

28 March 2018

Mr Linus Power MP
Chair
Economics and Governance Committee
Email: egc@parliament.qld.gov.au

Dear Mr Power

Re: Mineral and Energy Resources (Financial Provisioning) Bill 2018 – Supplementary submission on Government's response to submissions

The Queensland Resources Council (QRC) provides the Economic and Governance Committee (the Committee) with this supplementary submission, which focuses solely on the Government's response to stakeholder submissions (RTS) on the *Mineral and Energy Resources (Financial Provisioning) Bill 2018* (the Bill) (dated 16 March 2018).

This submission outlines, and elaborates on, QRC's key concerns with the following matters as it relates to the RTS:

- Amendments to the Bill based on the RTS and Government's intent;
- Discretion for the Scheme Manager to decide whether to consider the resource project characteristics as part of its assessment and allocation of companies; and
- Complete disregard for the mining sector's operational needs as it relates to the request for the inclusion of a mechanism in the Bill to allow for the routine review of long-term milestones in the PRCP schedule, over time and in response to external variables, without being subject to public notification and right to submissions processes.

Amendments to the Bill to reflect Government's intent

QRC appreciates the Government clarifying its intent in the RTS regarding a number of concerns and drafting matters raised by stakeholders. In some cases, Government has outlined where the relevant section of the Bill is to be reviewed to assess whether the intent of drafting could be more clearly or correctly expressed.

While QRC supports this approach, Government has not actually committed to reviewing or amending the Bill and/or Explanatory Notes to reflect all other critical clarifications outlined in the RTS. Without these relevant amendments the Bill, as introduced, may be interpreted and implemented in a way, when enacted, which does not reflect Government's intent as provided in the RTS.

QRC recommends that where relevant, and where Government has not already committed to reviewing relevant sections of the Bill, the Committee specify where amendments to the Bill should be made to better reflect Government's intent as provided in the RTS.

Consideration of resource project characteristics

In response to the issue of criteria relevant to making risk category allocation decisions by the Scheme Manager, the RTS states *"it is proposed that the scheme manager will make a statutory guideline that will outline detail of the criteria of the financial soundness and resource characteristics which the scheme manager may have regard to for allocating an authority to a risk category."*

- *Subject to the particular circumstances of each authority, it is a matter for the scheme manager to consider whether to consider the resource project characteristics when making an allocation decision. However, there are reasonable circumstances when the resource project characteristics may not be relevant, for example, for exploration projects or those in care and maintenance" (page 12)."*

As provided in Section 4.2.2 of QRC's submission on the Bill, we recommended that the Scheme Manager 'must' consider the resource project characteristics for all applicable holders. The discretion provided in the Bill appears to conflict with the premise of the reform. While Government is focused on establishing an understanding of the State's financial risk, the introduction of the Progressive Rehabilitation and Closure Plan (PRCP) clearly indicates that they are also concerned about the risk of companies failing to complete their rehabilitation on the ground. Given the two go hand-in-hand, it would seem appropriate for the Scheme Manager to be required to have regard to both when determining a company's risk profile.

Further, Government's justification that there are reasonable circumstances, such as care and maintenance, where the resource project characteristics may not be relevant is incorrect. Despite a site being in care and maintenance (i.e. temporarily not in production), a company must continue to rehabilitate consistent with its Environmental Authority requirements, which are subject to compliance inspections by the Department of Environment and Science. Companies with sites in care and maintenance and good rehabilitation performance records would be disadvantaged if the Scheme Manager did not consider rehabilitation efforts (i.e. resource project characteristics), which ultimately minimises the risk to the State, as part of its determination of a company's risk profile. As an aside, QRC must clarify that the Bill provides that the Scheme Manager 'must' have regard to financial soundness. The drafting of the RTS could be interpreted as being that the Scheme Manager 'may' have regard to financial soundness as it is provided in the context of the statutory guideline.

Need for a mechanism to routinely review long-term milestones

From the RTS, it is clear that the Government recognises that mining, and hence areas available for rehabilitation and the timing for delivery of rehabilitation outcomes, changes over time due to variations in operational needs (amongst other factors). This is partly reflected in Government's response to concerns raised in relation to 'assessment level decisions', whereby *"Section 228 includes a new criteria for an assessment level decision on a PRCP schedule amendment application to allow flexibility in long term planning and re-sequencing of rehabilitation areas...This section ensures that where an amendment is to the re-sequence (changing the order, not the processes or outcomes) of 2 or more*

rehabilitation areas and their respective dates for completion, then the administering authority can decide it is a minor amendment application if it is satisfied the applicant has undertaken adequate consultation with the community and the change would not result in submissions objecting to the amendment" (page 35)."

Unfortunately, the RTS does not extend to, or adequately respond to other operational realities expressed by the mining sector. Section 6.5.1 of QRC's submission on the Bill highlighted the lack of a routine review and update process to refine long-term milestones in the PRCP schedule without it being considered as a major amendment with full submission and objection rights. The mining sector holds a grave concern that the Bill, as drafted, will severely impact business flexibility, which is a direct risk to investment certainty.

QRC has explained that a PRCP schedule is approved once upon transition to the new framework and is intended to outline all milestones from the date of commencement throughout the life of operations, into closure and, as needed, upon approach to relinquishment. For many existing and new operations, this means getting one chance to forecast out the completion date of milestones for multiple areas across the site for decades (e.g. 20, 50 years).

The Government has stated in the RTS that *"Milestones in the PRCP schedule will be designed in a way that incorporates potential uncertainties related to the activities. In addition, areas, timeframes and milestones will be proposed by EA holders considering the activities at the site, which allows for some flexibility"* (page 40). While it is important for proponents to have a line of sight to the final landform and next land use, QRC maintains the position that this approach has the potential to drive a perverse environmental outcome of delaying some areas of progressive rehabilitation because of the invariable need for a company to include notable time contingencies in their milestone commitments. This is precisely what the Government is using the Bill to ultimately avoid.

Further, Government is of the view that *"Achieving milestone dates is considered a critical component of a PRCP schedule and the flexibility afforded by allowing five additional years without triggering a major amendment is considered sufficient"* (page 35). From the mining sector's perspective, beyond the immediate three years of operations, it is difficult to accurately forecast long-term milestones, particularly for long life mines, given the dynamic nature of operations in response to ongoing and short-term changes in market and customer demands.

Rather than make the entire mining sector predict milestones into the future, QRC's submission recommended to the Committee that a mechanism be included in the Bill to allow the PRCP schedule to be formally reviewed and amended with Government only for the sole intent of tightening the operational and rehabilitation commitments (i.e. milestones) for the upcoming period (i.e. the next three years) whilst still forecasting milestones to the best of the company's ability through to closure/relinquishment.

If Government is able to accommodate changes to operational needs via a minor amendment pathway in one regard (i.e. re-sequencing), as outlined in the RTS, it is unclear as to why a similar approach cannot be adopted to refine long-term milestones in a PRCP. This recommendation has no risk to the certainty about the proposed post-mining land use, which is highlighted as one of Government's objectives (page 29). It simply affords a process to more accurately forecast long-term milestones, upon approach, over time.

Recommendations

QRC must re-emphasise the importance of a workable and equitable rehabilitation framework for the resources sector, which also affords confidence to the community and Government. We again ask the Committee to consider the recommendations outlined in our submission, particularly as it relates to the matters outlined above (Recommendations 3 and 44) given the RTS does not adequately address these concerns.

Should you wish to discuss this submission further, please contact QRC's Policy Director, Environment, [REDACTED] at [REDACTED] or on [REDACTED], or QRC's Policy Manager, [REDACTED] at [REDACTED].

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Ian Macfarlane', with a stylized flourish at the end.

Ian Macfarlane
Chief Executive