



Working together for a **shared future**

21 January 2012

Mr Rob Hansen  
Research Director  
Agriculture, Resources and Environment Committee  
Parliament House  
George Street  
BRISBANE QLD 4000

Dear Mr Hansen,

Thank you for the opportunity to provide comment on the *Mining and Other Legislation Amendment Bill 2012* (the Bill).

As you know 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. QRC does not represent the small mining or gemstone sectors. 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 supports the initiative of Government to implement a small scale mining regulatory framework that recognises the level of regulation must fit the risk of the activity. QRC also acknowledges that this philosophy is also starting to be applied in other areas of resource regulation. For this reason, QRC supports the approach adopted in developing these small scale mining related amendments, however defers detailed comments on the amendments to the small miners' associations who have been directly involved in developing these reforms.

As QRC has outlined a number of times, the industry does not support a cash bidding process for exploration tenures. Accepting payments for tenure generates moral hazard, compromising the Government's ability to be seen to impartially regulate these projects.

QRC watched the former New South Wales Labor government implement a similar cash bidding process which has generated community concern that exploration rights are 'for sale' to the highest bidder. QRC understands that the normal tenure approval process would still be applied, whereby the proponent must prove its ability and capacity to meet its work program commitments however introducing cash bidding in NSW undermined community confidence in the government's role as the steward of the State's resources.

In July 2011 the Hon Chris Hartcher Minister for Resources and Energy in the new NSW Coalition Government announced that a new fee schedule would be developed and major cash payments for exploration licences would be removed. The Minister said that project-related fees would only be paid where the project obtains a Mining Licence. The Minister said in a media release on 13 July 2011 that “under the former Labor Government, the community rightly felt that fair process was at risk with hundreds of millions of dollars demanded at the exploration stage.” The tender process that was in place under the previous government in NSW has also been the subject of some evidence at an ongoing Independent Commission Against Corruption public inquiry around the granting of exploration licences in NSW. At the very least, Queensland should await the results of the NSW review.

QRC understands the purpose of the existing sub-section 35(3) and 127(3) in the P&G Act and new sub-section 136(C)(3) of the MRA to provide that the successful tender will need to manage other land use conflicts, however QRC seeks further information on what the Government proposes to ensure community confidence in the approval process is not diminished.

One section of the Bill particularly concerns QRC in regards to undermining community confidence in the process – the removal of the weightings of a decision to grant an authority to prospect under a competitive process. When the *Petroleum and Gas (Production and Safety) Act 2004* (P&G Act) was introduced, the explanatory notes accompanying the Bill explained that weighting used for the special criteria (like a cash bid component) ‘ensured the openness of the tender process’ (page 14). It would seem that such a provision should be mirrored in the *Mineral Resources Act 1989* (MRA) to extend the benefit of an open tender process.

QRC is not convinced the removal of the published weightings from the P&G Act (and therefore not replicating them in the MRA) that were designed to communicate how the assessment is calculated (and ultimately the choice for the winning application) achieves a more open tender process, especially where there is a cash bid component. QRC requests information be made public on how the new process for deciding the allocation of the State’s resources will incorporate the cash bid component. Not only is it essential for industry to understand the process of cash bidding, but also ordinary citizens of Queensland. The removal of weightings on decisions without adequate explanation of how the cash bids will be taken into account is simply unacceptable public policy. QRC strongly disagrees with the explanatory notes (page 66) of this Bill which state that the removal of the weightings (s 35(2)(e)(iv) ‘will strengthen the integrity of the tender process.’ QRC’s fear is in fact the opposite will be the case.

QRC is also concerned the cash bidding changes will adversely affect smaller explorers who do not have the up-front capital to bid for tenure. QRC understands the current intention is that only areas known to be highly prospective will be selected for cash bidding. The explanatory notes state that land releases will still happen for areas which are “under-explored”, which suggests a two-tier system of tenure in Queensland where the small innovative entrepreneurial exploration companies are effectively precluded from the most prospective country.

To date, no information has been made available to industry as to how highly prospective areas will be selected nor how the cash bidding process might operate. QRC members would be keen to understand if there are criteria for declaring a prospective area for cash bidding or if the decision is to be left to the Minister’s sole discretion.

QRC continues to be very concerned about the development of this policy, which emerged as part of the mid-year fiscal and economic review under the previous Government in January 2012. When the policy was announced, QRC publicly described the proposal as:

*“Predicated on a flawed assumption that minerals and energy companies are bottomless cash pits. Most small to medium explorers and developers operate on shoestring budgets because of the high-risk nature of their activities”.*

When the new Government announced in October 2012 that they would implement the previous Government’s policy of cash tendering, QRC emphasised that smaller exploration companies are crucial to the future of the industry and that these exploration companies will be outbid by larger mining companies. QRC said:

*“History has shown that the small explorers are the best at making discoveries, the best at juggling the risks. They have the best track record of delivering discoveries of new deposits. This policy is disenfranchising that smaller explorer because this is all about the big cheque book and the early return to the Treasury.”*

The headline revenues from the new cash bidding process have been emphasised in forward estimates (\$95 million a year pa from 2013-14), but unfortunately the methodology for estimating these revenues remains opaque. Industry is concerned that the policy’s genesis in meeting a fiscal need has led to substantial shortcomings in the usual policy development process including neglecting any assessment of the impact on exploration activity, the impact on the exploration industry, the impact on Queensland’s ability to attract and retain explorers and other key considerations of the impact, including community confidence in the process of the grant of resource tenure.

The Queensland Exploration Council produces an annual scorecard in November (see [link](#)) which reports on the industry’s perceptions of a series of lead and lag indicators of exploration activity. The 2011-12 survey saw sentiment around regulatory and policy matters in Queensland remain negative and deteriorated from the previous year. The change in cash bidding policy was one of the four key policy changes in Queensland which specifically called out as generating industry concern in the scorecard.

Another public survey, the Grant Thornton JUMEX Survey reported:

*‘We left Australia as a considered decision due to the impact of Government intervention on the industry in the last 12 months.’ ‘Africa is mineral rich, under-developed, less costly, attractive to other investors and for us there is minimal sovereign risk’.*

Grant Thornton [JUMEX Survey](#) Oct 2012 pages 5 and 15

In regards to competitive tendering, QRC has particular concern with the inclusion of an option for the Minister to call for tenders for non-coal tenures and include a cash bid component. When the Minister announced competitive tendering on 9 October 2012, its application to mineral tenures was silent.<sup>1</sup> The cash bid process was announced for coal and petroleum and gas exploration permits only. QRC only became aware of the broader application to mineral tenures once the Bill was introduced into Parliament as there was no consultation or even notification to industry of this significant change. This inclusion by default is highly detrimental to Queensland’s reputation as an exploration destination. Queensland does not need further policy surprises.

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<sup>1</sup> <http://statements.qld.gov.au/Statement/2012/10/9/new-competitive-cash-bidding-process-for-exploration-rights>

The Bill amends the definition of 'occupier' in all resources Acts. The definition of occupier is particularly germane when a resource company seeks out occupier(s) under the *Land Title Act 1994* to negotiate a land access agreement. The amendment widens the scope of who is considered an occupier to a person who has a "right to occupy under an Act or lease registered under the *Land Title Act 1994*" or "a person who has had a right to occupy given to them by such a person". QRC believes landholders should be compensated for resource activity on their land, however the broadening of the definition of occupier creates an unnecessary complication whereby the resource company has no means to exhaustively discover all parties who may have some standing as an occupier under this new definition.

The QRC contact on this Bill is Andrew Barger who can be contacted on 3316 2502 or alternatively via email at [andrewb@qrc.org.au](mailto:andrewb@qrc.org.au).

Yours sincerely



Michael Roche  
**Chief Executive**