to be fully relinquished. Equally the community wants to see;

> Rehabilitation close to previous natural or farming condition - pits refilled to near original surface level, groundwater protected and original types of vegetation replanted.4

1 Queensland Audit Office, Environmental regulation of the resources waste industries, Report 15: 2013-2014, https://www.qao.qld.gov.au/sites/qao/files/reports/rtp environmental regulation of the resources and waste industries.pdf.

2 Report of Targeted Compliance Program, Financial assurance for Queensland coal mines (TCP-009), 29 January 2016

3 Queensland Treasury Corporation, Review of Queensland's Financial Assurance Framework, April 2017, https://s3.treasury.qld.gov.au/files/review-of-queenslands-financial-assurance-framework.pdf.

4 Public Opinion on Mine Rehabilitation Briefing Note, The Australia Institute, June 2016

In the Queensland election last year, Queensland Labor made mine rehabilitation a major plank of its election platform, and committed to ensuring;

> "that all land disturbed by mining activities is rehabilitated to a safe and stable landform that does not cause environmental harm and is able to sustain an approved post-mining land use"5

Loopholes in this legislation in relation to final landforms and final voids mean that promise will be broken. This is a very serious breach of trust – the community rightly expects major election promises to be kept, and it is vital that changes are now made that reflect the commitments that were made by Labor.

Loopholes in the legislation also compromise attempts to protect the industry's social licence, create ambiguity in regards to acceptable outcomes and fail to deliver on the public's expectations. The legislation, in its current form, does not raise the bar to a level that meets world's best practice, a standard that Queenslanders deserve.

By way of example, in the USA the coal industry is regulated under the Surface Mining Control and Reclamation Act. Passed in 1977, this Act requires the coal industry to:

- restore the approximate original contour (AOC) of the land by backfilling, grading, and compacting;
- minimize disturbances to the hydrologic system and preventing additional contributions of suspended solids (sediments from erosion) to nearby streams and other water bodies;
- restore the land as soon as practicable after the resource has been extracted, and as the mining operation moves forward; and
- establish a permanent vegetative cover in the affected area.6

By way of contrast, the only large coal mine in Queensland entering the final rehabilitation, closure and relinquishment phase is the Ebenezer Mine adjacent to the suburb of Willowbank south-west of Ipswich. In stark contrast to the measures designed to protect the interests of US taxpayers, the Department of Environment and Science (DES) has approved two large un-rehabilitated voids, a poorly designed waste rock dump and an un-rehabilitated tailings dam as the final landform. The pits are filled with water, the quality of which is not known and the Department has failed to

5 Letter to the Lock the Gate Alliance from Jacki Trad Deputy Premier, undated 2017

6 Adapted from Mark Squillace, 2009 https://sites.google.com/site/stripmininghandbook/a-brief-review-of-smcra

enforce conditions within the environmental authority which require a tailings dam decommissioning plan and a final void rehabilitation plan. No risk assessment or mitigation study has been undertaken.

Residual risk payments are a crucial element in reducing risk faced by failures in resource activity projects

The QTC Report recommends that a payment and process be implemented to account for residual risks left from a closed resource site, to protect the state against the damage of mine sites that continue long after the mine has been closed. It is essential that the Queensland Government introduces this payment as an upfront payment from the commencement of the mine. This will help to ensure that all impacts of a project are considered, valued and accounted for when the proponent is applying for and the government is assessing a project. Unfortunately this was not included in the Bill as it is still being considered by the State Government. Brisbane Residents United is strongly advocating that this initiative is introduced as part of this reform package as another measure that will protect the interest of taxpayers and drive improved environmental outcomes.

Below is a summary of our key recommendations, with detailed submissions to support these recommendations provided in Appendix A.

Summary of recommendations;

1. Ensure all final landforms are rehabilitated and able to sustain a post-mining land use

   Remove any references to 'non-use management areas' as a post-mining land management option in the Bill – un-rehabilitated final voids and poorly-remediated waste rock dumps and tailings dams should no longer be permitted in Queensland. Consistent with clearly stated Queensland Labor election promises, all final landforms should be rehabilitated and able to sustain a post-mining land use without exception, so that the public interest is protected and the industry is provided with certainty in regards to required rehabilitation outcomes.
2. Ensure that rehabilitation milestones are enforceable with limited flexibility to provide certainty of enforceability
3. Improve transparency and accountability – the risk faced by the state from resource activities is a public interest matter

4. Support the dedication of funds accrued from the scheme to manage and rehabilitate abandoned mines, and for use where there is general environmental harm.
5. The proposed introduction of Progressive Rehabilitation and Closure Plan (PRC Plan) is a very positive measures
6. Improvements needed to strengthen PRC Plans and public consultation requirements
7. Timing and procedure for progressive rehabilitation and availability of mined land must be clarified and strengthened
8. Estimated Rehabilitation Cost (ERC) decision provisions are a good start but can be improved
9. Transitional provisions must ensure highest risk/ poorest rehabilitated mines are dealt with first
10. Environmental record of company should not be unnecessarily limited to Australia nor exclude parent company activities
11. Surety and financial assurance (FA) related amendments needed to ensure effectiveness of reforms by improving transparency and accountability around this decision
12. Independence of scheme manager must be strengthened through advice of expert panel and avoiding potential conflicts of interest
13. Improvements needed to risk category allocation to ensure all relevant material is required to be considered
14. Ensure effective review on change of holder to protect against risks
15. Offence provisions must be strengthened
16. Petroleum activities should be included in this reform package as they also can cause substantial damage that is expensive to rehabilitate.

We call on the Queensland government to give serious consideration to our concerns to ensure that Queensland is moving towards the best mining legislative system in Australia; one that truly inspires confidence and certainty from all stakeholders and empowers our communities to meaningfully participate in the process. Our organisation would appreciate the opportunity to discuss the contents of this submission directly with the Committee through the hearing process. Please do not hesitate to contact us if you have any questions or would like to discuss this matter further. I can be contacted on [redacted].

Yours sincerely,

Elizabeth Handley

President Brisbane Residents United Inc

APPENDIX A

Recommended improvements:

1. Remove 'non-use management area' from the Bill: (Cl 104, s126D(2))

A. Un-rehabilitated final voids must be prohibited. This must be applied to all existing lease holders as well as new developments.

B. Proponents should not be allowed to apply to have 'non-use management areas', which will not be required to be rehabilitated, simply because the cost is perceived to be too great for the proponent and the impacts localised to the site. All sites should be required to ensure that all land disturbed by mining activities is rehabilitated to a safe and stable landform, does not cause environmental harm and is able to sustain an approved post-mining land use. No exceptions should be permitted. The current practice of allowing large areas of land to be permanently sterilised from any future economic, conservation or community use must no longer be permitted.

C. Clause 203, new section 755, should be amended to require an assessment of risk when areas under existing authorities are allowed to not be rehabilitated under sub-section 755(3). The risk assessment should include consideration of the site risk profile category under section 29(3)(a)(ii) and the quantum of financial assurance either payable to the scheme fund or as surety. Residual risk payments should be increased where any area is allowed to remain un-rehabilitated to account for this increased risk.

No land in Queensland should be allowed to be prevented from any future activities simply because a resource company did not deploy industry leading practice life-of-mine planning or set aside adequate provisions for site rehabilitation. The Queensland Resources Council and its members purport to adopt the International Council on Mining and Metals best practice mine closure principles and guidance. The fact that QRC member companies choose not apply this best practice to their operations is an issue for their management and shareholders, not Queensland taxpayers and mine affected communities.

Queensland Labor committed as a key plank of its election platform:

> *"that all land disturbed by mining activities is rehabilitated to a safe and stable landform that does not cause environmental harm and is able to sustain an approved post-mining land use"7*

7 Letter to the Lock the Gate Alliance from Jacki Trad Deputy Premier, undated 2017

This promise is not adequately reflected in the draft legislation and in fact it is severely undermined because of the inclusion of 'non-use management areas' as an option in the Bill.

Cost should not be an excuse to leave an area un- rehabilitated. All mining companies are required to include a provision in their accounts to deal with the financial liabilities posed by mine site rehabilitation. All companies are obliged under international accounting standards to undertake a closure cost estimate to set these provisions. These cost estimates must be based on full conformance with the laws and expectations of the jurisdiction within which a site is situated. Cost must also include a risk provision with particular reference to risk from changing community expectations and associated regulations.

Further, we do not accept the proposition that there are situations where rehabilitating an area will cause greater environmental harm than if it were left un-rehabilitated. By definition a rehabilitated area must result in less environmental harm. This clause relates more to the cost element of achieving a stable site (see point 6 below) as opposed to the environmental merits of rehabilitating or not. This clause should be removed.

Both the policy and the legislation should reflect and clearly articulate that the new regulatory expectation is that all mined land should be returned to a stable condition as per the definition in section 111A.

In regards to all new EAs, DES should communicate to all new applicants the expectation that all mined land, without exception, must be returned to a stable condition -which includes the rehabilitation of an area of land containing a void - to a post-mining land-use. We strongly support the ban on voids in flood plains but we say that un-rehabilitated voids should be prohibited per se.

2. Rehabilitation milestones must be enforceable with limited flexibility to provide certainty of enforceability

(a) Milestones for the PRC Plan must be enforceable with sufficient certainty and limited flexibility.

The current situation does not allow the government to enforce conditions requiring progressive rehabilitation due to a lack of definition and excessive flexibility. If we are to move beyond this status quo, it is essential that rehabilitation milestones are sufficiently well defined and unambiguous to allow for enforceability. These milestones should ideally be coupled with a

financial incentive to progressively rehabilitate and meet the rehabilitation milestones. A financial incentive could be created if a material cash-based residual risk payment is required throughout the mine life, which can be reduced on the completion of accredited progressive rehabilitation.

In regards to changing milestones, environmental authority (EA) holders should be permitted only one application to make a major change to a milestone in any one planning period. Should an EA holder seek a second major amendment to a milestone in this period then this would trigger an independent audit and a departmental review.

3. Improve transparency and accountability – the risk faced by the state from resource activities is a public interest matter:

A. The following additional information should be required to be held on the public register and made available to the public to view and copy after they are submitted to the regulator under s 540 EP Act (cl 201):
   - Rehabilitation Audits;
   - Progressive rehabilitation certification reports;
   - ERCs must be made public for all EAs and should include a summary of the area of disturbance and proposed rehabilitation works on which the estimated rehabilitation costs (ERC) was based;
   - Amended EA's and PRC Plans;
     - the actuarial review under cl 73;
     - any information provided to decision maker in making decision on financial assurance (FA) or EA or PRC plan.

B. A new section is needed to provide extended standing for the public to seek reasons or judicial review of any decision around financial assurance or review of the transfer of an authority to a new entity.

C. The Right to Information Act 2009 (Qld) should apply to the Bill. It already includes extensive exemptions.

D. Section 150 EP Act should be repealed in this amendment Bill - it unfairly locks out the community from legal rights to provide a submission and to potentially refer or appeal a matter to Court where needed. (cl 113, amend s150).

E. It must be abundantly clear that the PRC Plan is subject to the Land Court objection process the same as is currently the case for environmental authorities.

This is a very important area of public interest legislation. Public transparency and accountability in decision making processes are crucial to ensure the quality of decision making and process undertaken. The management of the risks faced by the State by resource activities is a public interest matter and must be treated as such, with provision for public scrutiny and involvement in decision making.

There should be open legal standing for enforcement for breaches (irrespective of whether it is serious, material or a lesser level of harm under the EP Act) to the Planning and Environment Court and extended standing for reasons and judicial review as per the Environment Protection and Biodiversity Conservation Act 1999 (Cth) (EPBC Act) and Nature Conservation Act 1992 (Qld). These Acts recognise the role of public interest groups in ensuring better quality decision making through the powers to scrutinise decisions. The EP Act must generally be amended to provide for extended standing for decisions under this public interest Act.

The potential risk faced by the State from poor management of FA and transfer of authorities is a public interest matter and decisions around this must be open to public scrutiny.

There should be no discretion to avoid the requirement to publically notify changes on the basis of the administering authority considering that the administering authority is satisfied the change would not be likely to attract a submission. This is open to abuse and it would be very difficult for the administering authority to be able to be satisfied of this as possible concerns of the community cannot be necessarily foreseen. This discretion should be removed entirely from s150 EP Act.

The Right to Information Act 2009 (Qld) (RTI Act) should apply to information under the Bill, so the exemption should be removed. This provision erodes public accountability and transparency. The existing public interest exemptions for confidential information in the RTI Act are appropriate for information under the proposed Bill and in our view; there is no reason sufficient to justify the exclusion of accountability in this manner. The public must have the ability to access any information that is not regarded as commercial in confidence.

4. The dedication of funds accrued to manage and rehabilitate abandoned mines, and also that funds can be used for general environmental harm, should both be supported.

A. (a) We support that the Purpose of the Bill includes (cl 3):

'(c) to provide a source of funds to the State for costs and expenses relating to preventing or minimising environmental harm, or rehabilitating or restoring the environment, or securing compliance with an authority or small scale mining tenure; and

(d) to provide a source of funds to the State for—

(i) rehabilitation activities at land on which an abandoned mine exists; and

(ii) remediation activities in relation to an abandoned operating plant;'

B. We recommend that the Bill be amended to include the requirement that an automatic percentage of scheme funds (no less than 85%) be allocated to rehabilitating abandoned mines from riskiest to least risk, to ensure abandoned mines across Queensland are properly managed to reduce environmental risks and remediate sites and to reduce discretion of mining minister as to whether this money will be accessed for this purpose.

Notwithstanding concerns regarding the quantum of funding available, we strongly recommend that the Committee supports the use of funds generated under this framework for addressing the significant amount of abandoned mines needing to be rehabilitated across Queensland due to poor regulation in the past.

In addition to rehabilitation required of sites, there are many risks associated with operating resource activities, along with other prescribed environmentally relevant activities. We support the recognition of this and the clarification that funds sourced under this framework would be able to be used to prevent or minimise environmental harm more broadly than just typical required rehabilitation. This is essential to ensure the framework is effective at protecting our environment and communities from environmental harm.

We further support the fair requirement being placed on all proponents to provide some form of FA (cl 173, new s297).

5. New Progressive Rehabilitation and Closure Plans (PRC Plans)

A. We strongly support the introduction of PRC Plans which will provide for the progressive rehabilitation and transparent life of mine planning.
B. We strongly support the requirement that PRC Plans mandate public consultation with particular reference to defining what is an acceptable final land form for the site.

C. We support clause 125 new s202C EP Act requiring that PRC Plan be fulfilled even if a resource tenure is cancelled or expires. Our only concern is that the ability to access the land is sufficiently dealt with.

Requiring resource proponents to explicitly plan up front how they intend to leave a site once they have finished mining it through a PRC Plan is a major and very positive reform. Plans will be opened for public consultation prior to the mine being granted an environmental authority which is another major reform for mining assessment in Queensland (clause 115, amended s160, and related sections). Through these reforms, for the first time the public must be consulted and has the ability to influence the post mining land form and land use. We urge the Committee to support these measures – see 6(c) below – and strengthen the requirements regarding consultation.

We also support the insertion of clause 125, new s202E which clarifies that the EA overrides the PRC Plan where there is inconsistency. This is very important to ensure we don't have poor environmental outcomes due to a poorly drafted PRC Plan, especially in the three year transition period for existing mines.

We further support clause 173, new Part 12 which provides the framework for auditing PRC Plan schedules. This is a good measure to ensure that DES are informed by skilled experts. However, we also recommend that compliance with the EA as a whole should be subject to an audit every 3 years.

6. Improvements needed to strengthen PRC Plan and public consultation requirements

A. Clause 147 amending s228 must be removed. The application of the definition of a minor amendment to a PRC Plan is sufficiently clear and should not be further subject to the discretion of the administering authority to apply which would have the effect of locking out community involvement.
B. Clause 120, new s190(3) must be removed. This section states that Coordinator-General's conditions cannot be overridden. This is inappropriate and poor governance and process, and risks regulatory capture. The Land Court provides an independent forum for testing of evidence and assessment material – it should not be able to be overridden by conditions posed by the Coordinator-General. Further, Departments may have more knowledge and expertise in the subject matter than the Office of the Coordinator-General.

C. Consultation required for PRC Plans must be mandated in the Act, not open to discretion and interpretation by the proponent as provided in new s126C(c)(iv) (clause 104) the proponent must detail proposed consultation and 'ongoing consultation' on the proposed PRC Plan.
D. Clause 118, new s176A should include specific reference to the legislative requirements introduced for what a PRC Plan must include as provided in the Bill to remove uncertainty. Additionally, it must require consideration of submissions on the Proposed PRC Plan.
E. We support the proposed definition of 'stable' condition with two amendments:
    - the removal of 'on or in the land' from s111A(b); and
    - the inclusion of a requirement to fully rehabilitate voids.

'Safe' doesn't seem to be defined in the EP Act. How 'safe' is defined will form an important component of what is regarded as a stable condition and relates to public safety. The Bill must include a clear definition for 'safe'.

A. Clause 104 new s126C should be amended to include a requirement to provide a 3D land form representation, to assist with meaningful public consultation.
B. PRC Plans must include a detailed section devoted to rehabilitation of catchment hydrology and this should include water/catchment related milestones.

PRC Plans are an essential element of the reform package which may lead to better outcomes for rehabilitation of sites that is appropriate and in line with community interests. It is therefore essential that these Plans are robust and well informed and the requirements around them are certain and enforceable, including for public consultation.

To assist with community engagement, proposed final landforms should be described in laypersons language and include a 3D digital representation that can be viewed from a range of perspectives to ensure affected communities, neighbours and other stakeholders have a clear understanding of what is being proposed. The new Bill doesn't provide a requirement to detail the final land form including in 3D format, despite this being promoted during stakeholder consultation as a major component of the purpose of the PRC plan.

Community consultation needs to be codified with particular reference as to how community opinion is documented. This is material given proposals to change PRC Plans must be referenced against previous public expectations and issues when the department is considering these changes. Community consultation must include the articulation of a mechanism.

7. Timing and procedure for progressive rehabilitation and availability of mined land must be clarified and strengthened

A. Require that 'availability' of land which contains resources be determined by reference to the JORC standard and be JORC compliant 'Proved Ore Reserve'.
B. Limit the time period within which the resource must be mined to 5 years (Cl 104, s126D(5)(b)).

We support the approach of requiring rehabilitation to commence as soon as mining has cease. However, for an area not to be available it must be a JORC compliant "Proved Ore Reserve". The JORC standard needs to be referenced in the legislation as being the benchmark. In addition, 10 years is too long for this subsection to be effective in ensuring land is not kept in 'care and maintenance' without activity.

8. Estimated Rehabilitation Cost (ERC) decision provisions are a good start but can be improved

A. We support the cl 173 new s297 that an operator must not act on an EA without payment of an FA contribution.
B. The timeframes in cl 173 new s300 s(3) are too short for the decision maker. The decision maker should have the power to extend the period for making the decision without requiring permission from the proponent to do so – allowing the proponent the right of veto here gives the proponent unnecessary power. A large mine may have a large rehab plan needing consideration for which the regulator needs expert opinion - they should have the power to give themselves more time to make the decision.
C. Clause 173, new s303 shouldn't simply provide a discretion for DEHP to give the holder a written notice to apply for a new ERC in the event that s303 (1) (a) and (b) occurs. This would be more effective as a mandatory requirement for example: that the holder must apply for a new ERC; the administering authority must give the written notice.

Clause 173, new s310(3) requires the FA decision to be made with regard to an FA Guideline. We support this measure as long as the guideline provides sufficient detail to effectively implement the requirement. We also support inclusion of the costs of remediating environmental harm as well as rehabilitation.

9. Transitional provisions must ensure highest risk/ poorest rehabilitated mines are dealt with first

The priority list of EAs should include those sites that are within 5 years of closure (higher risk), those that are newly approved (ability to adapt existing plans) including all metalliferous mines (these sites pose significant risks) and those with high risk and/ or a known poor disturbance to rehabilitation ratio.

10. Environmental record of company should not be unnecessarily limited to Australia nor exclude parent company activities

To ensure a sufficiently robust assessment of the risks of a company is undertaken, the definition for 'environmental record' in the dictionary clause 205, sch 4 should:

A. include any fines, prosecutions or notices in regards to any operations managed by the proponent in Australia and other international jurisdictions; and
B. not be limited to the entity nominated as the proponent but also of whether the entity is a suitable person in consideration of the environmental record of related companies including parent and sibling companies, other joint venture holders and executive officers. See for example s136(4) EPBC Act.

11. Surety and financial assurance (FA) related amendments needed to ensure effectiveness of reforms by improving transparency and accountability around this decision

A. As stated above, the 5 and 3 yearly actuarial reviews under clause 73 should be made public in full, including the analysis and recommendations, on the public register.
B. Public consultation should be required in determining an entity's risk category, pool or surety, to ensure this important assessment is informed by all relevant information available.
C. In clause 11(1) the maximum 'fund threshold' contribution to the pool should be reduced from $450m to $350m to reduce the pools exposure to a material default.
D. Clause 71(a) should be deleted and replaced with: 'keep the Minister informed as to the performance of the scheme in regards to the scheme's capacity to cover the state's mine

rehabilitation liabilities, as well as the operations, financial performance and financial position of the scheme'.

We propose a revisiting of objectives that tighten up the remit of the proposed scheme to explicitly require that the Minister and the Scheme Manager are compelled to do everything necessary to ensure the scheme solvency is maintained so that it has sufficient funds to cover the state's liabilities.

Similarly that the actuarial investigation is directed to ensure that the scheme has adequate funds to cover the state's liabilities and that the 3 yearly review is explicitly directed to make recommendations to this end.

There needs to be a clear limit on the use of scheme funds to ensure government isn't exposed to liability of default which is the purpose for this reform work.

We suggest that consideration is had to whether the State's ability to recover a debt payable is an effective way of requiring payment from an operator. We recommend including strong enforcement powers.

12. Independence of scheme manager must be strengthened through advice of expert panel and avoiding potential conflicts of interest

A. The scheme manager should be advised in their determination of the risk category allocation by a panel of experts, to ensure independence and quality of decision. This may be the Long Term Asset Advisory Board, in which case specific provision should be provided to require consideration of their advice required to be sought under clause 21(2).
B. Stronger provisions for managing conflicts of interest by the scheme manager are needed.

It is unacceptable that the risk category of a company be determined by the scheme manager alone as provided in sections 27 and 29 because there is no requirement that this person has financial/risk evaluation competence. We recommend that a panel of experts be created to advise the scheme manager in this determination. This may be the Long Term Asset Advisory Board, as referred to in the Bill. If this Board is seen as providing sufficiently robust expertise around risk of environmental harm and default by operators, a specific provision should be provided to require consideration of their advice required to be sought under clause 21(2).

To reduce the risk of regulatory capture and conflicts of interest arising, clause 15 should be amended to add a new provision to explicitly prohibit the scheme manager being employed or acting as an executive officer in the resource sector while acting as scheme manager.
Part 2, Division 1 should include a new provision providing a positive requirement for the scheme manager to avoid any potential conflicts of interests as well as a requirement to advise the Minister and Governor in Council of potential conflicts of interest.

We support clause 14, however, we note that we don't see the utility of including limitations on reducing the wage of the scheme manager. We are not aware of any precedent where this was deemed necessary.

13. Improvements needed to risk category allocation to ensure all relevant material is required to be considered

A. Clause 27(3) and (4) should be amended to delete 'may' and provide that all of these considerations 'must' be considered.
B. Additionally, the following amendments to the sub-section clause 27(3) are required:
    • 'financial soundness' needs criteria for assisting in determining this, with case study examples;
    • 'characteristics of a resource project' is a very broad consideration with regard to risk. We recommend including a requirement to consider modelled predictions for the market of the commodity; and
    • add another sub-clause explicitly allowing for the community group/individual submissions to the scheme manager in regards to his/her consideration of a relevant entity's risk category.
C. Sub-clause 27(3) and s30 should be amended to include:

- the ability for public submissions on risk profile (pool or surety) which must be considered by the scheme manager. This will ensure scheme manager has all information in front of them in making sound, informed decision on risk; and
- a requirement to obtain and consider expert opinion from a panel of experts including risk analysts as described above.

We note that good process requires that any decision maker should have the ability to extend the timeframe for the decision, including the risk category allocation or ERC decision, if they need further information.

14. Ensure effective review on change of holder

A. Subclauses 44(5) and 45(4) should be amended to remove reference to 'unless the holder has a reasonable excuse'. This is vague and poorly drafted and significantly weakens the requirements and enforceability of these provisions.
B. We support clause 32 requiring a review of the risk category allocation on transfer to another entity and when owner changes through change in shareholders.

The transfer review triggers must cover both the Rio Tinto/TerraCom transfer and the Batchfire scenarios where change in share-holdings prevented the regulator from scrutinising the new operator. By way of further example, the newest example of exploitation of this potential loophole by transfer of liability for a site is MMG's transfer of the Century Mine site to Raging Bull resources.

The issue of ownership changes via change in shareholder also raises other issues that should be required to be reconsidered. Particularly, this should trigger review of the suitable operator registration status of the company under EP Act, and EA conditions as well. These should be provided for under the Bill. Additionally, there should be the opportunity for the public to make submissions to the scheme manager at this point. The criteria and process whereby the financial and technical capabilities of the (potential) new lease holder is assessed should be made public.

15. Offence provisions and public enforceability where mine assessment and compliance has failed are inadequate and must be strengthened

A. Clause 6(3) should include an enforcement mechanism for the regime that accurately reflects the State's liability in terms of managing the scheme effectively to cover all rehabilitation obligations.
B. Clause 6(4) must be removed. This subclause provides that there is no ability to make the government take action to remediate or avoid environmental harm - this is a failure of natural justice and must be removed.

C. For deterrence value, the level of penalty for an offence under the new reforms needs to be consistent with the penalties in the EP Act for causing serious environmental harm.

16. Petroleum activities should be included in this reform package as they also can cause substantial damage that is expensive to rehabilitate.

The new part 13 EP Act specifically excludes gas from the proposed reforms and in our view is a major oversight. The gas industry should be required to provide a PRC Plan and subject to the same playing field, requiring life time plan for rehab of sites. The proposed reforms introduce exactly the same problems for gas as currently exist for plan of ops for mining - e.g. there is no approval or acceptance required by DEHP of the plan of ops, no requirement to review whether they sufficiently comply with the criteria - it is merely submitted under s292.