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01 April 2016

The Research Director
Infrastructure, Planning and Natural Resources Committee
Parliament House
BRISBANE QLD 4000

By email: ipnrc@parliament.qld.gov.au

Dear Honourable Committee Members

Mineral Resources and Other Legislation Amendment Bill 2016

Thank you for the opportunity to provide a submission in relation to the above Bill.

Ergon Energy is a Queensland Government-owned corporation and supplies electricity to approximately 700,000 customers. Our electricity network extends across 97% of Queensland ranging from rapidly growing coastal and rural communities to remote outback and island communities. The significance of Ergon Energy's network is recognised as a state interest in the Single State Planning Policy as driving the economy and providing essential services and facilities to these communities.

This submission also has the support of Powerlink Queensland.

Our network commonly crosses resources tenure and Ergon Energy is in frequent contact with the holders of resources tenure about how each party conducts its business. Infrastructure that crosses resources tenures usually provides the sole source of supply to other mines, businesses and rural communities. As a result, Ergon Energy has negotiated co-use arrangements with some resources entities, where Ergon Energy is on a level playing field with the resources entity.

Ergon Energy provided submissions in relation to in relation to the Mineral and Energy Resources (Common Provisions) Bill 2014 and the Draft Mineral and Energy Resources (Common Provisions) Regulation 2014. Those submissions are **attached**.

Ergon Energy faces two difficulties with the operation of the mineral resources legislation:

1. Ergon Energy's infrastructure does not always meet the definition of a building for the purposes of the Restricted Land definition, because the infrastructure includes power lines, poles and towers.

2. Not all of Ergon Energy's infrastructure is on land owned by Ergon Energy. Rather, it can be within easements or take its tenure from statutory rights. These difficulties place Ergon Energy at the disadvantage of not always being aware of an application for resources tenure and not always having a level playing field from which to negotiate co-use arrangements with a resources entity.

Ergon Energy was very pleased to see that the Bill intended to repeal provisions of the *Mineral and Energy Resources (Common Provisions) Act 2014* (**Common Provisions Act**) that would remove objection rights. This goes part of the way to resolving the above difficulties and is strenuously supported.

However, even under the Bill, Ergon Energy will not always be a land owner and will not always receive notice of an application for a resources tenure.

The remainder of the difficulties could be resolved by prescribing electricity works (including power lines, poles, towers and substations) as prescribed structures for the purposes of being Restricted Land (as is allowed under clause 68(1)(a)(iii)).

We note that the Bill proposes to replace the un-commenced section 252A of the Common Provisions Act. Section 252A of the Common Provisions Act required notice to "an entity that provides infrastructure wholly or partially on the subject land" of a mining lease application. The proposed replacement section 252A would require notice only via a newspaper, which is a significantly less effective approach for notice to an infrastructure provider.

The direct notice required under the Common Provisions Act was valuable to Ergon Energy, particularly in the context of the difficulties outlined above. Accordingly, Ergon Energy submits that direct notification should be retained.

We would welcome the opportunity to discuss our concerns in more detail. Please contact Tim Stork on 3851 6798 if you have any queries.

Yours sincerely

Peter Billing
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19 January 2015

Bernadette Ditchfield
Executive Director – Land and Mines Policy
Resources Policy and Projects
Lands and Mines Policy
Department of Natural Resources and Mines

By email: mqra@nrm.qld.gov.au

Dear Ms Ditchfield

Draft Mineral and Energy Resources (Common Provisions) Regulation 2014

Thank you for the opportunity to provide feedback on the above Draft Regulation. We would also like to take this opportunity to briefly comment on the *Mineral and Energy Resources (Common Provisions) Act 2014* (**Act**).

Mineral and Energy Resources (Common Provisions) Act 2014

You will recall that Ergon Energy has previously raised matters of concern about the interaction of resources tenure and electricity infrastructure, including in a submission about the *Mineral and Energy Resources (Common Provisions) Bill 2014* that has since received assent from Parliament to become the Act.

Ergon Energy was pleased to see that the providers of infrastructure were given a right to be notified of an application for a resources tenure. We noted with interest the Department's response to Ergon Energy's submission, in which the Department indicated that this right to be notified would provide an opportunity to negotiate with a resources entity. The reality of the situation is less optimistic.

The resources tenure of most concern is a mining lease. Unless Ergon Energy happened to own land within the area of the proposed mining lease, it would have no right to object to the grant of the mining lease. This means that for proposed mining leases where Ergon Energy had powerlines only, it would have no position from which to negotiate.

These powerlines usually provide the sole supply to other mines, businesses and rural communities and towns. Accordingly, Ergon Energy and its customers are left in an unenviable position.

We note the Department's suggestion, in response to Ergon Energy's submission, that Ergon Energy can rely on rights under the *Electricity Act 1994*. Ergon Energy agrees that in most cases mining entities do take a cautious regard to the electrical infrastructure and proactively seek to resolve any potential issues. However, the reality is that solely relying

on the *Electricity Act 1994* is undesirable as it presents only remedial rights, activated after significant property damage might have been done, a potentially serious electrical safety situation caused and power outages caused to customers (including other resources entities). We would also reiterate that assessing and, if required, mitigating the potential impact of proposed activities requires adequate timeframes and Ergon Energy prefers a more proactive, upfront approach to address concerns before they arise (hence its position as to a right of objection).

Draft Regulation

Ergon Energy notes that section 68(1)(a)(iv) of the Act allows for an area, building or structure to be prescribed by a regulation as *restricted land*. The concerns raised specifically above would be resolved if the Draft Regulation was amended to prescribe that buildings and (most importantly) other structures used in electricity distribution are restricted land.

For the purpose of section 68(1)(a) the Draft Regulation prescribes that, for a mining lease, restricted land is land within 50 metres of a relevant building. Ergon Energy is concerned that this halves the perimeter distance (currently 100 metres) for restricted land under the current provisions of the *Mineral Resources Act 1989*.

To provide some context to this concern, the type of building Ergon Energy would typically have on restricted land is a substation. A substation is incredibly sensitive to the effects of ground movement, which is inevitable from mining. If a miner chooses to mine up to or near the boundary of restricted land, at a distance of 50 metres there is unlikely to be adequate protection for the electrical assets.

Such a situation is not merely hypothetical and Ergon Energy has in recent times been engaged in objecting to mining applications involving mining at a concerning proximity to Ergon Energy assets, despite early commercial discussions. One of these matters is still progressing via proceedings in the Land Court. Though new mining activity is currently somewhat subdued, we do believe that we will see more interactions in the future and we continue to have concerns.

We would welcome the opportunity to discuss our concerns in more detail. Please contact Tim Stork on 3851 6798 to arrange further discussions.

Yours sincerely

W D Edmunds

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Ergon Energy

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8 July 2014

The Research Director
Agriculture, Resources and Environment Committee
Parliament House
George Street
Brisbane Qld 4000

By Email: AREC@parliament.qld.gov.au

Dear Sir/Madam

Submission: ***Mineral Resources and Energy (Common Provisions) Bill 2014***

Ergon Energy's detailed submission to the Committee is contained in Annexure A.

The following background information is provided to assist the Committee in considering Ergon Energy's submission.

About Ergon Energy's infrastructure

Ergon Energy is a Queensland Government-owned corporation that supplies electricity to approximately 700,000 customers across a vast operating area of over one million square kilometres – around 97% of Queensland.

A significant part of Ergon Energy's network lies in areas that are subject to resource exploration and production.

Summary of Ergon Energy's position

Ergon Energy has made 2 recent submissions of relevance on the subject matter:

- one to the Queensland Competition Authority in December 2013, in response to its Coal Seam Gas Review; and

- one to the Modernising Queensland's Resources Acts (MQRA) Program Team within the Department of Natural Resources and Mines in March this year, in response to 2 discussion papers: *Standardised consent framework for restricted land* and *Mining Lease Notification & Objection Initiative*.

In summary, those submissions outlined Ergon Energy's position as follows:

- Resource companies should, as a matter of course, identify any essential community infrastructure within the area of their tenure applications.
- Ergon Energy's infrastructure should be considered part of restricted land.
- Resource companies should provide notice to Ergon Energy of an application for tenure.
- Ergon Energy should be afforded rights of objection in the same manner as a land owner or local government, where it has infrastructure or an easement within the area of a tenure application.
- If objection rights are denied to Ergon Energy, this could cause adverse impacts (including costs and connection difficulties) for its infrastructure.

Difficulties faced

In support of its submission, it is useful to provide some examples of the difficulties Ergon Energy encounters with resource tenures:

(1) It is commonplace for Ergon Energy to encounter structures constructed by resource companies along its line routes. These can include gates and fences and other works that alter its access tracks, but have also included more substantial items such as an over ground gas pipeline to supply gas to a mine and a large conveyor belt. These items restrict Ergon Energy's ability to properly inspect, maintain and repair its infrastructure, in some instances completely. This causes difficulties in complying with Ergon Energy's maintenance obligations under the *Electrical Safety Act 2002*. It also causes additional costs to Ergon Energy from wasted trips to lines (sometimes of substantial distance) as well as the costs associated with trying to resolve the access issues.

(2) Ergon Energy has recently been forced to object to the grant of a mining lease, where the mining company had inadequately planned for its impact on Ergon Energy's infrastructure. In that instance, the mining company proposed mining directly underneath Ergon Energy's poles and power lines. This was despite a report showing that significant subsidence was likely to be caused in the area. The subsidence would very likely cause Ergon to be in breach of the *Electrical Safety Act 2002*, as well as providing possible harm to mining staff, the land owner, or public traversing the area. If the mining had continued, this could have been entirely without Ergon's knowledge as these poles are generally inspected on cycles ranging from 3 to 5 years.

Until Ergon Energy lodged an objection with the Department of Natural Resources and Mines, there had been an impasse in negotiating a satisfactory outcome with

the mining company to avoid or manage the likely impacts on Ergon Energy's infrastructure. This example illustrates the advantage of objection rights and the even more significant advantage of up front notification to Ergon Energy.

(3) It is common for Ergon Energy to wish to access infrastructure within a mining lease area only to be denied access. Frequently this denial is on the basis that a site induction has not been carried out, but can extend to the personnel not having their vehicles equipped to the specifications required by the mining company (although they meet all of Ergon Energy's strict safety requirements). Sometimes this is resolved relatively simply by undertaking a site induction, but at other times can require more in depth discussions with a mining company before access is permitted (including leaving the site and returning after an exchange of correspondence and further discussions).

This has the obvious impact of wasted resources in mobilising a crew to particular infrastructure, difficulties in undertaking urgent maintenance and the costs associated with further discussions. Many, if not all, of these difficulties could be resolved if mining companies were required to deal with Ergon Energy in advance of obtaining their resource tenure. This would allow them to properly cater for the presence of electrical infrastructure in their mining safety plans.

(4) It is not unusual for Ergon Energy to need to move, alter or upgrade its infrastructure as a result of a proposed resource activity. If Ergon Energy is engaged early in the planning for resources tenure, it is better able to manage this. For example, it can take considerable time to plan for and undertake the relocation of a line route in order to facilitate better access to a resource. The longer the lead-time on such an activity, the better the outcome for all parties, including other resource entities, customers and the community at large that might be supplied by a power line.

There are good public policy reasons for ensuring that Ergon Energy's infrastructure, including its electricity lines are protected from inappropriate development. In many instances these lines could be the main supply for a regional town or for significant resources interests in a region. They may also be for more minor connections to individual rural land owners.

Ergon Energy thanks the Committee for the opportunity to make this submission.

Yours sincerely

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David Edmunds

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Annexure A

Recording and Removal of Associated Agreements

Agreements reached between holders of resource authorities and owners of infrastructure on the land (for example, owners of electricity generation, transmission or distribution buildings and structures) will be associated agreements under the Bill.

These associated agreements can be recorded on the register for that resources authority (section 33(1) of the Bill).

1. However, under section 33(1) of the Bill, only the resource authority holder has the power to have the agreement recorded on the register.

2. Similarly, under section 35(1) of the Bill, the resource authority holder has the power to apply to have the associated agreement removed from the register, without reference to the other party to the associated agreement.

   Under section 35(3) of the Bill, where a valid application is made by the resource authority holder to remove an associated agreement, the chief executive has no discretion and must remove the associated agreement from the register.

3. The key benefit to parties to associated agreements who are not the holder of the resource authority is to have the associated agreements recorded on the register is to ensure that any person acquiring an interest in the resource authority is aware of the existence of the associated agreement and the potential rights of the other party to the associated agreement.

4. If the resource authority holder can refuse to record the associated agreement on the register or have the associated agreement removed from the register at will, then the effectiveness of the register for this purpose is diminished.

5. While the chief executive is not required to enquire into the validity of an associated agreement, it is suggested that:

   a. a party to an associated agreement other than the resource authority holder should be entitled to apply to have the associated dealing recorded on the register provided that:

      i. upon such an application but prior to the associated dealing being recorded, notice is given to the resource authority holder of the application to record the associated dealing; and

      ii. if the resource authority holder objects to the recording of the associated dealing, then the associated dealing is not recorded and notice is given to the party who applied to have the associated dealing so recorded; and

   b. if a resource authority holder applies to have the

associated agreement removed from the register, notice should be given to the other parties to that associated agreement.

6. If these notices are given, then if there is a dispute about whether:

   a. the associated agreement was valid and should have been recorded on the register; or

   b. the resource authority holder should not have applied to remove the associated agreement from the register,

   then the parties can take steps to have the recording or removal of the associated dealing dealt with by way of court proceedings.

7. If such a system of notification was adopted, the role of the chief executive will still not require them to enquire as to the validity of the associated dealing but will be merely to provide notices to parties who are or may be affected by the recording of the associated agreement or its removal from the register. The parties will have to take steps to protect their own interests in the event of the unlawful or improper actions of the other party.

Restricted Land - Definition of Building

The definition of "restricted land" in section 68 of the Bill includes a variety of buildings and areas.

However, there is no definition of "building" in the Bill. There is a risk that various structures such as those used for the public purpose of generating and transmitting electricity to consumers in the State and which should be protected from resource activities (such as powerline towers owned by Ergon Energy) may not be a "building" for the purposes of the Bill and may therefore not fall within the scope of "restricted land".

8. Relevantly, the definition of "restricted land" includes (at section 68(1)(a)(iii) and (iv) of the Bill):

   (iii) "a building used, at the date the resource authority was granted, for a business or other purpose if it is reasonably considered that:
   (A) the building cannot be easily relocated; and
   (B) the building cannot co-exist with the authorised activities carried out under the resources authorities; or
   (iv) another building or area prescribed by a regulation."

9. If powerline towers and other structures or buildings used in the generation, transmission or distribution of electricity are "buildings" for the purposes of section 68 of the Bill, then an entity such as Ergon Energy will be a "relevant owner or occupier" of that restricted land. The consent of that electricity entity will be required before the resource authority holder can

enter the particular restricted land to carry out the prescribed activities.

10. But as the term "building" is not defined in the Bill, there is a risk that a narrow interpretation could be applied to this term which may limit the scope of restricted land. For example, "buildings" could be interpreted to be only buildings which contain offices or in which people work on a regular basis (e.g. office buildings or shops) rather than being given a broader interpretation that includes structures for electricity generation, transmission or distribution in or on which people may not be regularly present. The definition of "building" should be given a broad definition so as not to unduly limit the concept of restricted land and should, as a minimum, include electricity generation, transmission or distribution structures.

11. In order to ensure that the term "building" includes structures such as powerline towers and other electricity generation, transmission or distribution structures, or alternatively to ensure that "restricted land" includes the area around such buildings and structures, the following options are proposed:

    a. A definition of "building" could be inserted into the Bill which extends the definition to specifically include structures generally or structures used for electricity transmission, generation or distribution;

    b. Section 68(1)(a) of the Bill could be amended so that instead of referring only to a "building", the section referred to "building or other structure" or "building or other structure including a building or structure used for electricity transmission, generation or distribution"; or

    c. The regulations to the Bill could prescribe (for the purpose of section 68(1)(a)(iv) of the Bill) that buildings and other structures used in electricity transmission, generation or distribution are restricted land.

Restricted Land - Relevant Owner and Occupier

For any "restricted land", the Bill defines the person who is the owner or occupier of that restricted land (defined as the "relevant owner or occupier" in section 69 of the Bill). This relevant owner or occupier has the right to withhold or give consent (whether or not on conditions) to the holder of a resource authority carrying out prescribed activities on that restricted land.

12. In general terms, under section 69 of the Bill, the "relevant owner or occupier" of restricted land is the person who is the owner or occupier of the relevant building or area that comprises the particular restricted land.

13. It is possible that the owner of the relevant building is not the owner of the land on which it is located. For example, for powerline towers, the owner of the towers will likely be an electricity entity such as Ergon Energy and not the owner of the

land on which those towers are located.

14. As the definition of "relevant owner or occupier" includes both owners and occupiers, it is likely that the owner of powerline towers would be an occupier of that building and the land on which it is situated.

15. However, in order to put the matter beyond doubt, it is suggested that an additional paragraph be included in section 69 of the Bill which clarifies that for the purposes of section 69, the owner or occupier of a building may be different to the owner or occupier of the land on which the building is located.

Restricted Land - Compensation Agreements and Mining Leases

Section 71 of the Bill provides an exception to the need for consent from the relevant owner or occupier of restricted land. That exception is where the resource authority is a mining lease and the holder of the mining lease has entered into a compensation agreement with the relevant owner and occupier under section 279 of the Mineral Resources Act 1989 (Qld) (MRA).

16. The proposed amendment to section 279 of the MRA (contained in section 429 of the Bill) makes it unclear whether the exemption applies only to agreements voluntarily entered into by the parties or also where there is a determination of compensation by the Land Court. This inconsistency between section 71 of the Bill and the amended section 279 of the MRA should be clarified and should only apply to agreements voluntarily entered into by the parties.

17. In addition, consequential amendments should be made to various sections of the MRA (such as sections 279A, 280, 281 and 283B) to ensure that those sections apply to relevant owners and occupiers of restricted land who receive compensation and not just owners of land.

Restricted Land - Notice of Mining Lease Application

While relevant owners or occupiers of restricted land in the area of a mining lease are entitled to compensation in respect of the mining lease, there is no right for such owners and occupiers to receive notice of the mining lease application.

18. Section 418 of the Bill, which replaces section 252A of the MRA, provides that a mining lease notice must be given to "affected persons". The definition of affected persons includes owner and occupiers of land as well as entities that provide infrastructure within the area of the proposed mining lease. Owners, occupiers and entities that provide infrastructure will likely comprise the majority of relevant owners or occupiers of restricted land.

19. However, there remains the possibility that some relevant owners and occupiers of restricted land do not fall within the ambit of "affected person". For example, restricted land may be centred on a building on land adjacent to the mining lease and the area of the restricted land may extend into the area of the mining lease. In this instance the relevant owner or occupier of

restricted land may not be an affected person and may not be entitled to receive a mining lease notice under the proposed replacement section 252A of the MRA.

20. It is suggested that the definition of "affected person" in the proposed replacement section 252A(5) of the MRA also include "relevant owners or occupiers of restricted land".

Restricted Land - Declarations of Restricted Land

Only certain persons (described as "prescribed persons" in the Bill) are entitled to apply to the Land Court for an order declaring whether particular land is restricted land for a resources authority (section 72 of the Bill).

21. Currently, the definition of "prescribed persons" only extends to:

    a. resource authority holders; and
    b. owners or occupiers of the land.

22. While it is likely that any "relevant owner or occupier" for restricted land is either an owner or occupier of the land for the purposes of section 72 of the Bill, it should be clear that a person who claims to be a "relevant owner or occupier" for restricted land under section 69 of the Bill is also entitled to apply for an order declaring whether or not the land is restricted land.

Objections to Mining Lease Applications

The Bill (at section 420) limits the people who are able to make an objection to a mining lease application by replacing section 260 of the MRA. The people who may object to a mining lease application are now only owners of the land in the area of the mining lease, owners of access land and the relevant local council. However, there are other persons whose interests may be directly affected by the grant of the mining lease and these people should also have a right to object.

23. While it is understood that the intent of these amendments is to ensure that only persons directly affected by a mining lease can object rather than allowing the world at large to object, the list of persons who are "affected persons" for the purposes of the amended 260 of the MRA is too narrow as there are other persons who may be directly affected by the grant and these persons should also have a right to object to a mining lease.

24. Persons such as:

    a. occupiers of the land;
    b. relevant owners and occupiers of restricted land; and
    c. an entity that provides infrastructure wholly or partially on land the subject of the proposed mining lease,

    may all be directly affected by the grant of a mining lease but have no right to object. Indeed, some of these persons may

have no other rights in relation to the grant of a mining lease, i.e. no rights to compensation and no rights as owners or occupiers of restricted land, but may have significant business interests which may be affected by the grant of the mining lease and may have no means by which to take steps to protect their interests against the grant of a mining lease if they have no objection rights.

25. This is despite the fact that these people are entitled to receive notice that the mining lease has been applied for under the proposed new section 252A of the MRA.

26. It is suggested that the definition of "affected person" in the proposed new section 260 of the MRA be amended so that it is the same as the definition of "affected person" in the proposed new section 252A of the MRA (to also include "relevant owners and occupiers of restricted land" as suggested above) as these are the people who would be directly affected by the grant of the mining lease and should therefore have the right to make objections to the mining lease and to seek conditions on the grant of the mining lease or seek the refusal to grant the mining lease.

27. This is particularly important for owners of electricity infrastructure such as Ergon Energy. At present, where a mining lease is proposed over powerlines or other electricity infrastructure owned by Ergon Energy, the only means by which Ergon Energy can protect its interests is to object to the grant of a mining lease and/or seek conditions on the grant of the mining lease. If the right to object is taken away, the ability for Ergon Energy (and similar organisations) to protect their interests is significantly reduced. The suggested change above would ensure that Ergon Energy (and similar entities) would retain their rights and be able to take steps to properly protect their interests.

28. A corresponding amendment will also need to be made to the proposed new section 260(4) so as to clarify the grounds of objection that these additional categories of person can make.

29. It is suggested that each of:

    a. occupiers of the land;

    b. relevant owners and occupiers of restricted land; and

    c. an entity that provides infrastructure wholly or partially on land the subject of the proposed mining lease,

    be entitled to object to a mining lease on the same grounds as an owner of the land the subject of the proposed mining lease being the matters mentioned in section 269(4)(a), (b), (c) or (d)(i) or (iii) as all of these matters could be relevant to such persons.

Land Access and Public Land

The Bill provides for different processes to be followed by a resource authority holder in order to gain access to land depending on whether the land in question is private land or public land. The process for entering private land protects both owners and occupiers of the relevant private land. However, the process for public land only protects the rights of the owner of the land (being the public land authority for the land) not the rights of occupiers.

30. By way of example, the owner of electricity generation, transmission or distribution buildings or structures (**electricity infrastructure occupier**) may have rights to erect and maintain such buildings or structures on public land. The electricity infrastructure occupier would likely be an occupier of the land if the land was private land and would have the rights of an occupier of that private land. However, under Chapter 3, Part 3, Division 1 of the Bill, an electricity infrastructure occupier of public land has no such rights.

31. An electricity infrastructure occupier of public land (but who is not the public land authority for that land) has no entitlement to receive periodic entry notices. Similarly, they have no right to compensation for the potential impacts of any authorised activities on their assets or occupation rights. (It is noted that they may have rights as a relevant owner or occupier in respect of restricted land.)

32. An electricity infrastructure occupier of public land would have to rely on the public land authority requiring a resource authority holder to comply with conditions which protect the rights of the electricity infrastructure occupier when carrying out authorised activities. However, there is no obligation on a public land authority to impose such conditions or to otherwise take the rights and interests of the electricity infrastructure occupier into account (although there is an option for the public land authority to do so under section 59(3) of the Bill).

33. It is proposed that occupiers of public land, such as electricity infrastructure occupiers, have the same rights as occupiers of private land in order to ensure that their rights are adequately protected against the impacts of authorised activities under resource authorities.

Accessing Mining Lease Land

While the Bill deals with a number of issues around access to land, the Bill doesn't address an issue relating to access to land in the area of a mining lease (or mining claim) by owners and occupiers of that land.

Section 403 of the MRA, subject to some exceptions, makes it an offence to enter the land subject to a mining lease (or mining claim) without the consent of the holder of the mining lease (or mining claim). The new regime in relation to restricted land is not

consistent with this offence provision.

34. The current section 403 is problematic for owners and occupiers of powerline towers and other structures or buildings used in the generation, transmission or distribution of electricity (**electricity works**).

35. Owner and occupiers of electricity works are prevented from entering, using or occupying land or from erecting any building or structure or making any other improvement on land the subject of a mining lease unless they have the consent of the holder of the mining lease. The only exception may be under section 403(2) of the MRA which allows them to enter and be upon the land (but not to use or occupy or to erect buildings or structures etc.) where authorised under an Act or law for the purpose of carrying out duties.

36. Accordingly, where the holder of a mining lease refuses consent (unless the owner or occupier of the electricity works has a right under an Act or law to carry out duties but noting that that right does not entitle them to use or occupy the land or to erect any building or structure or make other improvement to the land), the owner or occupier of the electricity works will be prevented from operating, maintaining or improving the electricity works. This could adversely affect supply to customers and the community and it could also adversely affect the health and safety of customers, the community and people on the mine site as a result of electricity works not being properly maintained and operated.

37. These potential outcomes are likely not intended by the MRA and the legislation should be amended to address these land access issues.

38. In addition, section 403 of the MRA is inconsistent with the changes to the restricted land provisions introduced by the Bill. Prior to the commencement of the Bill, restricted land was excluded from the area of the mining lease where the owner of the restricted land didn't consent to the land being included and therefore section 403 of the MRA didn't apply to that restricted land and didn't prevent persons from entering that land. With restricted land now being included in the area of a mining lease (albeit with restrictions on the mining lease holder entering that restricted land), in order to ensure that rights are not diminished by the Bill, section 403 should be amended to ensure that owners and occupiers of restricted land have a continuing right to enter and use that restricted land notwithstanding the grant of a mining lease over that land.

39. Other potential options to deal with the issue about entering land in the area of a mining lease and to ensure that mining lease holders cannot prevent persons with particular rights or needs to enter land in the area of a mining lease, such as owners and occupiers of electricity works, are as follows:

a. The exception in section 403(2) of the MRA could be extended so that the whole of subsection (1) (and not merely (1)(a)) should not operate to prevent an authorised person from carrying out a duty according to an Act or the law. It is noted that this amendment alone would not be sufficient to ensure rights of access for the owners of electricity works.

b. Section 403(2) of the MRA should not be limited to people carrying out duties under any Act or law and could be extended to include rights to enter, use and occupy the land and to erect and maintain buildings, structures and improvements.

c. A specific exception could be included in section 403(2) of the MRA to allow owners and occupiers of electricity works to enter the land to operate and maintain those works and to erect replacement or extensions to those works. These owners and occupiers could be defined by reference to the definition of "affected persons" introduced in the proposed new section 252A of the MRA as an entity that provides infrastructure wholly or partially on land the subject of the mining lease.

d. A specific exception could be included in section 403 of the MRA to provide that a person may enter the area of a mining lease in accordance with the conditions of the mining lease. The conditions of mining leases could, whether in section 276 of the MRA or in the actual conditions imposed upon the grant of the mining lease, provide that the holder of the mining lease needs to allow certain persons, including the owners and occupiers of electricity works, to enter the area of the mining lease in order to exercise their rights and fulfil their obligations in relation to those electricity works. Further, the MRA could be amended to make it a requirement of the grant of any mining lease that the Minister impose such conditions as are necessary for the continued use and operation of electricity works by any owner and occupier of electricity works in the area of the mining lease.