QUEENSLAND resources COUNCIL

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Agriculture, Resources and Environment Committee
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Via email arec@parliament.qld.gov.au

Dear Rob,

Thank you for the opportunity to provide a submission to the Agriculture, Resources and Environment Committee ('the Committee') on paper number 1, *Reducing the regulatory burden for Queensland's agriculture and resource industries,* July 2012. Many thanks also for the short extension of time to allow us to finalise this submission. As you know all too well, the pace of Committee reviews at the moment is unprecedented and QRC appreciates the extra few days to develop this response.

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

QRC notes that given the very broad nature of the original referral (7 June 2012), that the Committee's paper focuses on *methods* to reduce the regulatory requirements or regulatory burden. QRC commends the Committee on the cogency of the issues paper, given the complexity of the issues.

In addition to the direct costs of regulation, which are identified on page 4 of the paper, QRC would suggest that there are also costs associated with variations in the consistency and certainty of regulation. The industry-chaired review of Queensland's tenure and project approval systems – *Supporting Resource Sector Growth*, April 2010 emphasised the importance of delivering clarity and certainty in government processes (page iii). The review grouped the recommendations under three overarching categories:

- → **Certainty of pace** ~ improving the speed and predictability of approvals;
- → **Certainty of scope** ~ regulation based on criteria which are relevant to the project rather than all encompassing
- → **Regulatory certainty** ~ at any stage the 'regulatory rules' which have been so painstakingly developed, for example, in an environmental authority can be revisited, revised and updated.

QRC suggests that the Committee may also want to consider these additional dimensions of the regulatory burden, which would be equally applicable to agriculture as they are to resources.

QRC notes that it is difficult to find an objective indicator of regulatory burden, especially at the sectoral level and agrees with the Committee paper (page 4) that proxy measures, such as pages of legislation are only a crude indicator of the overall cost.

QRC also notes that the Victorian Competition and Efficiency Commission completed an inquiry into state-based reforms earlier in 2012 and in their benchmarking paper ranked Queensland as seventh out of the eight Australian jurisdictions assessed. While this benchmarking was not specific to the resource or agricultural sector, it is indicative that Queensland has significant scope for reform, streamlining and greentape reduction.

Once again, the industry review process, (*Supporting Resource Sector Growth*, April 2010), found that the process of securing common forms of resource tenure had increased by up to 150% in the five year period to April 2010 (page 3).

> *"Industry submissions variously described the current system as: onerous, cumbersome, disjointed, riddled with significant and unexpected delays, requiring multiple authorities from multiple agencies, inconsistent, slow, and confused.*
>
> *When dealing with a multistep complex process, there is a real risk that the project uncertainty and delays will compound. There could be 45 separate steps in an approval process for granting a mining lease for example, and a 1-2 week uncertainty around each of these steps can add between 45-90 weeks to the project's critical path."*

Finally, the Minerals Council of Australia has commissioned specialist consultants, URS to update their 2006 audit of regulations influencing mining exploration and project approval processes to reflect the reforms implemented over the past 6 years. In 2006, the audit informed the development of a National Scorecard which assessed the regulatory arrangements of the States in both a comparative sense – assessing which regulatory system has the superior performance, as well as in an absolute sense – assessing the regulatory systems against the COAG best practice regulatory principles.

One of the main findings of this 2006 audit was that:

> *"Overall, the main differences between jurisdictions appear to be due to the resourcing and skill of staff in each relevant agencies. Industry stakeholders advised that the relative efficiency between jurisdictions varies over time. This was reported to be mainly due to the common practice of restructuring departments and movement of key departmental staff."*
> (page 3-21)
>
> *"High staff turnover in relevant government agencies has been cited as a factor in delays and poor administration. Part of the problem is due to high staff turnover as industry competes away skilled staff during the resources boom. This may be a cyclical phenomenon or may even reflect a structural change."*
> (page 4-30)

QRC suggest that this overall finding is unlikely to have changed in the past six years and the message that the levels of resourcing skills and experience available to key agencies remains central to the performance of regulatory systems. Clearly this warning from 2006 remains relevant at a time when Queensland faces severe austerity and with widespread shedding of positions in the public service. The need to foster, retain and develop skills in key regulatory agencies remains as an important determinant of the speed and effectiveness of a regulatory system. It is little use having best practice approval process in place without adequate resources to deliver.

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QRC hopes that a draft of the 2012 update will be available before the Committee's public hearings in September.

The Committee's issues paper lists some fifteen different methods for reducing the regulatory burden (pages 4-6) and invited comment on the benefits of these approaches and their relative importance.

QRC's view is that each of these fifteen methods is a useful indicator of when a regulatory process has strayed from the application of the COAG principles of best-practice regulation. QRC suggests that if these principles are applied in the development of regulation, then the toolkit of methods to reduce the burden are unlikely to be required. However, the COAG principles do not take account that there are often pressing political and other considerations in the development of regulations. As such, some of the methods – such as cabinet gatekeepers and a regulatory review committee or office may help be useful to filter the risk of regulatory excess.

QRC has selected three recent regulatory process to illustrate the extent to which actual regulatory processes match the COAG principles, and considers if any of the 15 methods would have helped identify an opportunity for improvement. The three case studies are – (a) overlapping tenures, an industry-lead process, (b) the development of the strategic cropping land policy and legislation and (c) the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Bill 2012.*

→ **Overlapping tenures**

Overlapping tenures related to the fact that tenures for coal and coal seam gas related to the same coal seams with different property rights accorded to the ownership of the coal and the methane adsorbed within the coal. The existing regime essentially provided more rights to higher forms of tenure (ie production tenure was afforded more priority than exploration tenure), which lead to concerns on both sides of the industry at the prospect of an unseemly rush to secure production tenure fuelled by a risk that if that race was lost that access to the resource was at the whim of the other tenure holder.

After a period of consultation with industry, the (then) Department of Employment, Economic Development and Innovation released on 20 January 2011 a discussion paper and draft legislation. The industry had mixed reactions to the proposals, which lead to a number of discussions between QRC's coal and coal seam gas members. These discussions focussed on whether a more fundamental reworking of the approach to overlapping tenure might deliver increased certainty for both sectors. The final industry report, delivered to Minister Cripps in May 2012 concluded:

> *"It is in Queensland's best interests that both coal and coal seam gas have a clear path to production. It is in Queensland's best interests that both parties have an incentive to negotiate outcomes which suit them. It is in Queensland's best interest that royalties are collected on both the coal but also on the gas that comes from those coal seams. (page 4)*

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COAG principles	Application 1: *Overlapping tenure*
1. Case for action?	There was a clear case for action – both coal and coal seam gas companies were calling for greater certainty around the process of resolving competing resource rights and Government had proposed draft legislation.
2. Range of policy options considered?	There were a range of regulatory processes considered – including proposed legislation, but the industry's preference was to clarify a default position from which both industry parties could negotiate an agreement that reflected their needs.
3. Greatest net benefit for community?	The result maximises the opportunity for resource extraction and limits the opportunity for the extraction of one resource to delay or sterilise the production of the other resource.
4. Accord with competition principles?	While a formal regulatory assessment statement has not been completed, the new process of industry agreement reduces the scope of regulation and
5. Effective guidance to regulators and regulated parties?	This work is still being developed in partnership between industry and the Department of Natural Resources and Mines.
6. Relevance and effectiveness through time?	The policy changes have not yet been implemented.
7. Effective consultation with stakeholders throughout regulatory cycle?	There were some concerns expressed by the (self-described) junior CSG explorers, whose views were included in a standalone section of industry's report back to Government. These small explorers will be formal participants in the discussions with Government about how to implement the report's recommendations.
8. Action is effective and proportional to issues.	Yes.

Methods to reduce regulatory requirements	Value?	Application 1: *Overlapping tenure* Comment
1. Better policy development	☺	Arguably, this was a process of essentially allowing industry to scope up the policy development and consider more fundamental reforms than the Government had proposed.
2. Benchmarking regulatory costs	☹	n/a
3. Regulatory impact statements (RIS)	-	Once the work progresses to legislative drafting a RIS may be helpful
4. Regulatory reduction targets	☹	n/a
5. Reviews of legislation	☹	n/a
6. Regulatory offsetting arrangements	☹	n/a
7. Cabinet gatekeepers	☹	n/a

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Methods to reduce regulatory requirements		Application 1: *Overlapping tenure*
8. Regulatory review office/committee	☹	n/a
9. Harmonisation	☹	n/a
10. Tiering	-	May be part of the process of addressing the concerns of the junior CSG explorers.
11. Better regulatory information	-	May form part of the implementation.
12. Electronic services	☹	n/a
13. One-stop shops	☹	n/a
14. Common commencement dates	☹	n/a
15. Consolidating the original Act and subsequent amendments	☹	This policy will involve amendments to a number of different resource Acts and consolidating all the Acts would be well beyond the scope of this work. It could also introduce unintended consequences.

→ **Strategic Cropping Land legislation**

QRC members have taken a keen interest in the development of the strategic cropping land policy and the QRC Secretariat has been an active member of the (then) Department of Environment and Resource Management (DERM) Stakeholder Advisory Committee. Key aspects of QRC's contribution to the public debate have included:

- → Surveying QRC members to gain an accurate picture of how many resource projects were covered by the strategic cropping land trigger maps and how much investment had already been made in these tenures;
- → Seeking expert legal opinion on the best legislative format for implementing the strategic cropping land policy. This advice suggested the semi-standalone Act for strategic cropping land, which the Government adopted;
- → Initiating a series of workshops with DERM's soil scientists and other key stakeholders to look at how to best develop a meaningful trigger map and how to represent the Government's policy intentions spatially by considering the relationship of possible criteria to cropping productivity;
- → Being hosted by *Future Food Queensland* to visit farms and to meet with farmers in Queensland's two key cropping areas – the Darling Downs and the Golden Triangle - which have turned out to be in the strategic cropping land protection zones;
- → Commissioning a scientific review of the proposed strategic cropping land criteria which have been used to identify strategic cropping land in the field and conducting an open workshop of soil scientists to discuss the report which identified a number of shortcomings in the proposed criteria; and
- → Working with QRC members to develop a practical set of transitional measures, which would recognise the long lead times for developing resource projects. These QRC proposals were adopted in part as the basis of the transition mechanisms that the Government subsequently announced on 23 May 2011.

Unfortunately, the preparation of the Strategic Cropping Land Act was rushed. This rush generated numerous major changes in policy reflected in the Act, which QRC sees as inconsistent with the Government's previous announcements, the policy reasoning explained at the discussion paper stage and the information which has been published in factsheets.

According to the Government's website:

> *"Strategic cropping land (SCL) is an important, finite resource that is subject to competing land uses from the agriculture, mining and urban development sectors. The SCL legislation is designed to strike a balance between these sectors to help maintain the long-term viability of our food and fibre industries, and support economic growth for regional communities.*
>
> *The SCL legislation applies to approximately 42 million hectares of Queensland, or about one-quarter of the state's landmass. Within this area, the trigger map identifies some 7.57 million hectares (4.36 per cent) of the state as areas where SCL may exist and where developers will need to undertake an on-ground assessment using the proposed criteria.*
>
> *Within this area, the two protection areas apply to a total of 4.8 million hectares (2.8 per cent of the state), of which 1.8 million hectares is identified on the trigger map as areas where SCL may exist. The management area covers some 37.2 million hectares (22.5 per cent) of the state, 5.7 million hectares of which is identified on the trigger map.*

COAG principles	**Application 2: *Strategic cropping land***
1. Case for action?	The policy was developed on the assumption that in some manner the existing regulatory scrutiny of resource projects through the environmental impact statement was inadequate and so a new policy approach was required. The deficiencies of the existing system were never identified; nor were the values that were being protected by the new policy ever clearly stated (ie protecting soils, providing food security, recognising key agricultural regions?).
2. Range of policy options considered?	No, from the outset there was an assumption that a legislative approach was required.
3. Greatest net benefit for community?	It has never been established whether the Act generates net benefits for the community, let along the greatest net benefit.
4. Accord with competition principles?	The SCL Act essentially establishes a state interest in land with a certain potential productivity, which precludes certain activities on that land. It's not clear if this situation is relevant to competition principles.
5. Effective guidance to regulators and regulated parties?	The Act has had a number of different Ministers and Departments responsible for the development and implementation of the policy and as such the guidance has been patchy (at best).
6. Relevance and effectiveness through time?	There are provisions to review the Act after three years, but there is also a risk that the mapped SCL becomes entrenched in the new statutory regional plans.
7. Effective consultation with stakeholders throughout regulatory cycle?	The consultation with stakeholders was very good on some issues and non-existent on others. It would be difficult to characterise the consultation as effective.
8. Action is effective and proportional to issues.	That case has never really been made, but assumed.

Methods to reduce regulatory requirements	Value?	Application 2: *Strategic Cropping Land* Comment
1. Better policy development	☺	If the regulatory process had been started with a clear statement of the policy problem and the proposed solution, SCL policy could have been better targeted
2. Benchmarking regulatory costs	☹	n/a – although the cost of SCL application seems pitched at a level which is punitive rather than cost reflective.
3. Regulatory impact statements (RIS)	☺	There was a regulatory assessment statement (RAS) although it only focussed on the question of whether the fees for the regulations should reflect the principles of user pays and be set to reflect costs, so it wasn't really a full RAS process. A full RIS (or RAS) may have helped identify some of the policy shortcomings.
4. Regulatory reduction targets	☹	n/a
5. Reviews of legislation	☹	n/a
6. Regulatory offsetting arrangements	☹	n/a
7. Cabinet gatekeepers	☺	A process of scrutinising the legislation and making sure that it was consistent with the earlier policy announcements would have been valuable, although given that the haste in drafting was driven by political considerations there is every chance that a cabinet gatekeeper would simply have been bypassed.
8. Regulatory review office/committee	☺	As above, in theory this could have improved the scrutiny of the legislative drafting, but in reality it probably would not have been allowed to delay passage of the Act.
9. Harmonisation	☹	n/a
10. Tiering	☺	There was a process of allowing small landholders a 12 month exemption from the cost-reflective fees, but again this decision seemed to be driven by political considerations rather than policy considerations. The RAS was not revisited to reflect this change in the assumptions about the pool of applicants to pay the costs.
11. Better regulatory information	☺	Key decisions around definitions and administration are still being taken – so better information about the regulations would be a good start.
12. Electronic services	☺	The release of the SCL trigger maps in a GIS consistent format was a big step forward for understanding the potential impact of the policy.
13. One-stop shops	☹	n/a
14. Common commencement dates	☹	n/a
15. Consolidating the original Act and subsequent amendments	☹	n/a

→ **Greentape reduction**

The Greentape reduction project has an interesting legacy in that it was established under the previous Government as a mechanism to deliver savings in administration but was given sufficient mandate to indentify real changes to processes which didn't deliver any improvement in environmental outcomes. A draft Bill was introduced into the house, but lapsed as a result of the election being called. The Government recognised the merits of the Bill and reintroduced it with only minor amendments.

The primary policy objectives of the Bill are to amend the *Environmental Protection Act 1994* so as to:

- → introduce a licensing model proportionate to environmental risk
- → introduce flexible operational approvals
- → streamline the approvals process for mining and petroleum
- → streamline and clarify information requirements. and
- → achieve the above whilst maintaining environmental outcomes.

COAG principles	Application 3: *Greentape reduction*
1. Case for action?	The case for action was determined by internal review. The project was unusual in that it was driven by officers with expertise in operational matters, so they understood which aspects of the existing legislation created work or a risk of delays without generating beneficial environmental outcomes.
2. Range of policy options considered?	Given that the imperative was to reduce the cost of regulation, legislative amendments seemed to be pretty clearly in scope.
3. Greatest net benefit for community?	The project was about reducing the cost of administering environmental protection while maintaining the standard of that protection, so the project was more about efficiency than maximising net benefits.
4. Accord with competition principles?	The policy didn't really relate to competition policy.
5. Effective guidance to regulators and regulated parties?	This guidance material is still being developed, however it is notable that the Act doesn't come into effect until March 2013 to allow sufficient time for this material to be developed.
6. Relevance and effectiveness through time?	The process of reviewing the efficiency and effectiveness of the legislation continues in the next stages of the project.
7. Effective consultation with stakeholders throughout regulatory cycle?	The process was characterised by very high levels of consultation – both with the general public and as part of stakeholder consultative group. The quality of the consultation gave stakeholders a lot of confidence in the final results.
8. Action is effective and proportional to issues.	As the action was reducing regulation, this point seems moot.

Methods to reduce regulatory requirements	Value?	Application 3: *Greentape reduction* Comment
1. Better policy development	☺	The policy development process was excellent in that the Department had identified a suite of reforms and thought through the consequences as a starting point for discussions with industry.
2. Benchmarking regulatory costs	☹	n/a
3. Regulatory impact statements (RIS)	☹	n/a
4. Regulatory reduction targets	☺	This was the genesis of the project – the need to save on the cost of administering the Department's regulatory responsibilities.
5. Reviews of legislation	☹	n/a
6. Regulatory offsetting arrangements	☹	n/a
7. Cabinet gatekeepers	☹	n/a
8. Regulatory review office/committee	☹	n/a
9. Harmonisation	☹	n/a
10. Tiering	☹	n/a
11. Better regulatory information	☹	n/a
12. Electronic services	☹	n/a
13. One-stop shops	☹	n/a
14. Common commencement dates	☹	n/a
15. Consolidating the original Act and subsequent amendments	☹	n/a

While the process of assessing the three different policies is subjective, what is clear is that for the two policies which most closely measured up against the COAG principles (overlapping tenures and greentape), the 15 methods to reduce regulatory requirements offered the least scope for improvements. By contrast, the strategic cropping land legislation seemed to fall well short of the COAG principles, and there were a number of the 15 methods which could have improved the regulatory outcomes from this process.

Thank you again for the chance to provide preliminary comments from the QRC Secretariat on the discussion paper. As the response provided is highly subjective, we have not yet sought member comments on the assessment of the three initiatives against the COAG best practice principles or the 15 methods identified in the issues paper.

QRC hopes to be able to bring a broader representative view to the public hearing in September. In the meantime I can be contacted on 3316 2502 or andrewb@qrc.org.au

Kind regards

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