Sub # 009

QGC
A BG Group business

29 September 2014

The Research Director
Agriculture, Resources and Environmental Committee
Parliament House
George Street
Brisbane QLD 4000

Dear Sir or Madam

Re Environmental Protection and Other Legislation Amendment (EPOLA) Bill 2014 (Qld)

QGC appreciates the opportunity to provide comment on the Environmental Protection and Other Legislation Amendment (EPOLA) Bill 2014 (Qld) (the **Bill**).

QGC supports the Australian Petroleum Production and Exploration Association (**APPEA**) submission and the Queensland Resources Council (**QRC**) submission made in respect of the Bill.

QGC is particularly pleased that the Bill adopts two proposals industry has sought:

1. relating to the interface between the standard approval framework with coordinated projects; and
2. recognition of State Development and Public Works Organisation Act (SDPWO Act) EISs in the *Environmental Protection Act 1994* (**EP Act**) environmental authority process.

However, QGC has concerns with other aspects of the Bill. They are:

- Amendment to the definition of 'environmentally relevant activity' (ERA);
- Conditioning power;
- Amendment of *Waste Reduction and Recycling Act 2011*;
- Expanded duty to notify.

Environmentally Relevant Activity

The proposed amendments specifically change the definition of a prescribed ERA, by omitting the words "other than an agricultural ERA or a resource ERA" from the definition in section 19 of the Act.

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The change to the definition of a key term in the Act, specifically to include activity that was previously excluded from the section, is not consistent with the description of the proposed amendments as being a simple "clarification" of what has always been intended.

Further, the proposed amendments are substantive, and add to the regulatory burden, and therefore should be subject of more rigorous regulatory impact assessment.

The proposed amendments will significantly alter the balance between the EP Act and resource tenures legislation, including the *Petroleum and Gas (Production and Safety) Act 2004* (P&G Act) to the detriment of resource industry and for no environmental benefit.

Since 2003, ERAs which are mining or petroleum activities have been recognised as a 'bundle of activities' that include both resource activities and activities necessarily incidental to resource activities. That is, if an application is approved for a resource activity ERA, the EP Act has recognised that all activity necessarily incidental to resource activity and referred to in the application material is also approved. For example, the storage of fuel is necessarily incidental to resource activities and is therefore within the scope of the resource ERA even though fuel storage may also be an ERA itself in other applications.

For resource ERAs, the scope of activities that are necessarily incidental to the resource activity is defined by the P&G Act and refined in the applicant's application materials.

Clauses 18-20 of the Bill seek to change that, and to give the Department power to approve the application in respect of the resource ERA but not necessarily authorise incidental activities. The effect would be that the applicant may receive an approval that is of little or no value because necessary activity is not authorised, even though the Department has not seen grounds to reject the application.

The effect is to force the applicant to specify the location, intensity, nature and processes by which resource activity are going to be conducted, before the environmental approval is granted and before any land access negotiations have taken place which may alter those plans. That will lead to unnecessary amendment applications, more paperwork, greater pressure on Departmental permitting workloads and more green tape. It will not deliver any benefit to the environment, which is more effectively protected through the upfront imposition of outcome based conditions. Using the example of fuel storage, it has been the practice previously that fuel storage is an activity incidental to authorised

resource ERAs and fuel storage safeguards are imposed through a requirement to comply with the relevant Australian Standards.

This amendment is described in the Explanatory Notes to the Bill as simply a "clarifying" amendment. On the contrary, Clauses 18-20 will have a significant and material impact on industry by removing or limiting rights that are currently available under existing law, and increasing the regulatory burden.

Conditioning power

Clause 37 of the Bill proposes to amend section 207 to empower the Department to impose conditions that *"restrict, or impose requirements on, the carrying out of the relevant activity"*.

The related Explanatory Notes identify that the proposed amendment is intended to *"remove any doubt that the administering authority can restrict, limit* ***or prohibit*** *certain activities through the conditioning of an environmental authority"*, and that "[*t*]*his was always the intent of the provisions, but the drafting style had caused some confusion"* (our emphasis).

It would be perverse if the amendments are intended to introduce a power for the Department to approve an application for a resource activity, but prohibit the very same activities through conditions. The proposed amendment to section 207 would introduce a level of permitting uncertainty that is unwarranted, especially because conditions are often vague and contradictory or open to interpretation.

Applicants need to know that when an application for an Environmental Authority is approved, the activities applied for can lawfully be carried out.

The conditioning power is intended to regulate the manner in which activities authorised under the relevant EA are carried out, not nullify the approval.

Therefore, QGC requests that the proposed drafting be amended to include "*but not in a way which prohibits, or limits in a way that effectively prohibits, the carrying out of the relevant activity*".

Further, the reference to 'prohibit' should be deleted from the related explanatory notes.

Amendment of *Waste Reduction and Recycling Act 2011*

QGC is pleased to have been consulted on the amendments to the *Waste Reduction and Recycling Act 2011* (WRR Act), especially as QGC is the producer of CSG water that feeds the Woleebee Creek to Glebe Weir and Kenya to Chinchilla Weir Beneficial Use schemes.

QGC supports the broad intent of the amendment Bill, which is to simplify and strengthen the regulatory regime governing the recycling of waste into a resource.

As a major water producer in the gas fields, QGC strongly supports legislative change that facilitates more efficient and streamlined processes for supplying clean, treated water for Queensland communities and waterway health.

We congratulate the Queensland Government on the steps it has already taken to simplify the processes for obtaining beneficial use approval, and for the support it has given to industry and consumers along the water supply chain.

The provision of coal seam gas water for use in irrigation schemes, general agriculture, industrial processing, construction, and for town water supplies is one of the many ways the natural gas industry is contributing to the economic, social and environmental welfare of Queensland communities.

Specifically in relation to this Bill, QGC proposes a number of minor but important amendments to ensure the regulatory regime remains robust and industry has the certainty it requires to make investment decisions:

1) The clauses relating to the amendment, cancellation or suspension of *End of Waste Codes* and *End of Waste Approvals* are too broad and lack clear criteria.

   For example, clause 173X includes "material environmental harm" as a ground for cancelling or suspending an End of Waste Approval, even though an appropriate degree of environmental harm may be authorised under an approval, such as environmental impacts of additional flows in watercourses that are already modified by other activity.

   QGC requests that the clause be amended to exclude otherwise lawful activity from the "environmental harm" criterion.

We also request that clause 173V be amended to prescribe criteria for the Chief Executive's discretion to unilaterally amend an *End of Waste Approval*, to give greater certainty to holders and everyone who relies upon an approval.

Other than in exceptional circumstances of systematic breach or failure on the part of the Approval holder, such approvals should only be amended on the Chief Executive's own initiative upon agreement with the approval holder.

Otherwise, the Chief Executive's power to make substantial amendments to an Approval will be almost unfettered, which would introduce a loophole against the Bill's restrictions on the Chief executive's power to suspend or cancel an approval.

Therefore, QGC proposes that the power to amend an Approval on the Chief Executive's own initiative be constrained unless the approval holder has agreed to the amendments.

2) The process leading to the creation of *End of Waste Codes* should include nominations by industry. This opportunity was included in an earlier consultation draft of the Bill and has been excluded from the tabled Bill without explanation.

3) Finally, it has been an ongoing concern for industry that the current definition of "waste" in the EP Act is too broad in scope and ensures that materials that may still provide value are captured and are caught in unnecessary legislative requirements. It would be more effective to define waste at the point of disposal rather than generation, thus deregulating the disposal of a resource that does not meet the waste criteria. QGC requests that the Parliament take the opportunity afforded by this Bill to make that simple and important change.

Expanded duty to notify

QGC is concerned with the provisions that introduce a duty on the part of occupiers, owners and auditors, to notify within 24 hours of notifiable activity including an event that may cause material environmental harm.

As drafted, the Bill would impose an unfair and burdensome duty onto landholders who are not involved in an activity occurring on their land.

Further, whether or not a 'notifiable activity' as defined is actually being conducted on land requires legal analysis against the triggers in Schedule 3 of the EP Act and in many instances is not readily apparent, except to the entity conducting the activity.

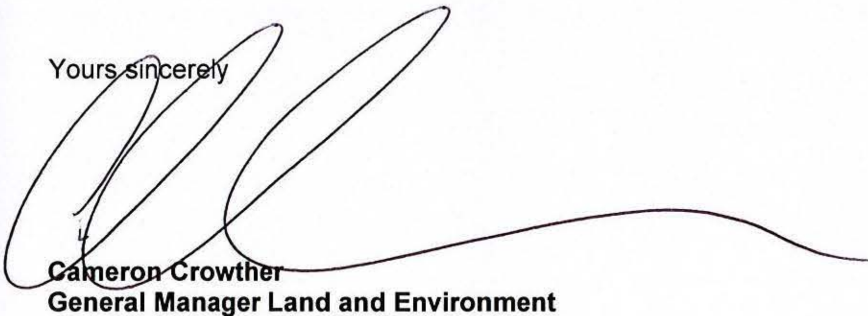
The explanatory notes identify that the new requirement to notify is consistent with the current requirement under the current section 371 in respect of contaminated land. In fact, the timeframe for notification under that provision is 22 business days, which is a significantly longer period than 24 hours.

QGC therefore suggests that the proposed amendments to the duty to notify be abandoned, and that the current duty to notify (in respect of potential environmental harm, and under section 371) remain in effect.

Alternatively, any amendment to the current duty to notify should be in clear and certain terms, and be based on an appropriate timeframe for notification.

We appreciate your consideration of our submission. If you have any questions please do not hesitate to contact Fiona Marks at fiona.marks@bg-group.com or (07)3364 2410.

Yours sincerely



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