Parliamentary Committees

Progressive Coal Royalties Protection (Keep Them in the Bank) Bill 2024

Report No. 9, 57th Parliament
Cost of Living and Economics Committee
July 2024

Cost of Living and Economics Committee

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Acknowledgements

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All web address references are current at the time of publishing.

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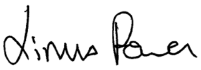
Chair's foreword

This report presents a summary of the Cost of Living and Economics Committee's consideration of the Progressive Coal Royalties Protection (Keep Them in the Bank) Bill 2024.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament. The committee also examined the Bill for compatibility with human rights, in accordance with the *Human Rights Act 2019*.

On behalf of the committee, I thank those individuals and organisations who made written submissions on the Bill. I also thank Queensland Treasury and our Parliamentary Service staff for their assistance.

I commend this report to the House.



Linus Power MP

Chair

Recommendations

Executive Summary

Under the *Mineral Resources Act 1989* (Mineral Resources Act), coal royalty rates are prescribed by subordinate legislation, meaning they can be raised or lowered via regulation.

The objectives of the Progressive Coal Royalties Protection (Keep Them in the Bank) Bill 2024 (Bill) are to amend the Mineral Resources Act to:

- prescribe a minimum coal royalty rate
- ensure coal royalty rates cannot be decreased without endorsement of the Legislative Assembly.

Feedback from stakeholders on the amendment was mixed. Some stakeholders supported the Bill as a means of ensuring Queenslanders continue to share in the profits made from Queensland's natural resources. Other stakeholders raised concerns the Bill would impact investment in Queensland's mining sector, thereby impacting the industry and the royalties received by government.

The committee's assessment of the Bill did not identify any potential incompatibilities with the *Human Rights Act 2019*, and as such, the committee considers that the Bill is compatible with human rights.

The committee's assessment of the Bill's compliance with the *Legislative Standards Act 1992* found no issues, and therefore considers the Bill is consistent with fundamental legislative principles. The explanatory notes contain the information required by Part 4 and a sufficient level of background information and commentary to facilitate understanding of the Bill's aims and origins.

The committee has recommended that the Progressive Coal Royalties Protection (Keep Them in the Bank) Bill 2024 be passed.

1 Introduction

1.1 Policy objectives of the Bill

Under the *Mineral Resources Act 1989* (Mineral Resources Act), coal royalty rates are prescribed by subordinate legislation. According to the explanatory notes, while the Legislative Assembly can disallow subordinate legislation under the *Statutory Instruments Act 1992*, this process could induce uncertainty in the State revenue base and resources sector if revenue losses result from the lowering of royalty rates.[1]

Hence, the objectives of the Bill are to:

- prescribe a minimum coal royalty rate
- ensure coal royalty rates cannot be decreased without endorsement of the Legislative Assembly.[2]

The Bill's objectives are achieved by inserting provisions into the Mineral Resources Act which 'prevent a regulation prescribing coal royalty rates that are lower than those prescribed at the time by way of new regulation, amendment of an existing regulation or repeal of an existing regulation'.[3] The Bill functions to ensure that any proposed decrease in the coal royalty rate would require legislative amendment and hence parliamentary scrutiny. The current processes for increasing coal royalty rates will remain as currently provided for under the Mineral Resources Act, that is, via subordinate legislation.

Treasury advised this approach 'is consistent with other revenue measures and other revenue rates such as payroll tax and transfer duty. These changes also bring Queensland closer and into line with the position of other states where coal royalty rates are legislated.'[4]

1.2 Background

In June 2022, as part of the state Budget, the Government introduced progressive coal royalty tiers. This represented the first change in rates after a ten-year royalty rate 'freeze'.[5] The royalty tiers 'were designed to ensure Queenslanders receive a fair return on the use of the State's valuable and limited natural resources during periods of high coal prices'.[6] The explanatory notes state that no votes were cast against that Bill by any member or political party represented in the Parliament.[7]

Royalty rates are prescribed under the Mineral Resources Regulation 2013 (Mineral Resources Regulation). In relation to coal, the Mineral Resources Regulation prescribes a progressive six-tier royalty rate structure. The applicable royalty rate is determined based on the average price per tonne of coal sold, disposed of, or used in the return period.[8]

The Progressive Coal Royalties Protection (Keep Them in the Bank) Bill 2024 (the Bill) amends the Mineral Resources Act to introduce a coal royalty rate floor, by providing that a regulation may not

[1] Explanatory notes, p 2.

[2] Explanatory Notes, p 1.

[3] Public briefing transcript, Brisbane, 10 June 2024, p 1.

[4] Public briefing transcript, Brisbane, 10 June 2024, p 2.

[5] Explanatory Notes, p 1.

[6] Explanatory Notes, p 1.

[7] Explanatory Notes, p 1.

[8] Explanatory notes, p 2.

prescribe coal royalty rates that are lower than those prescribed from time to time, to ensure Parliamentary consideration is required for changes that would decrease the coal royalty rates.[9]

In drafting the Bill, Queensland Treasury did not conduct any community consultation. The explanatory notes state this was because the amendments are machinery in nature and are necessary to support the administration of royalties.[10]

Submitters involved with, or who represent, mining interests commented on the lack of consultation. For example, the Queensland Resources Council (QRC) raised concerns about the lack of consultation with industry on the proposed legislation which it states will 'significantly impact Queensland's largest export industry and an important employer of Queenslanders'.[11] Both the QRC and Bowen Coking Coal called for the Bill to be reconsidered and for consultation with industry prior to any further legislative changes to coal royalties.[12]

In response to concerns about consultation, Treasury advised the following:

> The Bill does not have a direct impact on industry, in that the amendments do not change coal royalty rates or obligations on royalty payers. The amendments merely relate to the legislative process for amending coal royalty rates. Public consultation does not usually occur in relation to these types of amendments, which are machinery in nature.[13]

1.3 Legislative compliance

Our deliberations included assessing whether or not the Bill complies with the Parliament's requirements for legislation as contained in the *Parliament of Queensland Act 2001*, *Legislative Standards Act 1992* and the *Human Rights Act 2019*.

1.3.1 *Legislative Standards Act 1992*

Our assessment of the Bill's compliance with the *Legislative Standards Act 1992* identified no issues of fundamental legislative principles. Therefore, the committee considers the Bill is consistent with fundamental legislative principles.

Explanatory notes were tabled on the introduction of the Bill, as required by section 22 of the *Legislative Standards Act 1992*. The notes contain the information required by Part 4 and a sufficient level of background information and commentary to facilitate understanding of the Bill's aims and origins.

1.3.2 *Human Rights Act 2019*

Our assessment of the Bill's compatibility with the *Human Rights Act 2019* did not identify any incompatibilities. We find the Bill is compatible with human rights.

A statement of compatibility was tabled with the introduction of the Bill as required by section 38 of the HRA. The statement contained sufficient information to facilitate understanding of the Bill in relation to its compatibility with human rights.

1.4 Should the Bill be passed?

The committee is required to determine whether or not to recommend that the Bill be passed.

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9 Explanatory Notes, p 1.

10 Explanatory Notes, p 3.

11 Submission 4, p 3.

12 Submission 6, p 7.

13 Correspondence, Queensland Treasury, 26 June 2024, p 1.

Recommendation 1

The committee recommends the Progressive Coal Royalties Protection (Keep Them in the Bank) Bill 2024 be passed.

2 Examination of the Bill

The Bill amends the Mineral Resources Act – the legislative instrument that prescribes payment of royalties for minerals mined in Queensland. Under the Mineral Resources Act, the Governor in Council can make regulations about the amount or rates of methods of calculation of royalties paid under the Act.[14]

2.1 Insertion of new section 321AA - Regulation may not decrease royalty rate for coal

The Bill proposes to amend the Mineral Resources Act, inserting a new section 321AA Regulation may not decrease royalty rate for coal. The new section states that a regulation may not –

a. prescribe a coal rate that is lower than the coal rate in effect immediately before the commencement of the regulation; or

b. amend a regulation that prescribes a coal rate so that the coal rate under the amended regulation is lower than the coal rate in effect immediately before the commencement of the amending regulation; or

c. repeal a regulation that prescribes a coal rate unless, immediately after the repeal, a coal rate is in effect that is not lower than the coal rate in effect immediately before the commencement of the repealing regulation.[15]

2.1.1 Effect of the new section

The new section proposed by the Bill amends the power conferred on the Governor in Council to make regulations about coal royalties under the Mineral Resources Act (section 321(1)). This amendment requires that future regulations made in respect of coal royalties under the Mineral Resources Act cannot lower the royalty rate. To do so would require new legislation, which would be scrutinised by the parliament.

Treasury advised that coal royalty rates are 'a substantial portion of the Queensland government budget and a significant revenue measure. Including some legislative provision to prevent its decrease provides additional transparency in relation to those matters'.[16]

2.2 Stakeholder views

Some stakeholders expressed support for the Bill because of its intention to ensure Queenslanders continue to share in the profits made from Queensland's natural resources.[17]

For example, the Mining and Energy Union Queensland District (MEU) submitted the Bill 'will prevent Queenslanders being short-changed for their resources'.[18]

[14] Explanatory notes, p 2.

[15] Bill, p 4.

[16] Public briefing transcript, Brisbane, 10 June 2024, p 2.

[17] Andrew Reeson, submission 1, p 1; Mining and Energy Union Queensland, submission 2, p 1; Queensland Conservation Council, submission 3, p 1; Australian Workers' Union, submission 8, p 1.

[18] Submission 2, p 1.

Similarly, the Queensland Conservation Council (QCC) advised it strongly supports a bigger role for government regulation of the industry, with its support for the Bill stemming from a belief that 'Queenslanders are still bearing the brunt of increased energy and goods prices, while large coal companies are racking up superprofits'.[19] The QCC supports keeping 'coal royalties at their current rates or higher' because 'royalties in general have been too low in Queensland for many years'.[20]

Both the QCC and Mr Andrew Reeson raised concerns that if the price of coal drops, the amount of royalties paid by companies will be inadequate.[21]

The Australian Workers Union added its support because of the assistance coal royalties provides to Queenslanders, such as through cost of living relief, investment in regional Queensland and funding for training programs to equip working people with the skills needed for future jobs in clean energy and other sectors.[22]

In contrast, some other stakeholders opposed the Bill. The Queensland Resources Council (QRC) stated it 'welcomes public and parliamentary scrutiny' but 'does not believe the legislation as its stands will provide transparency'.[23]

The QRC submitted the Bill should not proceed, but if it does, that the legislation should be amended so that increases in royalty rates are also required to be approved via legislation, rather than through regulation.[24] The QRC argued that further sudden increases would cause more damage to Queensland's reputation as a stable and reliable place in which to do business, and cause more harm to Queenslanders who rely on the mining sector.[25] The QRC also argued that changes to the legislative regime cause uncertainty in the sector, which can negatively impact investment in new and expanded projects and could 'directly lead to a loss in the royalties Queensland has always relied upon to invest in hospitals, roads, police and schools, well before the 2022 royalty increases'.[26]

Bowen Coking Coal also opposed the Bill, arguing 'The current royalty rates are uncompetitive and risk a decline in the ability of the coal industry to drive further investment, and economic growth in Queensland'.[27] According to Bowen Coking Coal, the Bill 'fails to acknowledge Queensland's strong international reputation as a reliable supplier of coal to global customers, as well as its reliance on the coal industry to improve life for Queenslanders' and it therefore 'jeopardises the sector's long-term sustainability and its capacity to fund and provide essential services'.[28]

The Australian Institute for Progress (AIP) argued against the premise that lowering royalty rates requires a bill for the purposes of transparency, but increasing royalty rates can be done by regulation. The AIP stated, 'you either regulate or you legislate – you do not have a mixture of the two'.[29] The AIP pointed out that the Opposition will have the option, should they form government, to amend the bill in the parliament, stating:

> In a unicameral system, this is a relatively easy thing for a government to do. From the point of view of opposition from the public to such a change, it is likely to be the same were the changes to be made by

19 Submission 3, p 1.

20 Public hearing transcript, Brisbane, 8 July 2024, p 3.

21 Public hearing transcript, Brisbane, 8 July 2024, p 4.

22 Submission 8, pp 1-2.

23 Submission 4, p 3.

24 Submission 4, p 4.

25 Submission 4, p 4.

26 Public hearing transcript, Brisbane, 8 July 2024, p 5.

27 Submission 6, p 5.

28 Submission 6, p 7.

29 Public hearing transcript, Brisbane, 8 July 2024, p 11.

regulation, or legislation – voters care about the effect of policies, and generally don't understand the mechanisms by which they are effected.[30]

2.3 Departmental response

In response to submissions, Treasury emphasised that the 'Bill implements the decision of the Government that there should be appropriate visibility and Parliamentary consideration of any proposed decrease to coal royalty rates, to protect the integrity of progressive coal royalty rates that were introduced in 2022'.[31] Treasury also reiterated that the Bill does not change coal royalty rates; instead the amendments relate to the legislative process for changing the rates.[32]

2.4 Additions to the bill

Some submitters made suggestions for amendments or actions as an extension of the Bill. These included:

- implementing a requirement (potentially through legislation) for a designated portion of coal royalties to be directed back towards roads and other infrastructure and public services in coal communities[33]
- directing coal royalties into a transition fund for Queensland to build new industries in clean manufacturing such as green steel, iron and hydrogen, and building the renewable energy needed to decarbonise existing industries like aluminium smelting[34]
- improving the planning and regulatory frameworks governing project approvals for all industries, including renewable energy, to ensure nature is protected and communities get long term benefits from development in their regions[35]
- enshrining a dedicated percentage to the 'coal producing regions' where the royalties have been earned and reporting annually on the royalties and reinvestment in the separate coal producing regions[36]
- reviewing the government's coal royalty regime due to lack of competitiveness, sovereign risk, inequity, inefficiency, and ownership structure of the industry[37]
- raising the base rate and expanding it to include the gas industry.[38]

2.5 Departmental response

Treasury advised that the additional recommendations are beyond the scope of the Bill and funding decisions are a matter for the Government.[39]

30 Submission 7, p 2.

31 Correspondence, Queensland Treasury, 26 June 2024, p 1.

32 Correspondence, Queensland Treasury, 26 June 2024, p 1.

33 MEU, submission 2, p 3.

34 QCC, submission 3, p 2.

35 QCC, submission 3, p 2.

36 Fox Resources Ltd, submission 5, p 3.

37 Australian Institute for Progress, submission 7, p 5.

38 Mr Andrew Reeson, public hearing transcript, Brisbane, 8 July 2024, p 3.

39 Correspondence, Queensland Treasury, 26 June 2024, pp 1, 2.

Appendix A – Submitters

Sub #	Submitter
1	Andrew Reeson
2	Mining And Energy Union Queensland District
3	Queensland Conservation Council
4	Queensland Resources Council
5	Fox Resources Ltd
6	Bowen Coking Coal Ltd
7	Australian Institute for Progress
8	Australian Workers' Union

Appendix B – Officials at public departmental briefing

Queensland Treasury

- Mr Michael Carey, Under Treasurer
- Mr Dennis Molloy, Deputy Under Treasurer, Economics and Fiscal
- Mr Simon McKee, Commissioner of State Revenue, Queensland Revenue Office

Appendix C – Witnesses at public hearing

Queensland Conservation Council

- Ms Clare Silcock, Energy Strategist

Mr Andrew Reeson, Private citizen

Queensland Resources Council

- Ms Janette Hewson, Chief Executive Officer
- Ms Judith Bertram, Deputy Chief Executive Officer
- Mr Tom Cunningham, Assistant Policy Director Economics

Australian Institute for Progress

- Mr Graham Young, Executive Director

Queensland Treasury

- Mr Simon McKee, Commissioner of State Revenue, Queensland Revenue Office
- Mr Jason Mew, Director, Chief Revenue Counsel, Queensland Revenue Office