QUEENSLAND resources COUNCIL

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Finance and Administration Committee
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Finance and Administration Committee

Dear Ms Jeffrey

Thank you for the opportunity to comment on the *Payroll Tax Rebate, Revenue and Other Legislative Amendment Bill 2015* (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 previously made a submission to this inquiry on 20 April 2015, which is listed as submission number 4 on the inquiry website. That previous submission focussed on amendments to the *Environmental Protection Act 1994*, whereas this submission focusses on the Bill's Part 3 amendments to the *Duties Act 2001*, specifically the concession relating to farm-in agreements for exploration authorities. QRC welcomes the chance to provide comments on these amendments.

- Part 3 of the Bill is generally consistent with public ruling DA000.12.1 issued in June 2013. The QRC welcomes this consistency and acknowledges the intention of section 655 to establish a retrospectivity period to reinforce this consistency.
- Industry would like to suggest some improvements in the administration of the new provisions. As drafted some of the provisions risk stifling the exploration activity that the concession was designed to promote.
- Under that existing public ruling:
    - stamp duty is not paid if the only consideration is an exploration amount (duty ***is*** paid if there is any other consideration – cash payments or payments for information);
    - stamp duty is assessed at the time a farm-in agreement is granted – at each stage of the agreement – with a true-up mechanism reflecting previous stages (and any previous payments of duty); and
    - The farm-in concession requires an interest in the exploration authority in existence when the written agreement is signed. The concession will not apply if the exploration authority was not granted at the time the agreement is entered into. This will prevent the securing of funding during the application phase. Also, if an exploration tenement converts into a production tenement, then the concession does not cover any subsequent acquisitions in the production tenement.

Suggested administrative refinements

While QRC understands that the process of farm-in exemptions is part of a much larger body of reform, it is essential that the Committee understands that the process of farming in to an exploration project is a critical source of revenue for small exploration companies. With access to finance tightly constrained, it is difficult to overemphasise the importance of preserving the ability of the exploration industry to continue to access finance.

- The proposed design of the farm-in exemption does not accord with industry practice and the compliance processes appear to be over-engineered.
  - The advice to QRC from members is that the Bill's compliance regime is overly complicated. The Bill provides for very rigorous and prescriptive requirements. This complexity increases the risk of inadvertent technical non-compliance.
  - Farm-in arrangements are generally agreed at the early stages of an exploration project, when time is of the essence to secure investment. Such investments are already highly risky on geological and regulatory grounds without adding a new risk of further delay to address taxation complexity.
  - Industry's concern is that the Bill as drafted would require detailed legal and taxation advice to avoid the risk of technical non-compliance.

- The Bill may inadvertently discourage 'outcome focussed' farm-ins, as it requires that a farm-in agreement specifically provide for the spending of a 'stated amount' to become entitled to a transfer of an interest.
  - QRC recommends that this ambiguity in the Bill could be addressed to ensure that these outcome focussed farm-ins are recognised by amending the reference to 'stated amount' or 'exploration event' in sections 84B(1)(b) and 84C(1)(b) to encompass; *'[spending] an amount to achieve a stated milestone or task',* or *'a minimum amount to achieve a particular milestone or task or a stated amount*.'

- Sections 84B(1)(c) and Section 84C91)(b) of the Bill are drafted in too binary a manner. QRC recommends that they be amended to allow a pro-rata interest to be earned rather than requiring that the interest be forfeited if the obligation is not met by the completion date.
  - QRC recommends that sections 84B(1)(c) and 84C(1)(b) be amended to better reflect the long-standing industry practice whereby the farmee earns a pro rata interest based on the amount actually spent compared with the 'stated amount' spent set out in the farm-in agreement.. Appropriate changes would also be required to section 84H.
  - This would be consistent with the approach taken by the Australian Taxation Office (ATO) in relation to its rulings on farm-in and farm-out agreements - see Miscellaneous Tax Rulings MT 2011/D1 and MT 2011/D2.

- Lodgement and assessment obligations are more onerous for up-front agreements than for deferred agreements. There will be multiple assessment events and multiple lodgements required for upfront farm-in agreements.

- The Bill allows just 14 days, rather than the usual 30 days for lodgement of a notice. Further, this notice is required each time the exploration amount has been spent.
  - QRC recommends that the time period for lodgement under section 84K should be extended from 14 to 30 days to be consistent with the rest of the Bill and to reduce the chance of technical non-compliance.
  - This shorter period of 14 days is also applied in the important transitional provisions set down in section 658(4), (but not in section 658(5)).

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- Throughout the consultation, QRC has consistently emphasised that that it is inequitable for stamp duty to be assessed on mining information in the context of a farm-in agreement and not on any other style of transaction involving the provision of information. Worse still, duty on farm-in agreements were intended to be concessionally assessed under Part 8A however; mining information farm-in arrangements are being penalised by comparison to other dutiable transactions such as the transfer of operating mines or the transfer of exploration tenements for cash consideration.
  - QRC recommends, despite the original public ruling, that clause 84N(1)(c) should not include consideration paid for mining information under a farm-in agreement and that section 84J should also be amended to confirm that position.

- Similarly, if the farm in agreement provides for a final transfer to the farmee on completion of the agreement, which brings their interest to 100%, then the last transfer will not be entitled to the benefit of the concession.
  - QRC recommends that the entire farm-in transaction should be eligible for the concession.

- As drafted, the Bill's anti-avoidance mechanisms are clumsy and risks companies breaching section 84P(1) every time they seek to have the concession applied to their farm-in agreements. This is because a taxpayer would enter into a complying farm-in agreement to access the concession, which has the effect of avoiding the imposition transfer duty.
  - QRC recommends that section 84P(1) should be deleted in its entirety, with the Commissioner relying instead on the general anti-avoidance provisions within the *Duties Act*.

Conclusion

In conclusion, QRC has appreciated the opportunity to work with the Office of State Revenue in the development of the Bill. For the most part, the Bill reflects the draft ruling that preceded it; however QRC recommends that the Committee revisit the administrative complexity of Bill to ensure that it reflects existing industry practice. As drafted some of the provisions risk stifling the exploration activity that the concession was designed to promote.

Specifically, to reduce the risk of inadvertent non-compliance, QRC recommends that:

1. The definition of 'stated amount' be clarified to better reflect the needs of outcome-focussed or conditioned farm-ins to recognise *'a minimum amount to achieve a particular milestone or task or a stated amount*.'
2. Allow a pro-rata farm-in where the full 'stated amount' is not spent by the specified time by amending sections 84B(1)(c) and 84C(1)(b).
3. The time period for lodgement under section 84K should be extended from 14 to 30 days to be consistent with the rest of the Bill
4. It is inequitable for stamp duty to be assessed on mining information in the context of a farm-in agreement in part 8A and not on any other style of transaction involving the provision of information.
5. The entire farm-in transaction should be eligible for the concession.

6. Section 84P(1) should be deleted in its entirety, with the Commissioner relying instead on the general anti-avoidance provisions within the *Duties Act*.

QRC would welcome the chance to appear before the Committee. The contact at QRC is [redacted]

Yours sincerely

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