

9 October 2014

The Research Director
Agriculture, Resources and Environment Committee
Parliament House
BRISBANE Queensland 4000

via email: AREC@parliament.qld.gov.au

Dear Ms Crighton,

Thank you for the opportunity to comment on the *Water Reform and Other Legislation Amendment Bill 2014* (the Bill).

The Queensland Resources Council (QRC) is the peak representative organisation of the Queensland minerals and energy sector. QRC's membership encompasses minerals and energy exploration, production, and processing companies, 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.

The QRC works to guarantee the resource industry's long-term water security by promoting the industry's credentials as Queensland's best water managers. QRC's efforts are intended to complement and augment the significant water management activities already conducted by QRC member companies.

QRC welcomes the Government's commitment to "*reduce red tape and drive growth in the state's agricultural and resource sectors – while delivering greater certainty for existing water users*", (Minister Cripps' media release, 11 September 2014).

What is the role of Queensland's Water Act? The National Water Commission's [Water Planning Report Card](#) 2013 (page 265) provides a good synopsis of the diverse challenges facing water planning in Queensland:

*"Queensland faces a number of **water planning challenges** to ensure that water is used **efficiently** and that competing needs for water are **balanced** in an **open and transparent** way. Rapid population growth, particularly in the south-east, is creating increasing demand for urban water supplies. **Highly variable rainfall** across most of the State has an impact on water availability, which will intensify according to current climate change projections. Providing water for Indigenous economic and social benefit as well as for cultural flows provides another driver for water planning. Recent levels of activity in coal seam gas exploration and extraction create additional challenges to the sustainability of significant groundwater resources."* (emphasis added)

The *Water Act 2000* was a landmark piece of legislation for Queensland. It mapped out a painstaking process of community consultation and engagement to develop comprehensive water planning and sharing rules at a catchment level. The *Water Act* completely reformed the way in which Queenslanders accessed, owned and used water; but progressively managed and delivered this transformation at a catchment scale.

QRC thoroughly endorses the conclusion of the [National Water Commission](#) who described the *Water Act 2000* as securing for Queensland a:

“...comprehensive, mature and transparent water planning process.” (page 269)

QRC still regards these catchment-level water planning processes as the best example of community engagement ever conducted in Queensland. They were slow, laborious and often feisty discussions – but they were also very broadly based, well resourced, highly transparent and provided enough scientific and hydrological data to enable stakeholders to be confident that the compromises from each sector combined to produce a sustainable system of water use.

The *Water Act* oversaw a process of fundamental reform in Queensland’s water use – moving from a system of area-based water allocations which were inherent in the ownership of land, to a system of carefully specified water licences which had been designed around ensuring that no water was taken until agreed environmental flow objectives had been achieved. These reforms were absolutely revolutionary at the time, and the highly prescriptive nature of the *Water Act* needs to be understood in the context of the major uncertainty faced by water users at that time.

The *Water Reform and Other Legislation Amendment Bill 2014* (the Bill) is an ambitious, complex and substantial piece of legislation. To the credit of the Department of Natural Resources and Mines (DNRM), they have worked hard to ensure that stakeholders have stayed informed as the Bill has been developed.

As a result, QRC members understand the rationale for these changes and broadly support the aim of the Bill; however some otherwise laudable reforms risk being undermined by their hasty implementation. To offset this concern, QRC members place great stock in Minister Cripps’ promise;

*“I am committed to working with the resources sector and landholders to ensure an easy transition into the new framework and their existing water security isn’t compromised.”
(Media release, 11 September 2014)*

Existing water security is the nub of the transition question. The Bill’s consultation regulatory impact statement (RIS) noted that all stakeholders in water reform had a consistent message about the paramount importance of the certainty, security and reliability of water supply:

*“stakeholders are concerned that without the current prescriptive nature of the legislative framework the sustainability of water take, and hence **security** of water allocations would be at risk should the process for allocating and managing water be changed.” (page 12)*

QRC remains concerned that it is difficult to reconcile the caution of stakeholders with the pace at which reforms to the *Water Act* are being developed. Once again, DNRM are doing their best to engage, but the deadlines provide them scant time for the iterative discussions that characterises effective consultation. QRC congratulates DNRM on being proactive and running workshops across Queensland’s regions to ensure all stakeholders have an opportunity to understand these reforms.

In considering the Bill, it is essential that the Committee understand this sudden step-change in pace of reform is unsettling. All water users have been accustomed to deep and on-going consultation at a catchment level; which has simply not been possible in the time allowed for the development of this Bill.

The Bill as presented, combines a series of (a) reforms to modernise the administration of the *Water Act* along with (b) some more complex resource reforms and (c) some unrelated omnibus amendments.

Streamlining the Water Act

The streamlining reforms (set out below) will offer the benefit of additional flexibility for farmers to use their water licences more effectively, with little risk of additional environmental impacts. On the basis of this understanding, QRC members support each of these streamlining reforms to:

- establish a watercourse identification map – the inconsistent application of this critical definition has long been a concern for industry. As such, QRC hopes that this map will enable a clearer picture for assessment and approval processes. The mapping exercise will need to be undertaken in a consultative manner to ensure that the map is adequately ground-truthed;
- provide a new framework for management and allocation of water:
 - providing for the development of statutory water plans as the primary catchment-based water management instrument,
 - providing for the development of water entitlement notices to implement a water plan,
 - establishing a streamlined assessment and approval framework to facilitate major water infrastructure projects,
 - streamlining the framework for regulating the take and interference with water to reduce the regulatory burden,
 - reforming the framework for water licensing,
 - enabling the surrender of water allocations,
 - making other changes to chapter 2 such as minor amendments to align the streamlined frameworks;
- support the transition of category 2 water authorities to other institutional forms and simplify the administrative requirements for both category 2 water authorities and river improvement trusts;
- remove the reversal of the onus of proof under section 812A and 812B of the *Water Act*;
- make other amendments to:
 - remove provisions of the *Water Act* relating to drainage and embankment areas,
 - provide flexible 'fit for purpose' public notice requirements,
 - provide for online fees and payment,
 - remove spent transitional provisions from the *Water Act*.

Omnibus changes - specific to resource regulation

In addition, the Bill also seeks to make a number of changes to the specific regulation of resources. QRC largely supports these amendments to:

- enact safety and health legislative provisions for the new overlapping tenure framework for Queensland's coal and coal seam gas industries;
- broaden the categories of mandatory qualification for eligibility for appointment as the Commissioner for Mine Safety and Health;

The Bill contains a number of provisions related to mining and petroleum health and safety, particularly in relation to amendments developed by industry to better ensure the management of risk in areas of overlapping coal and CSG tenure. QRC is largely supportive of the safety and health overlapping tenure amendments. QRC has been closely involved in the development of these amendments that are part of the new regime proposed by industry in 2012 for a new overlapping tenure framework in Queensland. The amendments, which were not related to safety, to give effect to this new regime were passed in the recent *Minerals and Energy Resources (Common Provisions) Act 2014*.

Within these overlapping tenure safety and health amendments are amendments related to the appointment of the Commissioner for Mine Safety and Health, and to how a proceeding for an offence related to health and safety is commenced. Amendments to the qualifications required for someone to be appointed to the role of Commissioner are supported by QRC as this would widen the pool of eligible persons to include those who hold a legal qualification with experience in the law relating to mine safety, as well as those who have at least 10 years professional experience in senior positions relating to operational mine safety management (e.g. Site Senior Executive).

DNRM have advised that proposed changes to the current exclusive role of the Commissioner in commencing prosecutions are necessary given the Government's intent to appoint a part time Commissioner. The amendments will mean that the Chief Executive, or "another appropriately qualified person" who is authorised by the chief executive will also be able to commence offence proceedings.

QRC objects to such an open ended power to delegate this role on the basis that the Inspectorate should place greater emphasis on undertaking supportive and enabling functions, rather than taking a prosecutorial based approach. During the consultation on these amendments QRC recommended that such a function should only be undertaken by senior departmental officials and should therefore be limited by the legislation to the Commissioner, the Chief Executive and the relevant Chief Inspector under each of the Acts.

Complex resource reforms – changing water rights

The final category represents the most complex and contentious changes in the Bill. While QRC fully understand the reasons for these changes, the speed with which they are being enacted increases the risk of unexpected consequences. This risk is exacerbated because critical regulatory details such as timing, application and transitional arrangements are not yet available to enable a genuine assessment of the impact of these changes. The consultation regulatory impact statement set the goal of having legislative change passed by the end of 2014, which seems aggressively ambitious.

The two changes, where QRC suggests more time be taken to flesh out the important implementation details are to:

- provide a pathway for water rights held under special agreement legislation to be transitioned into the *Water Act*,
- establish a consistent framework for underground water rights for the resources sector and for the management of impacts on underground water due to resources sector activities through changes to:
 - the *Mineral Resources Act 1989* and *Petroleum and Gas (Production and Safety) Act 2004*, and
 - expand the application of chapter 3 of the *Water Act* to the mineral resources sector.

The central issue for industry is the removal of statutory water rights without an absolute confidence of being able to continue to access water. In many cases, the water may be in very small volumes or taken for a very short period, but in the absence of a process to enable existing operations to continue, create a risk of delaying current production while an uncertain new regulatory process is developed and implemented.

Each of these issues is addressed below.

A pathway for Special Agreement Acts

The process of transitioning water rights allocated under special agreement legislation to the *Water Act* has some appeal; however the inherent complexity of these bilateral discussions needs to be recognised.

QRC emphasises the importance of this reform continuing to provide an *option* for companies rather than dictating a new direction. QRC suggests that a directive approach would not be consistent with fundamental legislative principles.

The rights secured under special agreement legislation are fundamental to the significant investments of the special agreement holders in Queensland and those rights in respect of water should be preserved and recognised under the *Water Act*. As the water rights already exist under the special agreement legislation, it is essential that section 206 of the *Water Act* not apply. In addition, other powers of the Chief Executive, such as the ability to unilaterally amend water licences, should not apply where their exercise would impact existing water rights.

Extending underground water management framework to minerals

The process of applying the underground water management framework to mineral operations raises some complex questions. The framework was developed specifically to address the widespread and substantial impacts on underground water as a result of coal seam gas production. While the framework is complex, the Queensland Competition Authority's (QCA) review of coal seam gas (CSG) regulation in 2013 found that for the most part, the framework works well. However, that does not mean that the framework can be simply extended to apply to all resource operations in Queensland – both existing and prospective.

QRC understands and supports the goal of developing a regulatory framework that provides consistency and certainty for other water users (including impacts on groundwater springs). However, just as a specific regulatory framework was developed over a number of years for coal seam gas (CSG), QRC argues that mineral operations should also have a framework developed which reflects the mineral industry's operations, geology and water needs. While the starting

point for developing such a framework should be a close review of the existing CSG underground water management framework; QRC suggests it is too simplistic to apply wholesale, a framework specifically developed for one sector to the entire resource industry.

QRC recommends that the timetable for these reforms be revisited to allow the time to assess the suitability of a CSG groundwater management framework to a more universal application.

QRC supports the policy goal but proceeding on the current accelerated timeline is to accept a second-best policy development process. It is difficult to see the need for haste on this issue, as both the explanatory notes and the regulatory impact statement acknowledged that many existing mines are effectively conditioned to deliver the same outcomes as would be achieved through these statutory reforms.

Revising underground water rights for the petroleum and gas sector

All of QRC's CSG member are also members of the peak national body, the Australian Petroleum Production & Exploration Association (APPEA) and have also contributed to the APPEA submission. QRC supports the approach adopted by our CSG members under APPEA's banner.

In summary

QRC recommends that the set of streamlining and omnibus reforms identified earlier should proceed towards the deadline of achieving legislative change by late 2014, but that more complex resource reforms would benefit from a more measured process of further policy development work and consultation. Water users consistently identify the key outcomes from the Water Act as delivering certainty, security and reliability of water allocations. QRC submits that the timetable for reforming the *Water Act* should not imperil stakeholder's fundamental objectives.

QRC recommends that clause 217 in the Bill, which amends section 235(5)(c) of the *Mining and Quarrying Safety and Health Act 1999* and clause 233 which amends section 837(1) of the *Petroleum and Gas (Production and Safety) Act 2004* should both be amended so it is clear that the ability to instigate prosecutions are not open-ended but rather are limited to the Commissioner, the Chief Executive and the relevant Chief Inspector under each of the Acts.

Thank you again for the opportunity to comment on the Bill. QRC would welcome the opportunity to appear before the Committee and speak to this submission. The QRC contact on this submission is Andrew Barger. [REDACTED]

Yours sincerely

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Michael Roche
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