

# Chapter 1

## Introduction

1.1 The Galilee Basin (Coal Prohibition) Bill 2018 (the bill) was introduced by Senator Larissa Waters on 5 December 2018.<sup>1</sup>

1.2 On 6 December 2018, the Senate, on the recommendation of the Selection of Bills Committee, referred the bill to the Environment and Communications Legislation Committee for inquiry and report by 13 February 2019.<sup>2</sup>

### Conduct of the inquiry

1.3 In accordance with its usual practice, the committee advertised the inquiry on its website and wrote to relevant individuals and organisations inviting submissions. The date for receipt of submissions was 21 December 2018.

1.4 The committee received 52 submissions, which are listed at Appendix 1 of this report. The submissions are available at [www.aph.gov.au/senate/ec](http://www.aph.gov.au/senate/ec). The committee agreed to finalise its deliberations on the inquiry without holding a public hearing.

1.5 The committee thanks all of the individuals and organisations that contributed to the inquiry by making a submission.

### Reports of other committees

1.6 When examining a bill or draft bill, the committee takes into account any relevant comments published by the Senate Standing Committee for the Scrutiny of Bills. The Scrutiny of Bills Committee assesses legislative proposals against a set of accountability standards that focus on the effect of proposed legislation on individual rights, liberties and obligations, and on parliamentary propriety.

1.7 At the time of writing, the Scrutiny of Bills Committee had not reported on the bill.

### Purpose and overview of the bill

1.8 The bill seeks to prohibit the mining of thermal coal from the Galilee Basin in Queensland. The Explanatory Memorandum outlined the rationale for the proposed prohibition:

With the rapidly increasing concentration of greenhouse gases in our oceans and atmosphere, opening up new coal basins is a dangerous and

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1 *Journals of the Senate*, No. 136—5 December 2018, p. 4441.

2 *Journals of the Senate*, No. 137—6 December 2018, p. 4479.

irresponsible threat to the safety and wellbeing of current and future generations.

Therefore this Bill would prohibit constitutional corporations within the meaning of section 51(xx) of the *Constitution* from mining for thermal coal within the Galilee Basin.<sup>3</sup>

1.9 The Explanatory Memorandum also noted that the bill would not only ensure that Adani's Carmichael coal mine could not proceed, but also any other coal mine proposed for the Galilee Basin including those by companies controlled by Mr Clive Palmer and Ms Gina Rinehart. Clause 4 of the bill outlines that the provisions 'have effect irrespective of any other operating law or any permit, title or instrument issued under any other operating law. To the extent of any inconsistency, this proposed law will prevail'. In addition, clause 4:

...clarifies that while it is not expected that any compulsory acquisition would occur, given the nature of this prohibition being regulatory and not an acquisition, the operation of 'just terms' under section 51(xxxi) of the *Constitution* applies to the operation of this proposed Act.<sup>4</sup>

1.10 The bill also specifies the area in which the prohibition would apply, and provides a range of definitions to support the legislation. The Explanatory Memorandum states:

Definitions in clause 5 outline the relevant boundaries where the prohibition applies and defines thermal coal and the relevant mining operations, using the existing definition in section 355(2) of the *Environment Protection and Biodiversity Conservation Act 1999*.<sup>5</sup>

## **Compatibility with human rights**

1.11 The Explanatory Memorandum of the bill states that it is compatible with human rights as:

By preventing the further damage on the environment, this bill protects and strengthens the human rights of Australians.

The mining of coal within the prohibited area is a strict liability and prima facie raises concerns of human rights implications as it removes the need for a prosecution to prove intent or fault in the defendant.

However the burden of proving intent or fault is an unnecessary requirement when proving the facts of the carrying on of a mining operation within the proscribed area is enough to show that an offence has clearly been committed.

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3 Explanatory Memorandum, p. 1.

4 Explanatory Memorandum, p. 2.

5 Explanatory Memorandum, p. 2.

Given there is very little scope to mistakenly mine for coal in the prohibited region, a strict liability offence can reasonably be applied to these circumstances in a way that does not inadvertently affect the activities and enjoyment of the general population.<sup>6</sup>

### **Structure of this report**

1.12 This report comprises two chapters, as follows:

- this chapter provides the administrative details of the inquiry, a background to the bill, and an overview of its provisions; and
- chapter 2 outlines the principal issues raised in submissions, and sets out the committee's views and recommendation.

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6 Explanatory Memorandum, p. 3.

