QUEENSLAND resources COUNCIL

Resourcing Queensland's future

23 July 2020

Committee Secretary
Economics and Governance Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Ms Manderson,

Thank you to the Committee for the opportunity to make a submission on the *Royalty Legislation Amendment Bill 2020* (the Bill).

As you know, the Queensland Resources Council (QRC) is the peak representative organisation of the Queensland minerals and energy sector, including the LNG producers. QRC works on behalf of its members to ensure Queensland's resources are developed profitably and competitively, in a socially and environmentally sustainable way.

QRC represents explorers, miners, mineral processors, contractors, oil and gas producers and electricity generators. Together, these industries are the mainstay of the Queensland economy. For example, the latest trade figures showed that the resource industry generated eighty percent of Queensland's exports, worth $64 billion.

The Bill is complex, not only does it deal with revenue matters, but also it substantially reworks the mechanics of royalty payments. The Bill proposes amendments from two previously distinct royalty reform agendas and this confluence of reform compounds the complexity of the Bill. It also increases the challenge of providing the Committee with a comprehensive submission in just a week.

QRC has appreciated the opportunity to participate in the Petroleum Royalty Review. We note that the Treasurer's release of the consultation paper on 8 June included a firm promise to the industry:

> *"I give this commitment to the petroleum and gas sector – the Palaszczuk Government will continue to consult with industry prior to implementing the changes to the petroleum royalty regime."*

Queensland petroleum industry knows that this new royalty regime will be "*locked in for five years*" and this certainty until 2 October 2025 is most welcome. However, to draw a line under the upheaval of royalty arrangements over the past 18 months, industry requests that the **petroleum royalty regime be frozen for a full decade**. We request that the Committee recommend that the Bill be amended so that this decade of royalty certainty for all commodities is clearly set down in legislation.

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The QRC believes such a legislated measure would provide investors greater certainty and recover Queensland's position as an attractive jurisdiction for global resource investment. The Fraser Institute Annual Survey of Mining Companies 2019 found that Queensland was ranked 15th on its investment attractiveness and 4th of all Australian jursidictions behind Western Australia (1st), South Australia (6th) and Northern Territory (13th).

As the resources sector has been nominated as a key industry for the Government's Economic Recovery Strategy, and it currently supports more than 370,000 Queenslanders to work and earn, it is critical Queensland attracts as much of the investment to generate more jobs and more economic activity to support the strongest possible recovery from COVID-19.

The last Queensland budget showed that Queensland collected $5,453 million in royalties from QRC's petroleum, metal and coal members (table C.1, page 210 Budget paper 2). The composition of these vital royalty revenues is approximately 79.5% from coal, 10.6% from petroleum and 9.9% from metals and other minerals.

Even with all the resources of Treasury, royalty revenues are notoriously difficult to forecast with precision. The forward revenue streams are highly sensitive to movements in the Australian dollar and/or commodity prices. For example, a movement of just a single cent in the exchange rate delivers a $74 million impact to royalty revenues. A 1% variation in the average price of export coal delivers a $54 million impact to royalty revenues (page 212-13 Budget paper 2).

This revenue context is important for the Committee, because the Bill has two distinct components. The petroleum royalty review addresses the collection of the $577 million in petroleum royalties (in 2019-20) while the royalty administration modernisation (RAM) reforms address all royalties – the full $5,453 million in revenue. These two reforms overlap for petroleum royalty payers, who face the greatest regulatory uncertainty from the Bill.

Clearly, royalty payers and industry stakeholders would have appreciated a longer period of review to understand the commercial ramifications for the Bill. The Office of State Revenue (OSR) response to petroleum royalty review consultation submissions (received on 22 July) notes on page 28 that industry requested access to draft legislation and accompanying guideline materials as part of a structured implementation plan. OSR's response was that QRC and APPEA received an advance copy of the Bill on the evening before the Bill was to be tabled. In terms of consultation, there is huge difference between an opportunity to comment on draft legislation and receiving a copy of Bill just 18 hours before it is tabled.

QRC understands the mantra that "Treasury doesn't consult on revenue matters", however, in shaping a major restructure of the basis of petroleum royalties, it would seem prudent to allow royalty payers and other stakeholders sufficient time to grapple with the complex reforms proposed and to understand how Treasury propose to express these reforms in legislation, regulation, rulings and policy.

OSR's response to consultation submissions on the royalty administration modernisation (RAM) program notes that industry was supportive of most of the proposed reform. However, of the 19 issues raised by industry in their summary, at least 9 were flagged as being out of the scope of the program. In an ideal world, industry would have had the

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chance to contribute to developing the scope of these reforms rather than OSR having their hands tied to consulting with industry on a fixed menu of reforms.

QRC's submission will focus primarily on the RAM aspects of the Bill because QRC's membership in LNG, CSG and petroleum overlaps and compliments the national membership of the Australian Petroleum Production and Exploration Association (APPEA). QRC supports the more detailed submission on the petroleum royalty review that APPEA has made on behalf of the collective membership of the two associations.

QRC's mining and mineral exploration membership in Queensland also overlaps with the national peak Association of Mining and Exploration Companies (AMEC). AMEC members have focussed on the RAM reforms in their submission and QRC supports the AMEC submission.

To give effect to the policy changes, the Bill, will have to amend six different Acts and three associated but markedly different sets of regulations. These are a complex and technical set of amendments, with material consequences for the State's finances and these amalgamated amendment processes are slated to take effect from 1 October 2020. Time is short and the stakes are high. Queensland's royalty payers are relying on the Committee to scrutinise the Bill intently in the limited time available for review.

QRC members have done their best to provide constructive feedback on the Bill in the week that it has been available for review. Despite our best endeavours, there will still be important issues of drafting and interpretation that we have missed. We have appreciated the efforts of OSR to provide feedback on industry proposals and will continue to work closely with them as these legislative reforms are implemented.

The Committee's function in conducting the review of this Bill include the following key considerations, to:

a) consider the compatibility with the *Human Rights Act 2019*;
b) examine the application of fundamental legislative principles (FLPs); and
c) consider the policy to be enacted.

a) Compatibility with human rights

QRC has read the Minister's Statement of Compatibility and while the case could be made that that it might be a bit glib to assert that royalty payers are usually corporations which are not covered by section 11 of the *Human Rights Act 2019* (page 4), QRC largely endorses the analysis and conclusions of the Statement. That said, QRC recommends that the Committee seriously consider any potential of the Bill to infringe on existing property rights – whether they are the rights of individuals or corporations.

b) Fundamental legislative principles

QRC has also read the section of the explanatory notes that addresses the issue of fundamental legislative principles (pages 12-13). QRC welcomes the Bill's recognition of the need for transitional arrangements and the two-year head of power to make regulations under the Bill.

However, QRC is concerned with clause 11 of the Bill, which amends section 320 of the Taxation Administration Act 2001 so that the role formally played by the Minister is delegated to the Revenue Commissioner (see page 8 of the explanatory note). QRC would question whether it is consistent with fundamental legislative principles to have the Commissioner legislatively responsible for the administration of royalty laws. Given the other amendments in the Bill to replace Ministerial discretion with the

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Commissioner's discretion, QRC requests that the Committee ask if these changes, when considered in aggregate, are consistent with fundamental legislative principles.

Finally, given the Bill was tabled on 16 July and the Committee is required to report back to Parliament by 7 August, QRC would question whether the Committee can be confident that such a complex Bill, one which amends so many other existing legislative instruments, is "*unambiguous and drafted in a sufficiently clear and precise way*." QRC suggests that the seriousness of the subject matter merits a longer period of review.

c) Policies enacted

Both the Minister's introduction speech and the explanatory notes emphasised the consultation with industry. While the Treasurer's speech accurately identified a number of important industry requests which were granted during the petroleum royalty review processes; it is also important to acknowledge that there is not a corresponding set of granted industry requests for the broader RAM program. Consultation on the RAM reforms effectively wound up at the end of 2019, with no opportunities to engage on the detail of amendments until the Bill was tabled in July.

While QRC members would have appreciated an opportunity to make suggestions on the scope and focus of the RAM reforms, these initiatives proposed by Treasury are supported by industry. QRC's submission in November 2019 welcomed the long overdue reform to royalty administration. The modernisation initiatives are designed to provide greater certainty and administrative efficiencies for both industry and government.

On the petroleum royalty review, QRC endorses the way that the Treasurer has characterised the process to the House and the Committee. The appointment of an independent Chair was an early industry request, and the appointment of the Hon Jay Weatherill as Chair was an inspired choice. His two reports to the (then) Treasurer, released on 8 June, are a cogent distillation of his complex review task. QRC appreciated the opportunity to participate in all these review processes.

Specific drafting queries and suggestions

(a) Royalty administration modernisation

The following suggested changes and additions to the Bill will improve mineral and petroleum royalty administration by achieving balance between the position and rights of the Commissioner and royalty payers and will facilitate improved compliance practices:

- **Clauses 46 of the Bill:** Proposed new section 63(6) of the *Mineral Resources Regulation 2013* (MRR) states that *the commissioner cannot be compelled to make a gross value royalty decision for a mineral … to the extent that the decision would decrease the gross value taken to apply for the mineral, if royalty was payable for the period*. Meanwhile, new section (7) says that a decision of the commissioner not to make a gross value royalty decision under section (6) is a *non-reviewable decision*.

  These new provisions are at odds with section 59 and could undermine the veracity of gross value royalty decisions (GVRD) as a mechanism for attributing value to minerals when sold to related parties. The holder of a mineral is under a mandatory obligation to make an application for a GVRD (under section 60) as soon as practicable after the mineral is sold, however, the time that it has taken

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the Office of State Revenue to make these decisions has been an ongoing problem with Queensland royalty administration. With no royalty value decision there will be no rights of appeal either to QCAT or the Supreme Court. These provisions will encourage holders of mining leases to report low mineral values for royalty purposes when sold to related parties because, to do otherwise, might mean that they will never receive a decision and will not achieve certainty for sales to related parties. Submitting royalty returns with low sales values will then run the risk of penalties and interest being imposed by the commissioner when a decision is eventually made.

- **Clause 48 of the Bill:** The time allowed under section 64 of the MRR to advise the commissioner of an incorrect GVRD should not be reduced from 60 days to 30 days. The complexity of these issues and required documentation requires more time, not less. The length of time required for the Minister to make GVRDs in the past evidences this complexity.

- **Clause 49 of the Bill:** A time limit should apply to the commissioner to amend an earlier gross value decision under revised clause 65(5)(b) of the MRR even when the Commissioner has given notice of an investigation. Once notice is given there is no obligation on the Commissioner to conduct the investigation within a reasonable time period and so giving a notice will hold review periods open indefinitely. Furthermore, as submitted during consultation, if the Commissioner provides a notice under new section 65(5)(b)(i) then increases *and decreases* in the gross value of the mineral should be allowed. A change in the method or formula can often result in both positive and negative adjustments to prior return periods. It is inappropriate to allow only for increases in in the gross value of minerals when a formula or method is under review.

  The wording of subsection 65(5) appears to allow the commissioner to increase a royalty amount after 5 years if the amendment was on the basis of an amended GVRD on an investigation commenced within 5 years (investigations can take a few years to complete so that could mean at 8 years there are both increasing and decreasing amendments). It does not allow the revenue commissioner to make decreasing amendment unless the holder applies for an amended gross value decision within 5 years of the period. The commissioner will still have the advantage in these situations. Royalty payers will need to be careful in the process that leads up to the issue of a GVRD as it appears that, by subsection 65(7), if the commissioner approves a GVRD that overstates the royalty collected there may be no compulsion to fix it.

- **Clause 114 of the Bill**: New section 26(6) of the *Taxation Administration Act 2001* (TAA) provides that where an amount has been paid and/or the Commissioner has remitted an amount, a reassessment is not required to be issued. If an amount is paid in advance by a taxpayer to stop interest accruing but in respect of a contentious issue that has not been resolved, it may result in the taxpayer no longer having a reassessment to appeal against.

- **Clause 129 of the Bill:** Additional words need to be added at the end of new section 64(3) of the TAA: "*To remove any doubt, it is declared that this subsection applies only to matters relating to the decision and not to how the gross value of the mineral is finally worked out in accordance with that decision.*" These additional words are necessary because if a formula or method for deciding the market value of minerals is stated as general principles without clarity, the holder of a mineral being the subject of a decision should reasonably be able to object to the way the commissioner has applied those principles.

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- **Clause 143 of the Bill:** New section 149L(3) of the TAA ensures that section 39 covering the windfall gains will apply to royalty refunds. This section requires that the Commissioner be satisfied that the taxpayer hasn't received the amount from another person before refunding to the taxpayer. It is our view that the refund to the taxpayer should be the overriding concern of the statute and not commercial arrangements between the taxpayer and other parties. For practical purposes and given the range of possible commercial arrangements that may arise, it is difficult to envisage how the Commissioner could be satisfied in regard to matters covered by the section.

(b) Petroleum Royalty Review

- **Clause 97 of the Bill**: Despite retention of the exemption for flared or vented gas arising from coal mining operations in section 49(1)(a)(i) of the Mineral Resource Regulation (MRR), there is no apparent way for flared and vented gas to be excluded from the calculation of royalties under the amendments to the *Petroleum and Gas (Royalty) Regulation 2004*. The definition of *domestic gas* in section 135(1)(b) includes petroleum produced by the petroleum producer in a return period that is flared, used or vented. Meanwhile, section 145 states that the producer must "*pay petroleum royalty for the period on the volume of domestic gas produced in the period*".

  Section 15(2) says that if a coal mining lease holder mines coal seam gas under the Mineral Resources Act then for the purpose of the Petroleum legislation the lease holder is taken to *produce* the gas, however, it is not entirely clear whether the definition of *domestic gas* in section 135(1) will take priority over the provisions of the MRR. Sections 53 and Schedule 3, Part 2, section 7 of the MRR refer to the Petroleum regulations on questions of the value and rate applicable to coal seam gas but the quantity of gas sold or disposed of could also be determined under the MRR (per sections 46 and 49(1)).

  QRC would prefer to see a specific clause added to the Bill for the avoidance of doubt. In the absence of drafting changes to clarify the unaffected operation of the exemption for flared or vented gas arising from coal mining operations, QRC requests comments should be included in the explanatory memorandum to clarify this position.

- **Clause 97 of the Bill:** This submission is made is respect of *domestic gas,* but the comments are equally relevant to *supply gas*, *project gas* and *liquid petroleum*. The Commissioner will have a broad discretion to apply benchmark prices even where gas is sold to an independent buyer. The Commissioner can apply this discretion when he or she *considers it is appropriate for the protection of the public revenue*. In making his or her decision the Commissioner may have regard to any of the following limited matters:

  (a) any arrangements existing between the petroleum producer and a person who purchases domestic gas;

  (b) the number of sales in the royalty return period;

  (c) the volume of domestic gas produced by the petroleum producer in the royalty return period that is sold to an independent buyer;

  (d) the volume of domestic gas produced that is sold to a person other than an independent buyer;

  (e) any other matter the revenue commissioner considers relevant.

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The provision as drafted will not achieve ***improved royalty administration*** because it is imbalanced between the Commissioner and producers and provides inadequate guidance that is biased towards the revenue. The only real guidance on application of this discretion is in the words "*the protection of public revenue*". Gas producers who have pre-existing commitments made under long term arm's length supply contracts could be unfairly exposed to increased royalties. This is particularly so because the Commissioner is able to apply this discretion even where gas sales are made to independent buyers. Merely considering *existing arrangements* and the other sales and volume information says nothing about how these matters are to be taken into account when exercising the discretion. The Commissioner might consider, for example, that prior arm's length commercial commitments made by a producer *do not protect the revenue* because gas prices have risen since the commitments were made. It would be inappropriate and unfair for the producer to be required to pay royalties on the basis of current benchmark prices when they are receiving lesser amounts.

The statutory guidance for this discretion must be fairly balanced and better articulated so that it can be applied objectively to any given facts or circumstances. The arm's length standard should be a minimum point of reference, but contemporary international income tax concepts would be preferred. Consideration should be given to the *commercial and financial conditions* that apply to the producer and under any existing arrangements decided under *arm's length conditions*. In practical terms this would mean, for example, that a producer of incidental *domestic gas* at a remote coal mine location would unlikely to be required to pay royalties on the *Wallumbilla Benchmark Price* because, in real market terms, no one would be willing to pay that much for gas that is so far away from the major transmission pipelines and gas markets.

QRC would prefer to see a specific clause added to the Bill for the avoidance of doubt. In the absence of drafting changes, QRC requests comments should be included in the explanatory memorandum to clarify this position.

In conclusion, QRC supports the intent of the *Royalty Legislation Amendment Bill 2020* and subject to the questions of clarification raised above, recommends that the Committee support the Bill. We confirm that no matters raised in this submission are confidential and the Committee is welcome to publish it on their website.

QRC would welcome any opportunity to answer questions on any matter raised in this submission or to appear before the Committee at a public hearing. The contact at the QRC Secretariat is Andrew Barger on [redacted] or [redacted].

Yours sincerely

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