Speech By
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MEMBER FOR LOGAN

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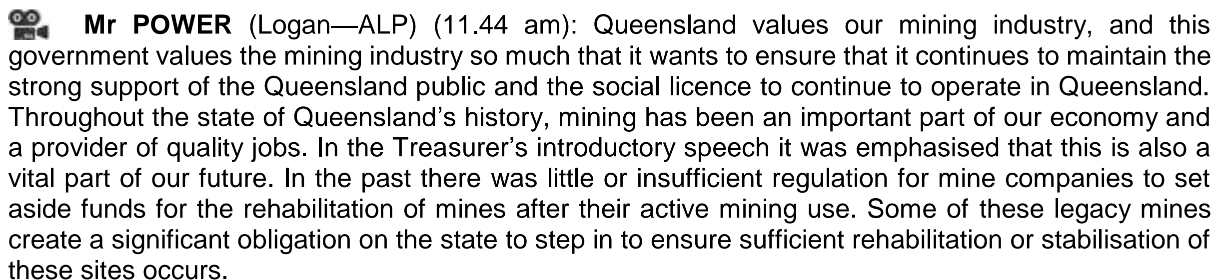
MINERAL AND ENERGY RESOURCES (FINANCIAL PROVISIONING) BILL



Mr POWER (Logan—ALP) (11.44 am): Queensland values our mining industry, and this government values the mining industry so much that it wants to ensure that it continues to maintain the strong support of the Queensland public and the social licence to continue to operate in Queensland. Throughout the state of Queensland's history, mining has been an important part of our economy and a provider of quality jobs. In the Treasurer's introductory speech it was emphasised that this is also a vital part of our future. In the past there was little or insufficient regulation for mine companies to set aside funds for the rehabilitation of mines after their active mining use. Some of these legacy mines create a significant obligation on the state to step in to ensure sufficient rehabilitation or stabilisation of these sites occurs.

After industry concerns in 2016, the relevant departments saw that there was an opportunity to improve the current framework of financial assurance. Vital to this process is the best practice rehabilitation of mines after use and the financial assurance mechanisms that have the dual purpose of giving confidence that rehabilitation will occur without unnecessarily burdening the finances of the companies that choose to invest in Queensland. This bill puts forward a new system of financial assurance that gives greater confidence to Queenslanders that the vital work of mine rehabilitation will be completed. This strengthens the position of mining within the Queensland economy as we can have greater confidence that all Queensland mines will be rehabilitated by the industry.

This bill was introduced on 15 February and referred to the Economics and Governance Committee, of which I am the chair. A previous bill was introduced into the previous parliament and referred to the then agriculture and environment committee, but it had not completed its inquiry by the time the parliament was dissolved. During the examination of the bill the committee invited submissions, received 51 submissions and received a public briefing from Queensland Treasury and the Department of Environment and Science. The committee held a public hearing on 28 March and also followed up with Queensland Treasury and the department on the issues raised in submissions. After considering the briefings and submissions, the committee made the recommendation to the House through the report that the bill be passed.

The bill was in response to a period of consultation and two discussion papers, the *Financial assurance framework reform* and the *Financial assurance review—providing surety*, and the mines rehabilitation policy. The reports identified that if in a particular case financial assurance is less than the rehabilitation cost there is no source of funding for the shortfall. The cost of bank guarantees is significant for small to midsized operators and the best practice of progressive rehabilitation is not sufficient, increasing the potential financial risk to the state. The bill introduces a new financial provisioning scheme which will provide funds to the government to complete environmental management and rehabilitation where an operator does not comply with its obligation to rehabilitate. This is designed not to change the obligations of a mine to environmental management and rehabilitation but to protect the state's financial interests through this process.

Under the bill's proposed scheme, the fund will operate on a pooled basis instead of the current situation where financial assurance is provided against each EA and because of that may only be applied for rehabilitation activities relating to that EA. Operating the fund as a pool avoids the risk of funding shortfalls and only requires holders to pay an annual contribution to the fund. Generally, submitters supported this in principle, seeing the advantages of a pool. There was also a need to understand the final operation of the financial provisioning scheme. The Queensland Treasury replied to these concerns with some detail on page 6 of the report, outlining the process setting risk categories and contribution rates.

A key feature of the financial provisioning scheme is the process of estimating the rehabilitation costs and the amount of the contribution to the scheme. The bill creates a scheme fund and also sets out the fund accounts and how they are to be kept and how the deposits must be added. To be clear, payments made to the fund are controlled receipts and not part of consolidated revenue. The fund threshold is $450 million unless otherwise set by regulation. There was some discussion of this rate by submitters. However, the Queensland Treasury responded that currently this had been set at a rate of around five per cent of the total estimated rehabilitation costs and had been based upon independent advice that came from the process of the QTC financial assurance review. There was some concern from mining companies that the fund would be used for broader unrelated purposes. However, Queensland Treasury makes clear there is within the bill 'clear and specific terms of the purposes which money from that fund can be used' and that there is no allowance for the fund to be spent on other functions of government.

The bill creates the role of the scheme manager, who allocates and reviews risk categories of EAs and sets the investment objectives and policies. There is also a requirement to keep the minister reasonably informed of operations and the financial performance of the scheme. The annual report requires information on the actuarial sustainability of the scheme and information about the effectiveness of the scheme in reaching rehabilitation targets. There is also a timetable of required actuarial investigations to be carried out to report on sustainability, the threshold, risk categories and rates of contribution.

The process of calculating the cost of rehabilitation is an important and contested part of any scheme and it needs to be continued to be calculated if there is any change to the mine design that increases the likely maximum disturbance, the resource activity, or other factors. In response to those concerns and comments on uncertainty, Treasury has advised that the department of environment is committed to providing a calculator that includes contemporary rehabilitation rates, building on the calculators released in 2014 and revised in 2017. We are advised that the new estimated rehabilitation cost calculator will be aligned with the commencement of the scheme.

Under the bill, the scheme manager has the responsibility to allocate a risk category to the project for any EA over $100,000, or as prescribed by regulation in the future. That is to properly cost the risk associated with the possibility that a company might be unable to fulfil its obligations of rehabilitation. The scheme manager considers the financial soundness of the EA holder, the characteristics of the mining project and, prior to making a final assessment, gives notice and reasons for the assessment. Further, the risk category must be reviewed annually, with a notice of confirmation or change for the EA holder. That calculates the probability that the state incurs a cost because of an inability to fund the required rehabilitation.

The nature of the scheme manager assessing the risk profile and other elements requires the manager to have access to high-level commercial information about a company and about an individual project. That information is by nature sensitive for companies and of a commercial nature and is not usually available to the public or, indeed, competing companies. It is important that companies provide a full account to the government, including information that may be commercially sensitive in nature. For that reason, it was proposed that the RTI Act not apply to this information. The Office of the Information Commissioner noted this exclusion and expressed some concerns about it. Although at the time Treasury advised that the bill does not otherwise, directly or inadvertently, make any changes to information that can currently be publicly accessed under the Environmental Protection Act, or any legislation in relation to the resource industry, the committee noted the concerns of the OIC and I note the amendments and the comments of the minister that the amendments will align the bill's right to information provisions with the recommendation made by the Information Commissioner.

The bill also establishes an advisory committee to give advice to the scheme manager. To ensure that there is a diversity of perspectives on the committee, there will be at least five qualified people, including at least one person nominated by an organisation representing environmental interests and at least one nominated by an organisation representing the mineral and energy sector. It was noted by the industry that the resource sector has diverse interests—across coal, hard rock oil and gas—and that all these sectors would want input. It is noted that the bill calls for at least one representative from

the various sectors and does not limit industry or, indeed, environmental participation. This unpaid advisory group will ensure that the scheme manager continues to get good advice from a variety of perspectives. The bill will also encourage progressive rehabilitation by requiring companies to develop a progressive rehabilitation plan as part of the process of applying for a site or a specific EA for a mining lease.

We all know that not all areas can be returned to exactly the condition they were in before they were mined. By definition, we encourage miners to extract resources for other uses. That is categorised as a non-use management area and is allowed only if carrying out rehabilitation would cause greater risk of environmental harm, or if it is justifiable in the public interest. I note the Treasurer’s comments that there are further amendments to the bill to ensure that non-use management areas are approved only in restricted circumstances and further strengthen the application of the public interest test with the administering authority to seek objective advice from an appropriately experienced and qualified entity during the assessment of a progressive rehabilitation and closure plan.

The purpose of this legislation is to give confidence to the Queensland community that we can continue to support the mining and resource industries in our state, not just for the jobs, commodities and revenue that they generate but also for the use of best practice methods to design resource projects that will find broad community support. That is the aim of this bill. I commend the amended bill to the House.