

Mining coup in Queensland removes public objection rights

Dr Chris McGrath¹

The Queensland government has recently removed long-standing public rights to object to mines. In shades of the Bjelke-Petersen era, Queensland mines minister Andrew Cripps made fundamental changes one minute before the bill was passed by the Parliament at 11:57pm.

The changes broke promises that the Mines Minister had made repeatedly from the outset² of public consultation on the bill and during debate³ in Parliament that public rights to object to large mines would be retained.

The changes sparked blistering criticism. Queensland Country Life described them as a “sell out”⁴ while broadcaster Alan Jones called the changes “corrupt” and “unbelievable” amidst other colourful language.⁵

What objection rights have been lost?

The changes affect public notification and objection rights for the two major approvals needed by a mine at a state level in Queensland:

- a mining lease under the *Mineral Resources Act 1989* (Qld) (MRA); and
- an environmental authority under the *Environmental Protection Act 1994* (Qld) (EPA).⁶

Large mines and other developments in Queensland can be declared a “coordinated project” under the *State Development and Public Works Organisation Act 1971* (Qld) (SDPWO Act) by a powerful public servant, the Coordinator-General, whose role is to facilitate the economic development of the State. However, a declaration that a mine is a coordinated project does not remove the requirements for approval under the MRA and EPA.

For many decades in Queensland, any person could object against the grant of a mining lease and have their objection heard by an independent court, which then provided a recommendation to the government on the application. The grounds permitted for an objection were very wide and included impacts on the environment and the public interest.⁷

¹ LLB (Hons), BSc, LLM, PhD, Barrister-at-Law. Senior Lecturer (Environmental Regulation), UQ. The author acted pro bono as a barrister for an objector in the Alpha Coal Mine case discussed in this article. He is currently acting in several mining objections and related proceedings for community groups. He is also acting as a barrister for the Queensland Government in an unrelated proceeding. This article was adapted from an article published on 22 September 2014 on *The Conversation* at <https://theconversation.com/mining-coup-in-queensland-removes-public-objection-rights-31737>

² See, for example, <http://www.abc.net.au/news/2014-03-11/qld-mining-laws/5312262>

³ Hansard, Queensland Parliament, 9 September 2014:

https://www.parliament.qld.gov.au/documents/hansard/2014/2014_09_09_WEEKLY.pdf

⁴ Sally Cripps, “Mining rights amendments a ‘sell out’”, 12 September 2014.

<http://www.queenslandcountrylife.com.au/news/agriculture/general/news/mining-rights-amendments-a-sellout/2712060.aspx>

⁵ Alan Jones, programme audio, 15 September 2014. http://www.2gb.com/audioplayer/63621#.VB_F7vk9ine

⁶ Small, low risk applications for environmental authorities under the EPA are known as ‘standard’ and ‘variation’ applications, while the larger, high risk mines are known as ‘site-specific’ applications.

⁷ Section 260 of the MRA provided the objection rights but did not specify any constraints on the grounds of objection. However, s 269(4) of the MRA specified the matters the Land Court was to consider, which, in effect, provided the nature of the grounds for any objection.



This objection right was an important part of the campaign to stop mining on Fraser Island in the 1970s and led to a famous win regarding the concept of the public interest.⁸

Prior to the changes, any person could also object to an environmental authority and have their objection heard by the Land Court. Again, the grounds permitted for an objection were very wide and included things like the harm a mine would cause to groundwater and biodiversity as well as noise and dust impacts.⁹

In the past, objection rights were only constrained by not allowing challenges to the conditions recommended by the Coordinator-General. However, neighbouring landholders and others could argue the mine should be refused due to its impacts on groundwater or other matters.¹⁰

In practice, few objections proceeded to a full hearing in the Land Court and those that did each year could normally be counted on two hands. For most landholders and other members of the community, the objection process is intimidating and too costly. Objections by landholders and others are invariably a David vs Goliath affair with massive mining companies out-resourcing locals.

However, in one recent case involving the massive Alpha Coal Mine proposed by Gina Rinehart's company and GVK, local graziers and other objectors succeeded in having the Land Court make a primary recommendation that the mine be rejected due to uncertainty about groundwater impacts.¹¹ This was in spite of the Coordinator-General's recommendation under the SDPWO Act to approve the mine and federal government approval of it under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).¹²

In this context it is noteworthy that the Land Court had found that, in its experience, there was no evidence to suggest that the court's processes were being used to delay project approvals.¹³

Broken promises

In early 2014, the Queensland government proposed to confine the objections and notifications process for a mining lease to people owning land within the proposed lease.¹⁴ However, the government said it proposed to continue to allow objections to an environmental authority for large, high risk mines to be made by neighbours and others.

In June, the government introduced these proposed changes to Parliament in the *Mineral and Energy Resources (Common Provisions) Bill 2014*.

The proposed changes went out for public consultation and hearings by a Parliamentary Committee. The minerals industry supported the changes but the vast majority of public submissions opposed them.¹⁵

⁸ *Sinclair v Maryborough Mining Warden* (1975) 132 CLR 473. Available at http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/high_ct/132clr473.html

⁹ The EPA has been amended significantly since its enactment. Prior to the amendments discussed in this article, Parts 4 and 5 of Ch 2 of the EPA provided wide grounds for objections to environmental authority applications for mines.

¹⁰ See *Xstrata Coal Queensland Pty Ltd & Ors v. Friends of the Earth - Brisbane Co-Op Ltd & Ors and DERM (No 2)* [2012] QLC 67 at [47] (MacDonald P). This was cited with approval and applied in *Hancock Coal Pty Ltd v Kelly & Ors and DEHP (No. 4)* [2014] QLC 12 at [78]-[79] (Smith M).

¹¹ *Hancock Coal Pty Ltd v Kelly & Ors and Department of Environment and Heritage Protection (No. 4)* [2014] QLC 12, available at <http://www.landcourt.qld.gov.au/documents/decisions/MRA082-13-etc-4-12.pdf>

¹² Approval was granted for 2008/4648 on 23 August 2012. See http://www.environment.gov.au/cgi-bin/epbc/epbc_ap.pl?name=current_referral_detail&proposal_id=4648

¹³ Agriculture, Resources and Environment Committee, *Mineral and Energy Resources (Common Provisions) Bill 2014 Report No. 46*, Queensland Parliamentary Committees, September 2014, p 15, available at <http://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2014/5414TS822.pdf>

¹⁴ See ABC News "Controversial changes proposed for Queensland mining". 11 March 2014. <http://www.abc.net.au/news/2014-03-11/qld-mining-laws/5312262>

¹⁵ The public submissions and committee report are available at <http://www.parliament.qld.gov.au/work-of-committees/committees/AREC/inquiries/past-inquiries/24-MinEngResBill>

The Bill was debated and passed by Parliament on 9 September 2014.

At 11:56pm, one minute before the Bill was passed, the Mines Minister moved a series of amendments.¹⁶ These included inserting a new s47D into the SDPWO Act controlled by the Coordinator-General:

47D Restriction on giving of objection notice under the Environmental Protection Act, s182

- (1) *This section applies to an application under the Environmental Protection Act for the proposed environmental authority if—*
- (a) *the proposed environmental authority is for a mining activity that relates to a mining lease under the Mineral Resources Act; and*
 - (b) *the Coordinator-General's report for the EIS or IAR for the project states—*
 - (i) *conditions for the proposed environmental authority; and*
 - (ii) *that the Coordinator-General is satisfied the conditions adequately address the environmental effects of the mining activity; and*
 - (c) *the mining activity evaluated in the Coordinator-General's report is the same as the mining activity the subject of the application under the Environmental Protection Act.*
- (2) *A submitter under the Environmental Protection Act for the application may not, under section 182 of that Act, request that its submission be taken to be an objection to the application.*
- (3) *This section applies despite the Environmental Protection Act, section 182(2). ...*

The last-minute changes mean that the Coordinator-General can prevent any objections to the environmental authority for a coordinated project from being heard by the Land Court. When combined with the severe restrictions on objections to mining leases, very few people can now challenge matters such as impacts on groundwater of large mines that are declared a coordinated project. Appendix 1 provides a summary of the changes in objection rights.

A case like the recently successful objection by neighbouring graziers and others to the groundwater impacts of the massive Alpha Coal Mine¹⁷ cannot be brought under the new system. None of the objectors in that case owned land on the mining lease or shared a boundary with it. Their main concerns were about regional impacts on groundwater.

The Minister did not explain the significance of the changes or state that the changes would reverse earlier assurances to the Parliament. In fact, he repeatedly assured the Parliament that neighbours and the general public would still be able to object to large mines.

For instance, at 9.59pm during in the debate in Parliament, the Minister criticised opposition MPs for not understanding the Bill and said:

*The proposed notification and objection provisions [in the Bill] will ensure that those mining developments that may potentially have a significant environmental impact will, as a site-specific application for an [environmental authority under the EPA], always—always—undergo a public notification, which will allow any person to lodge a submission and accrue a right to object.*¹⁸

The Minister's assurances turned out to be hollow only hours later.

¹⁶ See http://www.parliament.qld.gov.au/documents/tableOffice/BillMaterial/140909/Mineral_ACiD.pdf

¹⁷ *Hancock Coal Pty Ltd v Kelly & Ors and Department of Environment and Heritage Protection (No. 4)* [2014] QLC 12.

¹⁸ Hansard, Queensland Parliament, 9 September 2014, pp 3066-3067:

https://www.parliament.qld.gov.au/documents/hansard/2014/2014_09_09_WEEKLY.pdf

Coordinator-General's bad track record

The government's assurances that the Coordinator-General can be trusted to make a proper assessment of any environmental impacts are difficult to swallow in the light of obvious lack of independence, bias for economic development, and the poor track record in this regard.

A well-known example of where the Coordinator-General botched the assessment of a large project is the Traveston Crossing Dam. The Coordinator-General recommended approval of the dam in 2009 but that recommendation was rejected by the Federal Environment Minister who refused to approve the dam due to likely unacceptable impacts on nationally threatened species.¹⁹

In 2013, ABC Four Corners aired an interview with a whistleblower, Simone Marsh, who was employed in early 2010 in the Coordinator-General's office conducting the environmental impact assessment for large coal seam gas projects.²⁰ She was stunned when she was told that there was not going to be an assessment of groundwater impacts in the Coordinator-General's report recommending approval of one of the largest projects. This was apparently done to meet tight timeframes imposed by the proponents.

As mentioned earlier, in 2014 the Land Court made a primary recommendation that the massive Alpha Coal Mine be rejected due to uncertainty about groundwater impacts.²¹ This was in spite of the Coordinator-General's recommendation to approve the mine.

Links to federal one-stop shop

The Coordinator-General is fast becoming an almost supremely powerful czar for large projects in Queensland, subject only to the political whims of the state government.

Under the federal Coalition's one-stop shop the Coordinator-General is also proposed to have power to approve projects impacting on matters protected under federal environmental laws.²²

Mining coup reflects wider trend in Queensland

Rob McCreath, who owns a farm on Queensland's eastern Darling Downs, summarised the effect of these changes well:

*It feels as if there's been a takeover of the Government by the mining industry. It's a bit like a coup - it's not a military coup, it's a minerals coup.*²³

More widely, the changes reflect Tony Fitzgerald's recent comment that power in Queensland has been transferred to "a small, cynical, political class".²⁴

¹⁹ EPBC 2006/3150. For more information, go to

<http://www.environment.gov.au/epbc/notices/assessments/2006/3150/traveston-dam-the-federal-process.html>

²⁰ "Gas Leak!". Four Corners programme, 1 April 2013. Available at

<http://www.abc.net.au/4corners/stories/2013/04/01/3725150.htm>

²¹ *Hancock Coal Pty Ltd v Kelly & Ors and Department of Environment and Heritage Protection (No. 4)* [2014] QLC 12.

²² See *Queensland Draft Bilateral Agreement relating to Environmental Approval*,

<http://www.environment.gov.au/topics/environment-protection/environment-assessments/bilateral-agreements/qld>

²³ See <http://www.abc.net.au/news/2014-09-12/late-night-amendment-changes-right-of-qld-landholders-mining-lea/5741032>

²⁴ Reported in Remeikis, A. "Populist Newman Government Hiding Behind Façade: Tony Fitzgerald", *Brisbane Times*, 12 September 2014. <http://www.brisbanetimes.com.au/queensland/populist-newman-government-hiding-behind-facade-tony-fitzgerald-20140910-10f6r5.html>

Appendix 1: Table of changes to objection rights

		Previous objection rights	Objection rights proposed during consultation on bill	Objection rights as passed by Parliament after last-minute changes
Mining Lease (ML)		Any person may object on broad grounds to ML	Owners under the ML and access routes may object on restricted grounds	Owners under / adjoining the ML and access routes may object on restricted grounds
			Broader community excluded	Broader community excluded
Environmental Authority (EA)	Standard & variation EA applications (low risk)	Any person may object to standard or variation applications for mines on broad grounds	No objection rights to standard or variation EA applications for mines	No objection rights to standard or variation EA applications for mines
	Site-specific EA applications (higher risk)	Any person may object to a site-specific EA application for a mine on broad grounds	Any person may object to a site-specific EA application for a mine that is not a coordinated project	Any person may object to a site-specific EA application for a mine that is not a coordinated project
	Site-specific EA applications for mines that are coordinated projects (largest & highest risk)	Any person may object to a site-specific EA application for a mine on broad grounds provided not inconsistent with Coordinator-General conditions	Any person may object to a site-specific EA application for a mine on broad grounds provided not inconsistent with Coordinator-General conditions	Coordinator-General has power under s 47D of the SDPWO Act to remove objection rights to the Land Court on EA entirely for coordinated projects (largest & highest risk mines)