QRC Submission

Environmental Protection and Other Legislation Amendment Bill 2020

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QUEENSLAND resources COUNCIL

Table of Contents

1 INTRODUCTION

The Queensland Resources Council (QRC) welcomes the opportunity to provide a submission to the Natural Resources, Agricultural Industry Development and Environment Committee (the Committee) on the *Environmental Protection and Other Legislation Amendment Bill 2020* (the Bill) introduced into the Queensland Parliament on 18 June 2020.

QRC is the peak representative organisation of the Queensland minerals and energy sector. QRC's membership encompasses minerals and energy exploration, production, and processing companies, and associated service companies. QRC works on behalf of its members to ensure Queensland's resources are developed profitably and competitively, in a socially and environmentally sustainable way.

It is recognised that the Bill is intended to provide primarily for:

- Amendments to the residual risk framework, which expands on the recent financial provisioning and mine rehabilitation reform as introduced under the *Mineral and Energy Resources (Financial Provisioning) Act 2018* (MERFP Act); and
- The introduction of a Rehabilitation Commissioner having regard to the Deputy Premier's second reading speech on the *Mineral and Energy Resources (Financial Provisioning) Bill 2018* (now MERFP Act).

However, the Bill also includes several substantive amendments to the *Environmental Protection Act 1994* (EP Act), such as (but not limited to) amendments to the Environmental Impact Statement (EIS), Progressive Rehabilitation and Closure Plan (PRCP) and de-amalgamation processes.

The proposed changes are significant and will materially impact the way in which the resources sector operates. Despite this, the Government failed to undertake adequate consultation on the Bill (see **Section 2**) even though QRC sought to work proactively with DES and any other relevant Government departments in an iterative way to address the outstanding concerns in a timely manner ahead of introduction.

Government also did not undertake a best practice Regulatory Impact Analysis (or Regulatory Impact Statement) to identify and assess the impact of the Bill (financially or otherwise). In disregarding this process, Government has failed to recognise how the Bill, in particular amendments to the residual risk framework, will impact on land value and compensation requirements. QRC advocates for a greater adherence to the Regulatory Impact Analysis process. Where a Regulatory Impact Statement is not deemed necessary, the justification for this should be transparent and extraordinary in nature.

Further, Government has introduced the Bill while the resources sector is focused on responding to the COVID-19 global pandemic, which has had enormous upheaval for domestic operations and international markets, and at a time when the Government needs the resources sector for the State's recovery. This is in addition to significant works underway to transition the sector into the financial provisioning and PRCP frameworks under the MERFP Act.

QRC recognises that the general intent of some of the changes proposed by the Bill is consistent with reforms previously recommended by QRC, including:

- That PRCPs should be able to be submitted following an EIS process, so as to be properly informed by the data obtained during that process, rather than having to be submitted before the EIS;
- That there should be a framework available for a decision whether or not an EIS is required, before an application is lodged;

- That the correct time for any residual risk payment to be made should be upon surrender, not at the earlier stage of progressive rehabilitation certification, when financial provisioning is still in place; and
- That a residual risk management plan would be a useful instrument to be registered on title, where there are ongoing credible risks that should be managed post-mining, for the sake of greater transparency and certainty for anyone wishing to purchase successfully rehabilitated mined land.

However, QRC and its members raise a number of significant issues with the Bill, as set out in this submission, particularly where it fails to deliver practical law for the purpose of achieving Government's intent and stakeholder needs.

In summary, QRC is of the view that a Rehabilitation Commissioner is unwarranted. Given the Commissioner is to draw upon already existing Government staff for support and to provide technical advice, much of which is anticipated to be sourced from within the Department of Environment and Science (DES), QRC questions the add value of the role beyond the existing function and capabilities of the Department (or other Government department). In this regard, the financial commitment to implement the role is significant, particularly at a time when the State is now facing a greater shortfall in revenue than previously anticipated when the role was originally proposed.

Notwithstanding the above, QRC finds the provisions with respect to the Rehabilitation Commissioner's qualifications (and any delegate) incomplete and vague when compared to other similar statutory roles. Instead, DES is relying solely on the framework provided by the *Acts Interpretation Act 1954* (AI Act) to justify the lack of listed qualifications and experience for the role. Further, the Bill does not provide sufficient confidentiality safeguards for the mining sector relating to the information that may be requested by, and shared with, the Commissioner and supporting staff. This is a deviation from existing statutory provisions for confidential information, such as for public interest evaluations and financial provisioning.

While QRC appreciates that this Bill proposes some welcomed changes to the residual risk framework, the Bill does **not**:

- Establish a threshold for the materiality of residual risks to be assessed, paid for and managed. Based on previous stakeholder consultation and the Explanatory Notes for the Bill, only **credible residual risks** are intended to be relevant. Landholders are unlikely to appreciate their land being burdened with a '*risk management plan*' listed on title that relates to trivial or negligible risks; and
- Outline key policy positions with respect to determining a residual risk payment, such as threshold and discount rate. These fundamental factors should be included in the Bill in the same way as this was done for financial provisioning in the MERFP Act.

Instead the Bill relies on the '*Residual Risk Assessment Guideline*' that has not yet been made available and could be subject to amendments at any time in the future without the oversight of Parliament or any guarantee of transparent public consultation. In the absence of the Guideline, the Bill standalone could capture any and all residual risks, which could result in significant unintended consequences. QRC emphasises the ongoing difficulties for the resources sector in being able to evaluate the true impact of proposed legislation when the underpinning detail is not available.

Most critically, the Bill fails to remove a company's liability post successful surrender of the relevant tenure and Environmental Authority (EA). That is, once a company has completed successful rehabilitation and lodged any required residual risk payment, the Scheme Manager will have the opportunity to utilise part of the pooled fund towards insurance payments to cover possible events (such as impacts from earthquakes).

Neither the Government's insurance company nor anyone impacted by the insured event should be allowed to pursue a claim against a resource company, in respect of the same risk that the company has already properly disclosed and paid for. Without a clear expression of future release against liability, it will remain a fundamental deterrent for major resource companies ever to lodge surrender applications for large, complex sites. It also does not encourage or afford certainty for investment in new projects.

Considering the matters raised in this submission, the Committee should be aware that overall QRC and its members **cannot support** the Bill in its current form. QRC requests that the Committee consider the recommendations in **Section 5** of this submission when preparing its report on the Bill.

Beyond the Rehabilitation Commissioner and residual risk reform, there are a number of other substantive amendments proposed in the Bill. This is despite QRC having been previously advised by DES that there was no opportunity to make changes to the EP Act in response to reform priorities of interest to QRC and the resources sector. With the Bill now creating an opening, QRC recommends that the following be considered for inclusion in legislation:

- Ability for DES to amend the timeframe in a PRCP notice or reissue the notice with a new timeframe under particular circumstances where the original timeframe is impacted outside of a proponent's ability to control and could result in a non-compliance; and
- Exemption for petroleum and gas activities to have to maintain the rehabilitated land (or retained assets) through to surrender where progressive rehabilitation certification has been achieved and landholder sign-off received.

2 CONSULTATION

While QRC appreciated the structured consultation process on the *Managing Residual Risks in Queensland Discussion Paper* (the Discussion Paper) in 2018-19, the Bill fails to have implemented the intent of many of the reforms supported by a wide range of stakeholders during this engagement. QRC must also raise serious concern with the flagrant disregard of the 12-week minimum structured consultation period recommended by the Office of Best Practice Regulation for material policy or regulatory changes as it relates to the Bill and early engagement on the Rehabilitation Commissioner.

On 21 November 2018, the Premier, The Honourable Annastacia Palaszczuk MP, provided a strong assurance to the resources sector at her address at the QRC annual lunch that "*My Government is committed to continue with timely consultation with the Queensland Resources Council on legislative and policy changes*". However, Government's recent actions have not aligned with this commitment.

QRC stresses the importance of meaningful consultation in the development of policy and legislation to improve design, maximise outcomes, and avoid unintended consequences. QRC continues to see consultation efforts being impaired by DES' approach to transitioning from proposals or options under consideration to formal legislative change.

2.1 MANAGING RESIDUAL RISKS IN QUEENSLAND DISCUSSION PAPER

On 19 November 2018, Government released the Discussion Paper with submissions due on 1 February 2019 – a generally reasonable consultation timeframe (while noting additional time should have been afforded in light of the Christmas and New Year holiday period).

QRC supported a number of the reforms proposed in the Discussion Paper, including:

- Application of the residual risk framework, including risk assessment and residual management cost calculation, at surrender only;

- Identifying **credible risks** having regard to features and associated geotechnical, geochemical, and other risks;
- Establish a **threshold** for residual risk payments;
- Proposed introduction of what is considered equivalent to a site management plan (under the contaminated land framework) for **mining** for the management of land post surrender; and
- Proposed removal of residual risk requirements at progressive certification.

However, QRC was disappointed that some of the above reforms that were widely supported by stakeholders had not made their way into the Bill, particularly the fundamental principle of only regulating 'credible risk events' and deciding whether or not to set a 'threshold'.

2.2 REHABILITATION COMMISSIONER

In November 2018, the Deputy Premier stated in her second reading speech on the *Mineral and Energy Resources (Financial Provisioning) Bill 2018* (now MERFP Act) that:

> "…*we will explore options for the appointment of a mining rehabilitation commissioner within 12 months to set standards and keep them current and to ensure that the rehabilitation commitments made by mining companies are kept*".

While QRC respected Government's investigation of options into a Rehabilitation Commissioner, it recommended that these options should be compared with simply relying on existing Government expertise. Such a comparison would have been helpful in terms of identifying whether there is any actual value in creating this new position, particularly in view of the relative costs. However, on 27 September 2019, QRC was presented with a high-level proposal on the Rehabilitation Commissioner that DES had already chosen to progress rather than an exploration of options. Consultation was limited to a one-hour briefing with DES on the same day.

QRC was afforded only two weeks to review, engage with its broader membership and comment on the proposal. The proposal was high-level and contained little detail as to the scope of the role, its structure, governance, resourcing, budgeting and review. QRC delivered its submission to Government, as requested, on 11 October 2019.

Since lodgement of its submission, QRC routinely sought updates from, and requested further engagement with, DES on the consideration of options and development of the role of the Rehabilitation Commissioner. DES did not respond to QRC's submission, nor did it provide any further advice on, or involve QRC and its members in, the ongoing development of the role.

The fact that the role was progressed without consultation and only realised in the draft Bill (see **Section 2.3**) is not a fault of the mining sector or QRC. Outstanding concerns with the role of the Rehabilitation Commissioner are outlined in **Section 3.13** to **3.18**.

2.3 DRAFT BILL

On 28 May 2020, amid the ongoing difficulties of COVID-19, QRC was initially afforded only four days to review and comment on the draft Bill without being enabled to consult with its membership; despite being an industry representative body. Upon QRC raising this unacceptable timeframe and lack of inclusiveness directly with Government, the time to respond was extended by three days and member involvement was allowed.

While QRC understood the Bill was intended to make amendments to the residual risk framework and introduce a Rehabilitation Commissioner, it was not aware of other substantive changes to the EP Act impacting on the resources sector, which constituted over half of the content in the draft Bill.

QRC was pleased that some of the unintended consequences of drafting errors were addressed as a result of its submission on the draft Bill. If more time had been allowed, no doubt many of the other unintended consequences and gaps in the Bill, which are addressed in this submission and which were also addressed directly with DES at the draft Bill stage, could have been corrected before the Bill was presented to Parliament.

Disappointingly, Government was not willing to provide any further opportunity for engagement despite QRC advocating for, and standing ready to participate in, a genuine consultation process to address outstanding concerns. QRC sees this as a missed opportunity to collaborate with DES and test key concepts for appropriateness before progressing to proposed legislation.

3 THE BILL

This section details QRC and members' issues with the relevant clauses in Bill in the same order as it appears in the Bill. It is not intended to indicate priority with the most significant issues summarised in **Section 1**.

3.1 DECISION ABOUT WHETHER EIS MAY BE REQUIRED (CLAUSE 4, PART 3 AND CONSEQUENTIAL PROVISIONS CLAUSE 12, SECTION 125 AND CLAUSE 17, SECTION 143)

QRC **supports** the new framework for a formal process enabling a proponent to seek a decision upfront about whether or not an EIS would be required for an application, before proceeding with the application, while still enabling some flexibility to proceed with a voluntary EIS even if it would not be required. It would be helpful for either the Explanatory Notes or a guideline to provide some guidance about the circumstances in which a voluntary EIS would be considered not sufficiently 'appropriate' under Section 73C(3).

3.2 FLEXIBILITY TO PREPARE A PRC PLAN ARISING FROM THE EIS PROCESS

QRC **supports** the insertion of a series of new provisions designed to enable a proposed PRCP to be submitted later in an EA application process where an EIS process is to be completed. This ensures that relevant data is available to inform the PRCP.

QRC appreciates DES', albeit limited, engagement on these provisions has addressed the interface with the amendment process in Clause 40 (amendment of Section 232), as requested by QRC in its submission on the draft Bill.

3.3 SURRENDER APPLICATION PROCESS (CLAUSES 53 – 57)

QRC **supports in principle** the inclusion of a framework for post-surrender management reports **for mining leases** and associated risk management plans but **only where there are credible residual risks requiring ongoing management** (see also **Section 3.3.4.3**). In fact, this is a reform that QRC has been seeking since 2004, as it provides greater transparency for future landowners and Government agencies. QRC appreciates that the key elements of the amendments relating to surrender applications (Clauses 53 to 57) have been the subject of extensive consultation between QRC and DES. QRC's recommendations in relation to these clauses are directed towards fine-tuning the drafting for greater effectiveness and to avoid unintended consequences.

3.3.1 Post-surrender management reports should remain only applicable to mining leases (Clause 53, Section 262 and consequential amendments in other clauses)

QRC has never sought that this process should be made applicable to petroleum and gas tenures or to mining exploration or mineral development tenements.

Section 262(1)(d) already requires that, if the Environmental Authority (EA) contains conditions about rehabilitation and a PRCP schedule does not apply for the relevant activity (i.e., if it is not a mining lease), a final rehabilitation report must accompany a surrender application. For petroleum and gas activities and for exploration and mineral development activities, it is unclear why there should ever be an additional need for a '*post-surrender management report*' if there is nothing that requires ongoing post-surrender management.

The existing Section 262(1)(d)(ii) only requires '*a post-**mining** management report*' where 'a PRCP schedule applies for the relevant activity' (i.e., this was intended to mean where the relevant tenement is a mining lease). QRC recommends that the words 'resource activity' in Clause 52 should be '*mining lease*'.

A properly surrendered petroleum and gas tenement or mining exploration/mineral development tenement would not be expected to be able to be surrendered if there are credible residual risks that would impact on the landowner's future management of the land. Those landowners would have legitimate concerns about a '*post-surrender management*' document appearing in relation to their land, potentially impacting on their land values, for no good reason.

Bear in mind that it is normal for petroleum and gas tenements and for mining exploration and mineral development tenements to overlay other people's land, contrasted with mining leases which normally tend to overlay either freehold land owned by the mining company or term leases held by the mining company (or, if not, where any ongoing impact should already have been addressed by appropriate compensation). Consequently, a mining company is in a position to negotiate a lower price for the sale of the freehold of the mining company's own land, taking into account the disclosures in a post-surrender management report and the restrictions included in any risk management plan.

If the requirement for a post-surrender management report (and risk management plan) is to be extended to petroleum and gas tenements and to mining exploration tenements, this would have significant unintended consequences for Conduct and Compensation Agreements (CCA)[1].

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[1] In further detail, petroleum and gas members have advised that unintended consequences would include the following:

- First, they would be required to disclose this requirement as part of CCA negotiations with landholders.
- They would expect landholders and their representatives (solicitors and valuers) to view the notation as a perpetual record listed against their property even following completely successful rehabilitation.
- Landholders may be concerned about impacts to property values and future ability to sell where the title is listed as having 'residual risk'. Landholders may seek to negotiate clauses in their agreement for the petroleum and gas company to compensate for the loss of value and/or implications for future property sales.
- The following claims are frequently raised by landholder representatives during CCA negotiations concerning the perceived impact to their clients' property values and ability to sell as a result of coal seam gas (CSG) development:
    - There is a reluctance in the market for purchasers to consider buying in CSG affected areas;
    - Prospective purchasers use CSG development as a tool to negotiate a lower price;
    - Agents advise that a property with existing gas infrastructure would be heavily discounted in the marketplace in the absence of "acceptable ongoing income for permanent infrastructure on the land" (i.e. compensation).
- The concept of a post-EA surrender management report registration would give rise to further inflated landholder compensation assessments by including provision for impacts to property values and losses associated with future sales due to the potential registration. These assessments are relied upon by landholders and often set unreasonable expectations on compensation. This creates division between the petroleum and gas company and the landholder, prolonging negotiation timeframes and ability to access land.
- Compensation typically includes an annual payment that ceases when the CCA is at an end. Landholders would request ongoing compensation until the post-surrender management report is removed from title, which

The combined effect of not amending Section 262(1)(d)(i) while going too far with the amendments to Section 262(1)(d)(ii) is that an application for surrender for a petroleum and gas tenement or for a mining exploration/mineral development tenement would need to provide both a final rehabilitation report and a post-surrender management report, largely duplicating the same information, but in a different format. In contrast, a surrender application for a mining lease would only be required to lodge a post-surrender management report but not a final rehabilitation report. This would unduly burden petroleum and gas activities and mining exploration and development.

3.3.2 Compliance statements (Section 262(2)(b))

In Section 262(2)(b) it has always been problematic that the compliance statement by the EA holder is required to include a statement as to

> "*the extent to which relevant activities carried out under the environmental authority have complied with the conditions of the authority*".

A more accurate and relevant substitute requirement would be for the EA holder to provide a statement about the following issues in respect of **the part of the mine** the subject of the surrender application (refer to Section 261 which enables partial surrenders):

- Whether the project included no more Environmentally Relevant Activities (ERA) than the authorised ERAs (which is something that is strangely not currently required);
- Whether the extent of disturbance for the mining activities and associated prescribed ERAs was consistent with authorised disturbance (under either an EA or PRCP, depending on which is applicable); and
- Whether rehabilitation has complied with the PRCP or if there is no PRCP the rehabilitation conditions of the EA.

It is obviously a futile exercise and would normally not be practicable for a current EA holder to certify about non-rehabilitation related matters (e.g. whether there was historic compliance with noise conditions) and where the tenement has changed hands a number of times over its history and documents have been lost. It is apparent from Section 268(b)(ii) that the relevant area under consideration should only be the '*rehabilitation area*' (i.e. the part of the land that is being surrendered) not the entire project and this should be clarified in relation to the compliance statement requirements.

Given that this Bill is already amending Section 262, QRC recommends that this long-standing error should now be corrected.

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goes beyond the normal decommissioning and rehabilitation stages for which the petroleum and gas company would normally continue to pay annual compensation.

- There would be an increase in landholders expecting to be bought-out of their property in lieu of payment of compensation. This is neither in the interests of co-existence nor would it be in the interests of the State for good quality agricultural land to be owned by gas companies (or mining explorers). Likewise, the ability of many gas companies to purchase property has been adversely affected by changes to the national Foreign Investment regime.
- As an example, one petroleum and gas member advised that they currently hold over 1,200 individual active agreements with landholders across their operations and they would expect significant pushback from existing landholders who may request to vary current agreements under material change provisions in the agreement or under the *Mineral and Energy Resources (Common Provisions) Act 2014* given the potential post surrender management registration/notation of residual risk was not considered when their CCA was negotiated. The petroleum and gas company would also be expected to pay professional costs in this situation.

3.3.3 Final rehabilitation report (Clause 54, Section 264)

It is noted that Clause 54 does not amend the current Section 264(2)(d)(i) except by omitting the existing provisions about environmental risk assessment and residual risks, which are now addressed elsewhere. However, there has always been a lack of clarity in this subsection and QRC recommends that it be further updated to include the following amendments:

- If the surrender application is lodged after there is a PRCP schedule, the final rehabilitation report should be stating details of compliance with the rehabilitation monitoring indicators in the PRCP schedule, **not the EA**; and
- If the surrender application is before there is a PRCP for the land, it remains correct for the subsection to refer to the rehabilitation indicators in the EA conditions, but the wording should clarify that the monitoring programs intended to be reported on are **only** the rehabilitation monitoring programs (not noise, dust, blasting etc). Currently, the Bill refers to both

  > "*the monitoring program and the results of monitoring rehabilitation indicators required under any condition of the environmental authority*".

- It is clear from Section 268(b)(ii) that this should be restricted to "*any monitoring results relating to the rehabilitated area the subject of the application*".

Similarly, subsection (ii) should reflect that the rehabilitation criteria might **either** have been in the EA or PRCP, depending on whether there is a PRCP by that time.

3.3.4 Requirements for post-surrender management reports (Clause 55, replacement of Section 264A and associated definitions in Clause 100)

As noted in **Section 3.3.1**, QRC recommends that post-surrender management reports should only be required for the type of tenement for which post-surrender management would be justified (i.e., mining leases, not petroleum and gas tenements or exploration/mineral development tenements).

3.3.4.1 What should be shown on the map?

QRC supports in principle that the report should include a map and that this should show where the resource activities were carried out on the land. However, there is a drafting error in relation to the distinction in Clause 55 Section 264A(1)(b) between '*resource activities*' and '*site features*'. As currently defined in Clause 100, '*site features*' means the same thing as the '*resource activities'*, so the current drafting does not make sense. The demarcation between resource activities and the current definition of '*site features*' inserted in the Definitions Schedule[2] is inconsistent with current definitions of '*resource activities*' and '*mining activities*' in the EP Act[3]

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[2] **site features**, of land, means each of the following—
(a) surface and subsurface infrastructure on the land related to resource activities;
(b) other structures on the land related to resource activities;
(c) modifications of the land related to resource activities carried out on the land.
Examples of modifications of land—
tailings storage facilities, voids, waste rock dumps

[3] 110 EP Act What is a **mining activity**
A mining activity is—
(a) an activity that is an **authorised activity for a mining tenement** under the Mineral Resources Act; or
(b) **another activity that is authorised under an approval under the Mineral Resources Act** that grants rights over land.

and the reliance by these definitions on the term '*mine*' in section 6A of the *Mineral Resources Act 1989* (MR Act)[4].

All of the examples listed in the definition of '*site features*' would already automatically be covered by the term '*resource activities*' because they are already covered by the term '*mine*' in the MR Act. Similarly, a wide range of activities that are related to a '*mine*' can be authorised by mining tenements and consequently fall within the definition of a '*mining activity*' under section 110 EP Act (e.g. quarrying). It would only create confusion to set up a definition that overlaps with existing definitions[5].

QRC recommends that the map should show:

- The locations of the residual features created by former **mining activities** (and give some examples, e.g. residual voids, any tailings storage facilities that have not been removed, waste rock dumps that contain any buried regulated waste);
- The locations of any associated **prescribed ERAs** (e.g. motor vehicle workshop) and notifiable activities;
- Any associated third-party infrastructure of which the applicant is aware that is either a prescribed ERA or a notifiable activity; and
- Permanent watercourse diversions.

QRC also recommends that the map include '***site features***' redefined along the lines of background information that assists the reader to understand the locations of the other matters (e.g. property boundaries, natural watercourses, public roads or other remaining transport infrastructure).

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[4] 6A Mineral Resources Act 1989 - Meaning of mine

(1) Mine means to carry on an operation with a view to, or for the purpose of—
  (a) winning mineral from a place where it occurs; or
  (b) extracting mineral from its natural state; or
  (c) disposing of mineral in connection with, or waste substances resulting from, the winning or extraction.

(2) For subsection (1), extracting includes the physical, chemical, electrical, magnetic or other way of separation of a mineral.

(3) Extracting includes, for example, crushing, grinding, concentrating, screening, washing, jigging, tabling, electrowinning, solvent extraction electrowinning (SX–EW), heap leaching, flotation, fluidised bedding, carbon-in-leach (CIL) and carbon-in-pulp (CIP) processing.

(4) However, extracting does not include—
  (a) a process in a smelter, refinery or anywhere else by which mineral is changed to another substance; or
  (b) testing or assaying small quantities of mineral in teaching institutions or laboratories, other than laboratories situated in the area of a mining lease; or
  (c) an activity, prescribed under a regulation, that is not directly associated with winning mineral from a place where it occurs.

(5) For subsection (1), disposing includes, for example, the disposal of tailings and waste rock.

(6) (A regulation under subsection (4)(c) may prescribe an activity by reference to the quantities of minerals extracted or to any other specified circumstances.

[5] The normal relevant rule of statutory interpretation is that words are not to be regarded as 'superfluous' or 'mere surplusage', which creates difficulties where two defined terms are used together but the definitions are approximately the same. The principle is considered even more compelling where the apparently superfluous words are added by amendment, eg: Transport Accident Comm v Trelour [1992] 1 VR 447 at 462. The principle is summarised in Pearce & Geddes, Statutory Interpretation in Australia at [2.22].

However, the map should **not** show the locations of former features that have been completely removed (e.g. levees that have been removed or voids that have been backfilled) because:

- This would only distract attention from the residual features that do require some form of ongoing management;
- The inclusion of historic features that no longer exist and no longer create any risks would only tend to create unnecessary stigma for the future landholder, in terms of market value, including redevelopment potential;
- In many cases, the inclusion of layers of historic features that have been completely removed would make the map too confusing (e.g. where an open-cut void has been back-filled to create a waste rock dump and then infrastructure has been placed on top of that. The history of the backfilled void is no longer relevant at that point).

3.3.4.2 Reference to the Residual Risk Assessment Guideline (Clause 55, Section 264A(1)(e))

QRC **supports in principle** the requirement for the post-surrender management report to include a risk assessment in accordance with the proposed Residual Risk Assessment Guideline. The Bill makes reference to the Guideline with respect to the risk assessment for a post-surrender management plan (Section 264A(1)(e)) and also for deciding the amount of payment for residual risks (Section 273(2)).

QRC is concerned that the extent of the contents to be included in the Guideline, beyond the above, is unclear. QRC recommends that the Bill should provide some guidance about the minimum matters that the Guideline is required to cover, not just its title and who will publish it. This would be consistent with other sections of the EP Act establishing statutory guidelines, such as Sections 549 and 550.

3.3.4.3 Risk management plan

i) When a risk management plan is required (Clause 55, Section 264A(1)(f))

QRC appreciates that DES has engaged in consultation with QRC about the trigger for a risk management plan. By way of background, QRC has previously raised during consultation with DES that future landowners (such as graziers) should not be unduly burdened by risk management plans attaching to their titles merely because of negligible or inconsequential risks. It is appreciated that Section 264A(1)(f) makes some attempt to avoid that unintended outcome by linking the trigger for a risk management plan to whether there are residual risks that actually require ongoing management, as opposed to any residual risks at all. However, the current drafting does not go far enough to protect future landowners from the burden of having unnecessary risk management plans registered on their title.

Unlike the Explanatory Notes[6], the Bill does **not** explicitly recognise the distinction between any and all 'residual risks' and 'credible [residual] risks'. The definition of a 'credible risk' in the Discussion Paper was simply an event "*with a plausible likelihood of occurrence and reasonable magnitude of consequences*"[7]. There was broad stakeholder support for the approach in the Discussion Paper. Further, the existing Section 318ZF(2)(b), which deals with progressive rehabilitation certification, already included the concept of '*credible risk*':

> "*identify all **credible risks** for the proposed certified rehabilitated area*".

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[6] *Environmental Protection and Other Legislation Amendment Bill 2020* Explanatory Notes, page 27
"*As part of the risk assessment, there will be an identification of all **credible risk events** related to a failure of the rehabilitation or management action to perform as intended*".

[7] Queensland Government (2018) *Managing residual risks in Queensland discussion paper*, page 17

This is now proposed to be replaced by Clause 75 in such a way as to remove the concept of '*credible risk*' in relation to progressive rehabilitation certification.

QRC does not understand why DES has been reluctant to include this fundamental concept (and corresponding definition) in the Bill. QRC recommends that 'credible residual risks' be specified in the Bill to appropriately contextualise the materiality of the risks considered.

While recognising that there has been some attempt to limit the trigger for a risk management plan, there are still drafting issues with this trigger:

- What is meant by the threshold in Subsection (1)(f)(ii) that the costs and expenses are to be '*worked out in a stated way*'? Was it simply intended that a residual risk management plan is triggered if there is a residual risk payment for the land? Or is it intended that the risk management plan is triggered if there is any calculation required under the guideline, but the amount is less than some threshold (yet to be disclosed)?
- The term '*ongoing management activities*' in Subsection (1)(f)(i) is also too vague, as explained further in Section **3.3.4.3(vi)** of this Submission. The expression '*may need to be carried out*' also opens up the trigger beyond what was originally defined as a '*credible risk*' in the Discussion Paper.

ii) Area subject of a risk management plan

Although the post-surrender management report should provide an overview of the entire area the subject of the surrender application, QRC recommends that it would be more helpful to future landowners if any risk management plan is on a lot-by-lot basis under the *Land Titles Act 1994* or *Land Act 1994*, rather than on the basis of the entire mining project. For example, if there are two adjoining lots the subject of the mining tenement being surrendered and only one of these lots is affected by ongoing management requirements, only that lot should be affected by the risk management plan. This may have been intended to be implied by the words 'for the land', but it is recommended that this should be made clearer.

iii) Matters to be included in a risk management plan (Clause 55, Section 264A(2))

With respect to the opening line for Subsection (2), as noted above, the risk management plan should be targeted only to the relevant land titles affected by ongoing credible risks requiring management and should not necessarily be for the entire area of the '*land the subject of the surrender application*'. The typical Central Queensland coal mine covers many square kilometres and numerous land titles. Much of the land is likely to have been either never disturbed by mining activities or rehabilitated to a standard requiring no ongoing management. QRC recommends that this land should be unburdened by a risk management plan.

iv) Spatial Information (Clause 55, Section 264A(2)(a))

In paragraph (a), QRC supports in principle the inclusion of spatial information, but land titles do not need to be burdened with such information about historic disturbance that no longer exists or about features that do still exist but which require no ongoing management beyond the same normal facilities characteristic of the area.

For example, if a future landowner wishes to retain beneficial infrastructure, such as roads, farm dams and fences, unrelated to any ongoing management of mining residual risks, that should not be a problem that needs addressing. QRC recommends that the spatial information in the risk management plan should be specifically targeted at:

(a) the location, size and nature of each of the relevant matters identified as requiring any of the following:

- Ongoing management activities,
- Restrictions on activities or uses; or

- If the owner proposes to remove or amend a management activity or restriction, the further work that would be recommended for that purpose.

(b) Contextual mapping information so that the reader can easily understand where the relevant matters are located (e.g. property boundaries, watercourses, public roads or other transport infrastructure).

v) Consultation (Clause 55, Section 264A(2)(b))

For large mining projects, it is normal in Queensland that the mining company owns most of the land in freehold. Upon surrender, the mining company would be proposing to sell the land to third parties. Prior to surrender, there may be an option to purchase, but the future landowner would not normally yet be the legal '*owner or occupier*' because this would still be the mining company There should be a mechanism available for the future landowner to have consented to which beneficial infrastructure they would like to be retained on the land.

vi) Remedial action or ongoing management activities (Clause 55, Section 264A(2))

Throughout Subsection (2), the term '*remedial action or ongoing management activities*' is used but undefined. In particular, the term '*remedial action*' implies a positive compulsory obligation to do work and consequently is likely to be viewed by future landowners as unnecessarily burdening their land and impacting on land values.

QRC recommends the following be included in the risk management plan to improve flexibility and transparency for future landowners:

- For each identified credible risk:

  (a) **either** ongoing management activities; **or**

  (b) restrictions/limitations on activities or uses; **or**

  (c) **both**.

  Example of an ongoing management activity –

  Maintain a fence.

  Examples of restrictions –

  Do not construct a building within a specified area (due to subsidence), or the mapped area is only suitable for light grazing (to avoid erosion). This is envisaged as similar to a 'site suitability statement' for a site management plan for contaminated land and would interface well with that process.

  '*Restrictions*' are negative and passive and are not the same as '*management activities*', which is a term that implies a positive obligation to do work.

  QRC recommends that the plan may also (optionally) provide advice on the circumstances in which those ongoing management activities or restrictions would no longer be justified.

- Two examples of circumstances in which a restriction could be removed:
  - Example 1: Further earthworks are undertaken to backfill an area to the satisfaction of the administering authority so that it no longer needs to be fenced.
  - Example 2: The plan has recommended only light grazing to avoid erosion but this restriction would no longer apply if the land is no longer used for grazing at all.

The plan should also be set out so that, for each identified credible risk, there is a corresponding set of assumptions and corresponding management activity or restriction. It would be less transparent to have a general '*statement of assumptions*' unrelated to each corresponding credible risk.

vii) Activities are to be carried out and managed 'in perpetuity' (Clause 55, Section 264A(2)(e))

The requirement for '*details of how those activities are to be carried out and managed in perpetuity*' regarding site management plans and management activities for risk management plans does not make sense.

Section 406 of the EP Act already requires that, in relation to a site management plan:

> "*A local government must not, under an approval or other authority granted under the Planning Act or any other Act, allow the use or development of, or an activity to be carried out on, land in a way that contravenes a site management plan for the land the details of which are recorded in a relevant land register*".

In QRC's view the same should apply to risk management plans.

Sections 407 and 408 impose notice requirements about issues such as site management plans upon a sale or lease of land. The same should apply to risk management plans.

Under Section 434, a person must not contravene a site management plan. The same should apply to a risk management plan.

Chapter 7, Part 8, Subdivision 6 enables landowners to apply to amend site management plans and an assessment framework by the administering authority. The same should apply to risk management plans.

If these simple existing mechanisms that address ongoing management and restrictions on the use of contaminated land are all adopted for risk management plans, there is no need for the mining company to be staying around to manage minor risks such as maintenance of fencing *'in perpetuity'*, when the whole purpose of the exercise is to enable surrender. If the mining company has to manage the residual risks *'in perpetuity'*, it would be futile to undertake a surrender and make a residual risk payment in respect of the identified credible risks.

viii) Costs of management activities (Clause 55, Section 264A(2)(f))

QRC supports in principle that the costs of management activities should be estimated upfront. This is already included in the residual risk payment to the State under Section 271. QRC has repeatedly emphasised that nearly all credible risks following successful rehabilitation should be capable of being managed by private landholders, in a similar way to their normal management of any other land, such as maintaining fencing, not removing vegetation required for erosion control and the like. It would be an unwelcome intrusion into normal day-to-day rural activities for the State Government to become involved in such matters. It follows from this that there should be a statutory framework enabling private landholders to be able to access funds from the residual risk pool. Otherwise the State would be receiving the funds but not undertaking the corresponding management activities. There should be a framework for private landholders to be entitled to these funds, including rights of review against decisions they consider unfair.

ix) Insurance arrangements

Some credible risks will not be addressed by '*management activities*' (or not entirely) but rather by insurance or by State monitoring and this should be made transparent to landowners. As noted in Section 7.4 of Queensland Treasury Corporation's (QTC) *A Framework for Queensland's residual risk in the resource sector*:

> *"The State does not need to assume responsibility for any variations in costs such as cost inflation, unexpected or unforeseen deterioration in the rehabilitation or catastrophic events. By aggregating the risks, the State could take advantage of* ***external insurance arrangements*** *to cover its overall risk management at a whole-of-state level. Premia to cover these insurance arrangements could be deducted from the RR Fund with proceeds from claims made credited to the RR Fund to offset the costs associated with aggregated credible risk events".*

The summary of submissions from the insurance sector included in this report indicated that QTC's recommended approach was supported by the insurance industry.[8] QRC has also supported this approach. Where the State will be utilising pooled residual risk funds towards insurance premiums, which will address specified credible risks, there should be a mechanism for this to be made transparent to affected landowners and occupiers.

QRC recommends that the types of monitoring activities that would be normal for the nature of the post-mining land use should be left with the landowner (e.g. monitoring fencing, drainage and the like) so as to minimise any unnecessary intrusion by the State. However, the State may wish to assume responsibility for monitoring of higher consequence risks and part of the residual risk payment would relate to the State's monitoring costs. If the State is being paid out of the residual risk pool to undertake ongoing monitoring on a landholder's title, there should be a mechanism for this fact to be made transparent to landowners, if only so that landholders are aware of access issues. A notation by the State on the risk management plan would be helpful.

x) Site suitability statement

It is not considered helpful that Section 264A(2)(f) requires a statement of '*the estimated amount of costs and expenses that may be incurred in carrying out remedial action*'. An estimate of the present value of carrying out '*management activities*' that the future landholder would be expected to undertake would likely be helpful for landholders. However, it would not be helpful to landholders for this statement to include details of the estimated impact on land values of any passive restrictions (i.e. not to do something, rather than to carry out positive work).

It would be particularly unhelpful to try to include cost assessments of various hypothetical remedial work that landholders may wish to do in the future for a hypothetical change of land use, partly because it would not be foreseeable by the mining company which changes of use a future landowner may wish to pursue. For example, a re-mining development would trigger different remedial actions from a residential development. Secondly, an assessment of that hypothetical remedial cost would quickly become outdated and would no longer be relevant to someone wishing to redevelop the land for a different purpose in 50 years. Finally, this hypothetical assessment would unnecessarily burden the market value of the land to the landholder.

QRC recommends instead that the risk management plan should include a site suitability statement, in the same way as a site management plan is implemented under the contaminated land framework.

There is no need for the land uses stated in the site suitability statement to be restricted to the same post mining land use set out in the PRCP because the future landowner's uses will be subject to the local government planning scheme and the *Planning Act 2016*. By analogy, the purpose of a site suitability statement for contaminated land is to restrict inappropriate uses, and it is not necessarily the only authorisation required for appropriate uses in terms of planning legal requirements.

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[8] Queensland Treasury Corporation (2018) *A Framework for Queensland's residual risk in the resource sector*, page 16.

Site suitability statements will often be particularly important in relation to former underground mines that have been subjected to controlled subsidence. Inappropriate development may include development above certain threshold weights or residential development. This information would be valuable to local governments.

For land that is proposed to be surrendered, it is suggested that a combined site suitability statement should accompany the draft post-surrender management plan and (if applicable) the site investigation report for any contaminated land. The definition of a '*site suitability statement*' would then need to be amended in both the EP Act and the *Planning Regulation 2017*.

3.4 CRITERIA FOR DECISION (CLAUSE 57, SECTION 268)

The proposed replacement criterion at Section 268(b)(iii) does not make as much sense as the current version of the provision. The proposed replacement subsection is:

> "*(iii) a final rehabilitation report and post-surrender management report accompanying the application*".

As explained in **Section 3.3.1** of this submission, the combined effect of **not** amending Section 262(1)(d)(i) while going too far with the amendments to Section 262(1)(d)(ii) is that an application for surrender for a petroleum and gas tenement or for a mining exploration/mineral development tenement would need to provide both a final rehabilitation report and a post-surrender management report, largely duplicating the same information, but in a different format. In contrast, a surrender application for a mining lease would only be required to lodge a post-surrender management report but not a final rehabilitation report. This would unduly burden petroleum and gas activities and mining exploration and development.

QRC's recommendation is that only a final rehabilitation report should be required for petroleum and gas activities, exploration and mineral development activities, and prescribed ERAs where the EA includes rehabilitation conditions (as per the current EP Act). A post-surrender management report should be required in relation to surrender of mining leases where there has been mining disturbance of the land (but not if there has been no disturbance). The section would then omit the word '*and*' and substitute '*or*'.

3.5 PAYMENT MAY BE REQUIRED FOR RESIDUAL RISKS (CLAUSE 58, SECTION 271)

3.5.1 Other entities (Clause 58, Section 271(2))

QRC supports a payment for residual risks to be provided to the Scheme Manager, as per the example in Section 271(2), however, it is not clear which '*other entities*' are intended by the section and QRC recommends this should be clarified.

3.5.2 Stated amount (Clause 58, Section 271(2))

It is no longer acceptable for the provision to remain so vague that the amount is whatever '*stated amount*' the administering authority requires. QRC recommends that the Bill should be reflect that the amount should be calculated having regard to only **credible residual risks** (see **Section 3.6**) in accordance with the residual risk calculator (or expert panel) and with any further procedures in the Residual Risk Assessment Guideline, and subject to review (i.e. with a consequential amendment to include this decision in the list of '*original decisions*' in Schedule 2).

3.5.3 *Reasonable period (Clause 58, Section 271(2))*

It has always been problematic that the payment is required within a '*reasonable period*' at the absolute discretion of the administering authority. As provided in the Explanatory Notes, the surrender cannot take effect until the payment had been made. It should not matter to the authority how long it takes for the company to provide the payment because in the meantime the Scheme Manager still holds financial provisioning for the area the subject of the application and the surrender cannot take effect until the residual risk payment is received. QRC recommends that this discretion be removed.

3.6 AMOUNT AND FORM (CLAUSE 59, SECTION 273)

3.6.1 *Reference to the Residual Risk Assessment Guideline (Clause 59, Section 273(2))*

Section 273 requires that the administering authority must have regard to the residual risk assessment guideline in deciding the amount of the payment. As noted in **Section 3.3.4.2**, the extent of the contents to be included in the Guideline is largely unclear. Reference to the Guideline alone is not sufficient when payment is to be calculated having regard to credible residual risks in accordance with the residual risk calculator (or expert panel) (see **Section 3.5.2**).

The Bill should provide some guidance about the minimum matters that the Guideline is required to cover, not just its title and who will publish it. This would be consistent with other sections of the EP Act establishing statutory guidelines, such as Sections 549 and 550.

3.6.2 *Materiality of residual risks informing payment*

Regarding the substituted sections, there is an issue regarding materiality of the residual risks informing payment. This issue appeared to have been considered during consultation but has not made its way into the Bill.

The Bill itself should specify that a payment is only required in respect of **credible residual risks** above a certain threshold. Similarly, QRC recommends that the Bill should include Government policy positions for determining the residual risk threshold and discount rate. By way of analogy, the MERFP Act includes a range of important details about the Scheme Fund, such as the fund threshold (see Section 11 of the MERFP Act).

Despite the Explanatory Notes[9] stating that the Residual Risk Assessment Guideline will "…*provide more clarity and certainty regarding the identification and calculation of residual risks*", it is not sufficient to defer all of these issues to the Guideline which may be subject to change at any time; the key elements should be crystallised in the legislation in the same way as financial provisioning. While the administering authority must have regard to the Guideline in deciding the amount for a residual risk payment under Section 273 (2) of the Bill, the term '*calculator*' or '*calculation tool*' should be specified to remove doubt (see **Section 3.5.2** and **3.6.1**).

Matters of further detail can then be addressed in the relevant guideline provision similar to the approach adopted for the Estimated Rehabilitation Cost calculators, and the key requirements for matters to be addressed in the Residual Risk Assessment Guideline should be referenced in the Bill (similar to section 550).

3.6.2.1 *Likely management costs (Clause 59, Section 273(4))*

Under the new Section 273, when deciding the amount and form of the payment required, the administering authority cannot require a payment of an amount more than the amount that, in the authority's opinion, represents the '*likely management costs*'.

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[9] *Environmental Protection and Other Legislation Amendment Bill 2020* Explanatory Notes, page 29

Under Subsection (4), the Bill defines '*likely management costs*' as

> "*in relation to land the subject of a surrender application, means **all** likely costs and expenses that may be incurred in carrying out remedial action or ongoing management activities in relation to the land because of **residual risks** of the land*".

This does not align with the Explanatory Notes[10], which states

> "*The estimated costs and expenses will be the sum of costs and expenses associated with undertaking ongoing management activities and remediation activities required due to **credible risk events***".

Further, and having regard to the structure and intended operation of the residual risk calculator, QRC understands that only credible risks above a threshold were intended to be considered in determining payment for likely management costs – recognising that the threshold and the allowance for the accumulation of interest on the pooled fund over a period of time also influences the calculation. Also, it should be noted that some types of residual risks will not involve any '*management activity*' or '*remedial action*' by the landowner under a risk management plan. For example, some types of low risk but high consequence events may only be addressed by a residual risk payment which is directed by the Scheme Manager to insurance, so it is unclear whether the definition even covers some credible risks that the Scheme Manager would be addressing. Is a (relatively) low risk but high consequence event '*likely*' (as in probable)? Is the insurance for this type of event a 'management activity or remedial action'?

Again, QRC recommends that '*credible residual risks*' be specified in the legislation with respect to the '*likely management cost*' to appropriately contextualise the materiality of the risks considered with respect to payment. This could be further expanded in the Residual Risk Assessment Guideline.

3.7 POST-SURRENDER LIABILITY

The Bill critically fails to include provisions to release holders (and related entities) from future liability in respect of the surrendered land, upon surrender. QRC maintains the position, as set out in QRC's submission on the Discussion Paper, that without a clear expression of future liability release, it will remain a fundamental deterrent for resource companies ever to lodge surrender applications.

Following surrender, companies effectively lose control over the sites and are placed at risk of being sued, in respect of residual risks that they have fully disclosed and paid for. This contingent liability will never be removed from the company balance sheets unless legislation confirms that the company is no longer liable at this point. Otherwise, the company remains at risk of being pursued for a claim from the State's insurance company.

The issue of post-surrender liability is one of the most significant reasons why there have been no surrenders of major resource operations in the last 18 years. Historically, small operators have avoided this liability by going into liquidation. This is not an option for major operators. It means that, for nearly all tenures, they would simply be unable to utilise the surrender provisions and would need to remain in control of the land indefinitely, preventing this land from being returned to landowners.

QRC is seeking legislative amendments to confirm that future liability in respect of the surrendered land be removed upon successful surrender. QRC recognises that achieving this requires consultation across Government, including DES, the Department of Natural Resources, Mines and Energy, and Queensland Treasury, with considerations in respect of common law.

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[10] *Environmental Protection and Other Legislation Amendment Bill 2020* Explanatory Notes, page 28

While it may not be possible to address this issue as part of the Bill, it is a significant gap to delivering a complete and effective residual risk framework. As such, QRC recommends that the Committee seek a commitment from Government to investigate this issue through a separate program of works to be delivered within a committed timeframe, with the aim of achieving a resolution in consultation with QRC and the resources sector.

3.8 POST-SURRENDER STEPS (CLAUSE 60, SECTION 275)

3.8.1 Recording on the register (Clause 60, Section 275(a)(i))

QRC supports the introduction of the register for post-surrender management reports. However, in previous consultation, QRC's point was that the **report itself** should be publicly available as opposed to only advising the owner and occupier of '*the existence of*' the report.

3.8.2 Written notice of the report to the owner and occupier of the land (Clause 60, Section 275(a)(iv))

If the owner of the land is not the same as the resources company making the surrender application, QRC recommends that written notice to the owner and occupier should provide the report or a link to the report, not merely advise them of the existence of the report. However, if the holder (or a related entity) is the owner, it should not be necessary for the administering authority to give a copy of the report to the holder.

QRC recommends that a copy should also be provided to the local government, so that any issues relevant to land use planning can be taken into account in planning instruments. The notice should include advice about the effect of the report and the ability of the owner to apply to make changes.

3.9 RECORDING OF RESIDUAL RISKS ON TITLE (CLAUSE 61, SECTION 275B)

QRC supports that a post-surrender management report should not be recorded on title unless it includes a risk management plan. It is critical that this document should only be recorded on those specific titles that are affected by the specific risks, so as not to burden titles unnecessarily with risks relating to land many kilometres away.

QRC **supports in principle** Section 275B(6) enabling risk management plans to be removed from title. However, there should be a proper application process available for the owner or occupier to apply to remove or amend a risk management plan, subject to satisfying the administering authority that the owner or occupier has undertaken further work to remove the risk. Decisions should be subject to review.

In the meantime, the risk management plan should attach to the land and be binding on the owner and successors in title. Local governments should also not make decisions inconsistent with restrictions on land use that have been approved for inclusion in the plan (e.g. not to construct buildings within certain areas).

As noted in **Section 3.3.4.3** of this submission, Section 406 of the EP Act already requires that, in relation to a site management plan:

> "*A local government must not, under an approval or other authority granted under the Planning Act or any other Act, allow the use or development of, or an activity to be carried out on, land in a way that contravenes a site management plan for the land the details of which are recorded in a relevant land register*".

In QRC's view the same should apply to risk management plans.

Sections 407 and 408 impose notice requirements about issues such as site management plans upon a sale or lease of land. The same should apply to risk management plans.

Under Section 434, a person must not contravene a site management plan. The same should apply to a risk management plan.

Chapter 7, Part 8, Subdivision 6 enables landowners to apply to amend site management plans and an assessment framework by the administering authority. The same should apply to risk management plans.

If these simple existing mechanisms that address ongoing management and restrictions on the use of contaminated land are all adopted for risk management plans, there is no need for the mining company to be staying around to manage minor risks such as maintenance of fencing 'in perpetuity', when the whole purpose of the exercise is to enable surrender. If the mining company has to manage the residual risks 'in perpetuity', it would be futile to undertake a surrender and make a residual risk payment in respect of the identified credible risks.

As noted in QRC's submission on the Discussion Paper:

> *"To the extent that the State reserves to itself the role of managing and monitoring particular features of a site, both the landholder and neighbours will be relying on the State continuing to perform that role. Insurers will be relying on this and (to a lesser extent) the EA holder also has an interest in this.*
>
> *The following questions are put forward to the Government for further consideration:*
>
> - What mechanism will be adopted by the State to give confidence that the State (or its contractors) will perform its agreed role?
> - What action can be taken by a landholder who is concerned that the State's contractors are not doing a competent job?
> - Can the landholder apply to take over these responsibilities and receive compensation from the fund for doing so?
>
> *Confidence in the system can only be maintained if there is some mechanism available to interested parties, particularly the landholder and affected neighbours, to ensure that the State's performance of the ongoing monitoring and maintenance responsibilities that the State has decided to retain for itself".*

3.10 OTHER RELATED MATTERS

3.10.1 Criteria for decision to make residual risks requirement (Section 272)

Section 272 is not amended by the Bill but this section is in need of change, to bring it in line with the wide range of potential post-mining land uses that have been made available, due to the recent reforms in Schedule 8A Part 3, Table 1, item 1 *Environmental Protection (Rehabilitation Reform) Amendment Regulation 2019*.

Section 272 still requires the administering authority to be satisfied regarding the topic of a *'self-sustaining ecosystem'*. In contrast, the majority of mines can be expected to rehabilitate land to "*the use… consistent with how the land was used before a mining activity was carried out on the land*" (normally grazing) or to work with a proposed purchaser of the land regarding a development application for a different purpose, such as infrastructure or industrial land. There will still be a minority of land rehabilitated for purposes such as offsets for other projects.

In addition, Section 272 should recognise that a payment is not required where there are no credible risks above a certain threshold in the calculator, and that payment in respect of any credible risks is to be in accordance with the calculator, not in accordance with vague terms such as '*best practice environmental management*' which may not even be relevant for a variety of post-mining land uses that are now available under Schedule 8A Part 3, Table 1, item 1, inserted by the *Environmental Protection (Rehabilitation Reform) Amendment Regulation 2019,* for example, a post-mining land use for an industrial estate or a landfill.

3.10.2 Need for private property owners to have a framework for access to their fair share of the residual risk payment

QRC has repeatedly emphasised that many types of credible risks following successful rehabilitation should be capable of being managed by private landholders, in a similar way to their normal management of any other land, such as maintaining fencing, not removing vegetation required for erosion control and the like. It would be an unwelcome intrusion into normal day-to-day rural activities for the Government to become involved in such matters. It follows from this that private landholders should be able to access funds from the residual risk pool. Otherwise the State would be receiving the funds but not undertaking the corresponding management activities. There should be a framework for private landholders to be entitled to these funds, including rights of review against decisions they consider unfair.

Where the State has reserved to itself the responsibility for ongoing management activities, this fact should be noted on the risk management plan and there should be a transparent system available for landholders to be able to keep track that the State is fulfilling this role, so as to have confidence in the framework.

3.11 PROGRESSIVE REHABILITATION CERTIFICATION (CLAUSES 72 – 80)

QRC supports in principle the amendments to the progressive rehabilitation certification sections but notes some minor corrections to the drafting to avoid unintended consequences.

QRC does **not** support the fact that Clause 75 (Replacement of Section 318ZF) removes the existing concept of '*credible risk*' from the current Section 318ZF(2)(b), which states:

> "*identify all credible risks for the proposed certified rehabilitated area*".

It does not make sense that the concept of '*credible risk*' was widely supported by stakeholders when the Discussion Paper was released but the concept is now proposed to be removed from the current EP Act by this Bill.

In Clause 76(Amendment of Section 381ZI(2)), QRC recommends that the drafting be updated similar to recommendations regarding final surrender. Current subsection (2)(a) requires satisfaction that

> "*the conditions of the environmental authority have been complied with for the certified area*".

Firstly, the conditions about rehabilitation for a mining lease would now be in a PRCP schedule and not in an EA. Secondly, even for other types of resource activities, most of the conditions of the EA relate to issues such as noise, blasting and dust that are irrelevant to the progressive rehabilitation certification.

3.12 NOTIFICATIONS (CLAUSE 79, AMENDMENT OF SECTION 320A)

QRC **generally supports** these amendments, but would also recommend a clarification in Sub-section (iii) of each of Section 320A(2)(b) and 320A(3) regarding notifiable activities. These should only be required to be notified if they have not already been notified.

Also, in Subsection (4), authorisation by way of a temporary emissions licence should be added.

3.13 NEED FOR THE REHABILITATION COMMISSIONER (CLAUSE 81)

QRC is of the view that a Rehabilitation Commissioner is unwarranted. Given the Commissioner is to draw upon already existing Government staff for support and to provide technical advice, much of which is anticipated to be sourced from within DES, QRC questions the add value of the role beyond the existing function and capabilities of the Department (or other agency).

The additional resourcing and expenditure required to implement the role of Rehabilitation Commissioner and the associated office is to cost the State an initial $8 million over six years (through to 2024-25)[11]. This is a significant financial commitment in the current environment, particularly when Government already has the capability to largely deliver the intent of the Commissioner.

While QRC does not support a Rehabilitation Commissioner, it recognises the opportunity to provide comment on the Bill as drafted, as per **Sections 3.14** to **3.18.**

3.14 APPOINTMENT (CLAUSE 81, SECTION 444A)

Section 444A of the Bill is limited in that it only refers to appointment of an appropriately qualified person. The Bill has relied solely on the vague framework provided by the AI Act to account for the qualifications and experience of the Rehabilitation Commissioner, which states:

> *"appropriately qualified—*
>
> *(a) for a function or power—means having the qualifications, experience or standing appropriate to perform the function or exercise the power; or*
>
> *(b) for appointment to an office—means having the qualifications, experience or standing appropriate to perform the functions of the office*
>
> *Example of standing—*
>
> *a person's classification level in the public service".*

This was reiterated by DES on 1 July 2020 in the public briefing to the Committee[12]. With respect to the role, DES also stated:

> *"It is important to note though that with the degree of complexity of rehabilitation issues in Queensland there are a number of areas of specialist expertise that will be required to be drawn upon to develop the sort of advice that the Rehabilitation Commissioner will give out, and that could be engineering, hydrology, agronomy et cetera. The Rehabilitation Commissioner is going to need to be able to draw on advice of experts from these areas, both within their team as well as external sources of advice as well".*

Given the advice of the Rehabilitation Commissioner will inform DES' assessment and decision on rehabilitation matters, including PRCPs, it is critical that the person appointed is more than a project manager who collates and disseminates technical information from its support staff.

The Rehabilitation Commissioner must have a comprehensive understanding of how mines of different commodities operate and rehabilitate, and the technical matters to be considered in these processes. For this reason, and the highly technical nature of the role, it is necessary for the person appointed to have relevant qualifications and experience outlined in legislation or subordinate legislation as is the case for other statutory roles, for example (but not limited to):

- Gasfields Commission[13];

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[11] *Environmental Protection and Other Legislation Amendment Bill 2020* Explanatory Notes, page 5

[12] Natural Resources, Agricultural Industry Development and Environment Committee (1 July 2020) Public Briefing – Inquiry into the *Environmental Protection and Other Legislation Amendment Bill 2020*, Transcript of Proceedings, page 3 and 4

[13] ***Gasfields Commission Act 2013***

9A Appointment as a commissioner

(2) In deciding whom to recommend to the Governor in Council for appointment to the commission, the Minister must be satisfied—

(a) each person nominated for appointment is eligible under section 10; and

(b) the commission will include—

(i) a commissioner who has knowledge of, or experience with, the interests of landholders; and

- Crime and Corruption Commission[14];
- Commissioner for Mine Safety and Health[15].

QRC recommends that section 444A, at a minimum, require that the Rehabilitation Commissioner demonstrate:

- Sufficient competency and a high degree of understanding of mine rehabilitation planning, practices, and management as it relates to the different minerals (e.g. coal, metals) and mining methods permitted in Queensland; and
- Qualifications in two or more branches of science relating to geochemistry, geotechnics, water, soil or revegetation.

3.15 POWERS (CLAUSE 81, SECTION 444J)

Subsection 444J(d) of the Bill states that the Rehabilitation Commissioner has the power to:

> *"do anything else necessary or convenient to be done in the performance of the rehabilitation commissioner's functions.*

(ii) a commissioner who has knowledge of, or experience with, the interests of communities in which the onshore gas industry operates; and

(iii) a commissioner who has knowledge of, or experience with, the onshore gas industry.

10 Eligibility for appointment as a commissioner

A person is eligible for appointment as a commissioner if the person has qualifications or experience in any of the following—

- the onshore gas industry
- a branch of science relating to the exploration or production of petroleum, or the impact of those activities on the environment
- legal practice relevant to the exploration or production of petroleum
- negotiations between landholders and the onshore gas industry
- land management
- land valuation
- community development
- the financial and business sector.

[14] ***Crime and Corruption Act 2001***

224 Qualifications for appointment—chairperson and deputy chairperson

240 Qualification for appointment as a sessional commissioner

304 Qualification for appointment as parliamentary commissioner

A person is qualified… [of the above] only if the person has served as, or is qualified for appointment as, a judge of—

(a) the Supreme Court of Queensland; or
(b) the Supreme Court of another State; or
(c) the High Court of Australia; or
(d) the Federal Court of Australia.

[15] ***Coal Mining Safety and Health Act 1999***

73B Qualifications for appointment

To be appointed as commissioner, a person must have—

(a) a science or engineering qualification relevant to the mining industry, and professional experience in mine safety; or
(b) a qualification in law, and professional experience in the law relating to mine safety; or
(c) at least 10 years professional experience in senior positions relating to operational mine safety management.
Example of a senior position for paragraph (c)—
a site senior executive at an underground mine

Examples of things the rehabilitation commissioner has power to do under paragraph (d)—

- *access information held by an administering authority*
- ***ask an entity to give the rehabilitation commissioner access to information held by the entity***".

The circumstances for which the Rehabilitation Commissioner can ask an entity (e.g. a mining company) for information, how a request is to be executed and the extent of the information that can be requested is not specified. Without appropriate qualifications, as drafted, the Commissioner may be able to ask for any type of information, even if it does not relate to mine rehabilitation, at any time. For example, this could relate to financials, broader operational or environmental matters.

QRC recommends that subsection 444J(d) be expanded to clarify the specific circumstances, method and type of information that the Rehabilitation Commissioner can request from an entity. Alternatively, this must be provided in subordinate legislation given it forms part of the function of the Rehabilitation Commissioner. Further, and as a safeguard, there should be the ability for an entity to refuse the information request from the Commissioner if not reasonable or justified as per the aforementioned specific defined scope of the Rehabilitation Commissioner's functions.

3.16 CONFIDENTIALITY

In some cases, information sought by the Rehabilitation Commissioner from an entity may be confidential. As currently drafted, the Bill lacks appropriate confidentiality provisions for the Commissioner and any staff drawn upon from government agencies. The Commissioner is only limited to the confidentiality provisions under:

- 444K(2) related to the publication of advice, reports and guidance; and
- 444N(3) related to the preparation of an annual report.

QRC recognises that the Explanatory Notes[16] state:

> "*…the Rehabilitation Commissioner may request information from industry or other stakeholders subject to a confidentiality agreement, so that the Rehabilitation Commissioner must not share particular information covered by the agreement with other stakeholders or with other government bodies and the chief executive. In terms of maintaining the confidentiality of information, it is noted that the Rehabilitation Commissioner and the staff of their Office will be required to comply with the usual provisions of the Information Privacy Act 2009 and are also bound by the Public Sector Ethics Act 1994 (as the Rehabilitation Commission is an office established under an Act)*".

While QRC appreciates that DES has made some attempt in the Explanatory Notes to address concerns on confidentiality, the Bill does not go far enough to safeguard confidential information collected and used in relation to the Commissioner and its staff's functions more generally.

QRC recommends that relevant confidentiality provisions and appropriate penalties be included in the Bill with respect to any and all functions of the Rehabilitation Commissioner and any staff drawn upon from Government agencies as opposed to relying on the intent in the Explanatory Notes.

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[16] *Environmental Protection and Other Legislation Amendment Bill 2020* Explanatory Notes, page 40

QRC draws the Committee's attention to confidentiality provisions under Section 316PE of the EP Act (i.e. Public Interest Evaluation) as well as those under Part 5 of the MERFP Act, which could be used as a model for the Rehabilitation Commissioner.

3.17 DELEGATION (CLAUSE 81, SECTION 444L)

Section 444L of the Bill provides provisions for the Rehabilitation Commissioner to delegate limited parts of its functions, including:

- "*(e) consulting on, and raising awareness of, rehabilitation and management matters*"; and
- "*(f) chairing workshops and forums about technical, scientific or engagement matters*".

Appropriately the core functions are to be carried out by the Commissioner. However, where delegation can occur, the Commissioner should still have oversight of such matters and not be at arms-length by means of delegation.

QRC recommends that section 444L, while allowing for the Rehabilitation Commissioner to delegate powers of permissible functions, should clearly state that the Commissioner retain oversight of those relevant activities.

Similar to **Section 3.14**, section 444L of the Bill is limited in that it only refers to delegation to an appropriately qualified officer or employee. The Bill is silent on the qualifications and experience that such officer or employee must demonstrate.

Given this person is to fulfil part of a statutory role, QRC recommends, at a minimum, the Section 444L of the Bill or regulation stipulate the qualifications and experience of the appropriately qualified officer or employer with respect to duties under 444l(e) and (f).

3.18 MINISTERS DISCRETION (CLAUSE 81, SECTION 444N)

QRC supports the Minister having the ability to review the performance of the Rehabilitation Commissioner's functions and powers by means of a written directive. However, such review is only at the Minister's discretion and does not go far enough to ensure the role operates effectively, efficiently and as intended.

While the Explanatory Notes[17] propose a review at the end of the sixth year of operation, this is limited to the scope of works and funding relating to the Commissioner and its supporting office.

QRC recommends that the Bill include a routine independent, formal review or audit process of the Rehabilitation Commissioner role, its functions and powers, particularly whether it adds value, given the proposed budget for the role.

3.19 REPLACEMENT ENVIRONMENTAL AUTHORITY (CLAUSE 100, SCHEDULE 4 AND SECTION 250C)

Clause 100 of the Bill seeks to amend the Schedule 4 definition of '*replacement environmental authority*' to include

> "*(e) if the administering authority de-amalgamates an environmental authority under section 250C — each of the de-amalgamated environmental authorities issued under section 250C(1)(c)*".

[17] *Environmental Protection and Other Legislation Amendment Bill 2020* Explanatory Notes, page 5

To remove any doubt, QRC recommends that it be made clear that a replacement EA, that is associated with the de-amalgamation of an EA, is **not** a new EA, which subsequently must reflect the intent of conditions, including any exemptions (for example exempt resource activities under section 99 of the *Regional Planning Interests Act 2014*), consistent with that of the original EA. Any intent to the contrary would not respect the pre-existing rights of the original approval, particularly when the nature of the operations is not to materially change. This intent could also be emphasised in section 250C.

3.20 AMENDMENT OF THE MINERAL AND ENERGY RESOURCES (FINANCIAL PROVISIONING) ACT 2018 (PART 3)

QRC does not have any comments on the majority of the MERFP Act amendments, provided that the Scheme Manager has been consulted and it is an appropriate and consistent operationalisation of the residual risk fund proposal.

However, QRC is concerned with Clause 107 inserting new Section 25A(3)(b), which provides the ability for monies received for the residual risks fund to be deposited into an account used for depositing other amounts of the department. The principle behind the establishment of a such a fund is surely that it is a wholly and separately held fund, not that there is a possibility it could interact with other funds or consolidated revenue. QRC is not suggesting that if such a thing was to occur, that the intent would be to use residual risk funds for inappropriate purposes. However, a legislative basis for a separate fund would provide all stakeholders with greater certainty that residual risk fund payments are being clearly and separately captured only for their intended purpose.

It is also understood that Government is often reluctant to go to the time and energy of setting up such separate accounts, but given the circumstances of the residual risk fund and that it is meant to be easily accessed without the risk of a shortfall, should such a need arise, this should not be a reason for not doing so. It would also make the actuarial assessment of the sustainability of the fund that much easier.

As an aside, it is difficult to understand how the fund can be expressed in the singular if it is just a joint account.

QRC recommends that Government establish a wholly standalone residual risk fund.

4 OTHER AMENDMENTS

In light of other substantive amendments proposed in the Bill, it is evident that there is room to accommodate long-standing reform priorities of interest to QRC and the resources sector as outlined below and proposed previously to Government.

4.1 NOTICE REQUIRING THE PREPARATION OF A PROGRESSIVE REHABILITATION AND CLOSURE PLAN (SECTION 754)

QRC has been working closely with DES to implement the PRCP framework. Since April 2020, the focus has been on early planning to:

- Confirm the intended land outcome/s;
- Establish a clear scope of works to achieve the requirements of the PRCP Guideline and the EP Act more generally to achieve the intended land outcome/s;
- Ascertain timeframes to prepare a PRCP; and
- Ensure expectations of all parties involved are met.

This approach has primarily been driven due to the lack of a statutory framework in the EP Act for DES to amend or reissue a notice (requiring a PRCP) to reflect a revised timeline to that originally stipulated. While QRC fully supports the above early planning, despite all efforts, there are unforeseen circumstances outside a proponent's control that can impact the ability to meet the timeframe and result in a non-compliance. For example:

- Equipment delays;
- Changes to technical specialist availability due to personal circumstances or other commitments; and/or
- National or global crisis (e.g. COVID-19 pandemic).

QRC recommends that DES amend the EP Act, whether as a new section or an extension of Section 754, to allow the Department a specific statutory framework to amend the timeframe in a PRCP notice or reissue the notice to include a new timeframe under particular circumstances, as provided above.

It is noted that there is a general ability under the AI Act for an instrument to be withdrawn and re-issued. However, in the experience of QRC, DES is reluctant to rely on the general power under the AI Act. It is also unclear why a specific extension framework should not be included in the EP Act for this issue, given that an express extension power already exists in the EP Act for numerous other types of notices and decisions (e.g. Section 50(2), Section 147(2), Section 167A(3)(b)). This would give more confidence to DES staff implementing the PRCP framework.

4.2 PROGRESSIVE TRANSFER OF REHABILITATED LAND ASSOCIATED WITH PETROLEUM AND GAS ACTIVITIES (SECTION 318ZB)

For QRC and the petroleum and gas sector, Government has missed a critical aspect of the residual risk and progressive certification reform in developing the Bill. QRC has long raised concerns with the obstacles created by the EP Act, which prevent the effective transfer of rehabilitated land (and remaining infrastructure or disturbed areas) associated with petroleum and gas activities to the underlying landholder in a progressive manner in advance of surrender.

That is, if the area of land is not able to be partially surrendered and can only be addressed by progressive certification, section 318ZB (2) and (4) (and consequential provisions) impose an ongoing responsibility on the EA holder to maintain the rehabilitation in the same condition as at certification. This means that the EA holder either cannot lose control over the sub-area by allowing it to revert to the landholder, or, if the company does allow the land to revert to the landholder, the EA holder is at risk of liability for the landholder's activities.

As expressed to DES on multiple occasions since February 2019, it is not appropriate or feasible to continue a Conduct and Compensation Agreement (CCA) as a mechanism to retain access to private land to maintain rehabilitated land through to surrender. Given a Petroleum Lease can have a maximum term of 30 years, a CCA for a particular area should usually only last for the period in which activities are being undertaken on an individual landholder's property or properties. Continuing a CCA beyond the agreed period places unnecessary conditions on or restricts both the landholder and EA holder and creates a financial obligation for the EA holder for no return. It also delays achieving the Government's rehabilitation policy which seeks to return rehabilitated land to a subsequent use as soon as possible.

Where land is proposed to revert to private landholder control following progressive certification, QRC recommends that there be a legislative exemption from section 318ZB(2) and (4), and the need to maintain the land or assets through to surrender. As part of the transfer process, the landholder provides a statement of their overall satisfaction with the rehabilitation (or any proposed transfer of remaining infrastructure or disturbed areas). Upon achieving certification and receiving landholder sign-off, such documents should be able to contribute to a surrender application.

5 RECOMMENDATIONS

QRC submits the following recommendations for amendments to the Bill for the Committee's consideration as detailed in the body of this submission:

1. The application of the post-surrender management report should be constrained to mining leases only as opposed to all resource activities.
2. A final rehabilitation report only should be required for petroleum and gas activities, exploration and mineral development activities, and prescribed ERAs where the EA includes rehabilitation conditions.
3. The requirements for a Final Rehabilitation Report should be clarified so as to relate only to rehabilitation conditions whether in an EA or PRCP, pending a PRCP being required and published on the relevant register at the time of surrender.
4. The requirement for a compliance statement should be amended to relate to rehabilitation conditions of an EA or PRCP for the authorised activities but only to the extent to which disturbance occurred on the land as is relevant to the surrender application.
5. The map required for a post-surrender management report should include considerations listed in 3.3.4.1 and these should be reflected in the Bill.
6. A post-surrender management report should be publicly available with written notice to the owner and occupier, on the presumption that this requirement for the surrender process applies only to mining, providing the report or a link to the report, not merely advising them of the existence of the report.
7. The term '*credible residual risks'* should be distinguished from all '*residual risks'* and specifically referenced with respect to the assessment of residual risks, calculation of the associated payment and risk management plan.
8. The threshold referenced with respect to the costs and expenses that are to be '*worked out in a stated way*' should be clarified so as to confirm its application in the context of triggering a risk management plan.
9. Requirements for a risk management plan should have regard to the following:
    a) Risk management plans should be considered on a lot-by-lot basis and to the extent of disturbance rather than on the basis of the entire project.
    b) Spatial information in the risk management plan should focus on the location, size and nature of ongoing management activities, restrictions on activities/uses or further works to remove or amend a management activity, supported by appropriate identifying features for context.
    c) The term '*remedial action'* should be clarified in the requirements for a risk management plan supported by examples (see **Section 3.3.4.3**) to guide the intent of ongoing management activities and restrictions on activities/uses.
    d) The requirement for a risk management plan to include details of how activities are to be carried out and managed in perpetuity is unreasonable when considered in the context of surrender. It should be replaced by provisions (relevant to a risk management plan) which reflect the existing sections of the EP Act, which regulate uses or development of, or an activity to be carried out on, land with respect to a site management plan and provides a pathway for amendments to the plan (Section 406 to 408, 434 and Chapter 7, Part 8, Subdivision 6).

e) The requirement for a risk management plan to provide the estimated amount of costs and expenses that may be incurred in carrying out remedial action unduly burdens landholders and could impact property values. It should be replaced by provisions for a site suitability statement, in the same way as a site management plan is implemented under the contaminated land framework, including the ability to amend the plan.

f) There should be a proper application process available for the owner or occupier to apply to remove or amend a risk management plan, subject to satisfying the administering authority that the owner or occupier has undertaken further work to remove the risk.

10. There should be a mechanism available for the future landowner to have consented to which beneficial infrastructure they would like to be retained on the land.
11. There should be a framework for private landholders to be entitled to, and able to access, residual risk funds, including rights of review against decisions considered unfair, where the landholder is capable of undertaking relevant ongoing management activities.
12. Where the State will be utilising pooled residual risk funds towards insurance premiums, which will address specified credible risks, or for contracting ongoing monitoring there should be a mechanism for this to be made transparent to affected landowners and occupiers.
13. The term '*other entities*' should be clarified, beyond the Scheme Manager, for who can accept payment for (credible) residual risks.
14. The term '*stated amount*' is not adequate for expressing the payment amount for (credible) residual risks nor is relying on the Residual Risk Assessment Guideline standalone. It should be replaced with drafting that states that the amount is to be calculated having regard to only credible residual risks in accordance with the residual risk calculator (or expert panel) and with any further procedures in the Residual Risk Assessment Guideline, and subject to review.
15. Guidance should be included about the minimum matters that the Residual Risk Assessment Guideline is required to cover similar to other provisions of the EP Act (Sections 549 and 550).
16. The administering authority's discretion to require payment within a '*reasonable period*' should be removed given surrender cannot take effect until the payment had been made.
17. Government commit to investigate this issue of post-surrender liability through a separate program of works to be delivered within a committed timeframe, with the aim of achieving a resolution in consultation with QRC and the resources sector.
18. The criteria for a decision to make residual risks requirement requires the administering authority to be satisfied regarding the topic of a '*self-sustaining ecosystem*'. It should be amended to align with potential post-mining land uses accepted under Schedule 8A Part 3, Table 1, item 1 *Environmental Protection (Rehabilitation Reform) Amendment Regulation 2019*.
19. The concept of '*credible risk*' should not be removed from existing progressive rehabilitation certification provisions under the EP Act.
20. Progressive certification provisions should be amended to recognise that rehabilitation conditions for a mining lease will be outlined in a PRCP, pending a PRCP being required and published on the relevant register.

21. Notifiable activities should only be required to be notified if they have not already been notified.
22. The qualifications and experience of the Rehabilitation Commissioner (and any delegate) should be outlined in legislation or subordinate legislation as is the case for other statutory roles. At a minimum, the Rehabilitation Commissioner should demonstrate:
    - Sufficient competency and a high degree of understanding of mine rehabilitation planning, practices, and management as it relates to the different minerals (e.g. coal, metals) and mining methods permitted in Queensland; and
    - Qualifications in two or more branches of science relating to geochemistry, geotechnics, water, soil or revegetation.
23. The powers of the Rehabilitation Commissioner should be expanded to clarify the specific circumstances, method and type of information that the Rehabilitation Commissioner can request from an entity. Alternatively, this should be provided in subordinate legislation given it forms part of the function of the Rehabilitation Commissioner.
24. There should be the ability for an entity to refuse an information request from the Rehabilitation Commissioner if not reasonable or justified with the defined scope of the Commissioner's functions.
25. Relevant confidentiality provisions and appropriate penalties should be included in the Bill with respect to any and all functions of the Rehabilitation Commissioner and any staff drawn upon from Government agencies.
26. The role of the Rehabilitation Commissioner should be subject to a routine independent, formal review or audit process.
27. The definition of a '*replacement environmental authority*', that is associated with the de-amalgamation of an EA, should be clarified to confirm it is not a new EA. As such, it must reflect the intent of conditions consistent with that of the original EA.
28. A wholly standalone residual risk fund should be established so payments do not interact with other funds or consolidated revenue.
29. A specific statutory framework should be established to allow the administering authority to amend the timeframe in a PRCP notice or reissue the notice to include a new timeframe under unforeseen circumstances outside a proponent's control, which can impact the ability to meet the notice timeframe and result in a non-compliance.
30. A legislative exemption be inserted to remove the requirement for petroleum and gas companies to maintain rehabilitated land (or assets) through to surrender once progressive rehabilitation certification and landholder sign-off has been received.

6 CONCLUSION

While QRC appreciates the general intent of many of the provisions in the Bill, unfortunately, as currently drafted, QRC is not in a position to support the Bill until further changes have been made to recognise and resolve the issues as outlined in this submission.

Although QRC views the Rehabilitation Commissioner as unwarranted, should the Committee deem it suitable to proceed, it is important that the qualifications, powers and functions of the role (and any delegation), including the handling of confidential information, be well articulated in the Bill. This will give confidence to the mining sector that the role will operate appropriately and as intended.

In addition, QRC supports Government's intent to refresh and improve Queensland's current residual risk framework and it does not oppose the basis for the relevant amendments in the Bill. However, QRC and the resources sector remains concerned that the Bill could have unintended consequences and capture a broader range of risks that could unnecessarily burden not only the sector but subsequent landholders.

QRC would welcome further consideration by the Committee in seeking amendments to the Bill to deliver this legislation in a practical and effective way. QRC would be pleased to discuss this submission further with the Committee during its consideration of the Bill and to participate in the public hearing.

Should you have any queries in relation to this submission, please contact QRC's Assistant Policy Director, Environment, Chelsea Kavanagh, and Policy Director, Environment, Frances Hayter at chelseak@qrc.org.au and francesh@qrc.org.au.