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QUEENSLAND resources COUNCIL

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20 January 2012

Ms Bernice Watson
The Research Director
Industry, Education, Training and Industrial Relations Committee
Parliament House
George Street
Brisbane QLD 4000

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

Dear Ms Watson

Thank you for the opportunity to provide a submission to the Industry, Education, Training and Industrial Relations Committee's inquiry into the *Resources Legislation (Balance, Certainty and Efficiency) Amendment Bill 2011* (the Bill).

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

To start on a positive note, QRC is pleased with the many legislative amendments attributable to the *Streamlining Mining and Petroleum Tenure Approvals* Project. QRC has worked alongside Government during this process to deliver meaningful time and cost savings to both industry and Government. The Government's initiative of establishing the Government-Industry Implementation Group back in 2010 is commendable and shows its ability to openly engage on matters critical to the future of the Queensland resources industry.

Unfortunately this is not the case for the Urban Restricted Area (URA) policy and legislative amendments. QRC is frustrated at the Government's undue haste with both the development of the policy and getting the Bill drafted and introduced. QRC feels that as a result, the Bill is not informed by an understanding of industry's legitimate concerns. QRC members would have welcomed the opportunity to be part of a genuine consultation process where impacts of the URA amendments on industry, the community and indeed Government could be adequately addressed – QRC notes that impacts were not assessed in a Regulatory Assessment Statement, which could have provided a systematic appraisal of the issues and assessed the merits of a range of alternative regulatory responses.

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Further, QRC notes the Industry, Education, Training and Industrial Relations Committee (the Committee) has scheduled public hearings on the Bill in Brisbane, Chinchilla and Toowoomba. The Bill affects the entire Queensland resources industry, yet public hearings have been limited to only one of the State's many key resource areas, the Surat Basin.

OVERVIEW OF KEY ISSUES

The URA policy enacted in the Bill seems to be non-compliant with section 4 of the *Legislative Standards Act 1992*, whereby the provisions in the Bill do not have regard to the rights and liberties of individuals. Specifically section 4(3)(g), as the policy adversely affects the rights and liberties of granted exploration permit holders through a diminished right to explore an area for which permission by the State has already been granted. The retrospective application of the policy to granted tenures is alarming to the industry as it removes confidence in resource investments in Queensland.

As indicated in a previous QRC submission to the Department of Employment, Economic Development and Innovation on 16 September 2011,[1] the policy is predicated on the incorrect assumption that intensive exploration activity, which is then assumed to also include full-scale production, is imminent in urban areas. The policy insinuates that in the absence of the new URA, the industry would be granted permission to mine within an urban area. This contradicts the message delivered by the Premier on 16 August 2011 - '*None of them [resources companies] would have reasonably expected to convert their mining exploration lease in a residential area into a mining permit.*[2]'

This submission provides a clause by clause assessment of QRC's issues – see the attachment starting on page 5. A summary of QRC's request for amendment of the Bill is outlined below in six key areas:

- **Crown resources for the Crown's decision**

The minerals and energy resources under the ground belong to the people of Queensland and the people of Queensland elect State Governments to make decisions on the best use of those resources. The URA policy outlined in the Bill in each of the resources Acts essentially enables the delegation of Ministerial power over access to the Crown's resources to a local government, as resource activity can only occur with Local Government consent.

The URA policy removes accountability and transparency of decisions and is seemingly non-compliant with the *Legislative Standards Act 1992* (section 4(4)(B)), as Local Government decisions are not subjected to the scrutiny of the Legislative Assembly, as well as not required to consider a set of criteria (as the Minister must) in making their decision.

- **Duplication of subsections within the legislation**

There are many sections in the Bill which are unnecessarily duplicated. Most notably, the consent form is repeated four times (noting different sections for consent within a restricted area and consent within a URA) within each resource Act–

> *A consent given by an owner or an occupier under subsection (1)(b)—*
> *(a) must state the period of the consent; and*

[1] *https://www.qrc.org.au/_dbase_upl/Exploration_UrbanLiving_16Sept2011.pdf*

[2] 16 August 2011, *http://www.brisbanetimes.com.au/queensland/bligh-dismisses-legal-threat-over-mining-exploration-buffer-20110816-1ivaa.html*

(b) may be on conditions; and
(c) can not be withdrawn.

QRC recommends that duplicate sections be simplified to refer to most relevant remaining section (see Attachment to this submission – as an example see clause 20, amendment of s 386C(2)).

- **Inconsistent timeframe for a response**

The Bill states that Local Government's will be given 40 days to respond to a proponent to give consent of activity within a URA. This timeframe is excessive and will add even further delay for access to land on top of the existing land access laws. In the aim of consistency and reasonable timeframes, QRC recommends 20 days for a local government to respond is appropriate. Although not the only example, twenty days aligns with the timeframe allowed to negotiate a conduct and compensation agreement with a landholder under the land access laws.

- **Blanket restriction on open cut mining**

QRC considers the blanket restriction on open cut mining in the URA section of the Bill is unnecessary (proposed amendment to section 235(b) of the *Mineral Resources Act 1989* (MRA)).

The Bill provides for the Minister to veto any decision on the grounds of *overall State interest.* Further, there are established processes for assessing the broad environmental impacts of a project – these processes allow projects to be conditioned to reflect community expectations on a range of outcomes. The environmental impact assessment is a rigorous process, which is conducted at the risk and expense of the proponent. It is difficult to see how a simplistic ban on activity is in the community's interest when compared with the existing process that allows a project to present a case for the project proceeding.

- **Cumulative term restriction on exploration permits**

Decision on application (proposed amendment to section 147A of the MRA (Clause 110)
The Bill prevents renewals (except in exceptional circumstances) of exploration permits (EP) for coal and minerals that would result in a cumulative term of more than 15 years.

The proposed amendments to section 147A are intended to commence on a date to be fixed by proclamation. QRC requests the proclamation date be publicly confirmed to give the exploration permit holders time to develop exploration planning and mine development strategies. QRC recommends proclamation of this amendment for this particular amendment should at least twelve months from the date of assent of the Bill.

In addition, QRC also asks the Committee to consider an additional transitional provision for those exploration permits already beyond a cumulative term of 15 years, to allow for one additional renewal where either:

- The EP has been assigned from one company to another; or
- The EP has met the conditions of the permit (this would be indicative of a highly prospective area and in the State's interest for continuous exploration).

Ivanhoe Australia has advised that their submission provides additional information on this amendment.

- **Post-Grant Dealings**

Prohibitive dealings (proposed amendment to section 318AAQ of the MRA)
The Bill introduces a prohibitive dealing in the MRA whereby a proponent is unable to transfer part of a tenure that is part of the surface area or strata beneath the surface. This was one aspect of the proposed amendments on which QRC members were consulted, however the full implications of the amendment have just become apparent.

Dealings with a divided part of the area of a mining tenement, although not expressly provided for in the current MRA, are in fact common (this is in part due to the fact that the MRA does not have mechanisms for subdivision of Exploration Permits for Coal (EPC) or Mining Leases (ML)).

Examples

1. Following relinquishments, EPCs can become fragmented, leaving isolated sub-blocks which may have limited viability on their own, despite being highly prospective. Such isolated sub-blocks may be adjacent to other EPCs (or MLs), and the holders of the EPC may want to transfer or "swap" the beneficial interest in such an EPC sub-block, so that it can be run in conjunction with the immediately adjacent EPC/ML. This results in more efficient use of the land and greater investment, and it is therefore not in the State's interest to restrict such dealings.

2. If two adjacent ML holders wish to adjust a common boundary in order optimise mining by both parties, this can not currently be done under the MRA (eg by way of transferring part of one ML to the holder of the other, and vice versa). The only process is for there to be a surrender by one party of part of their ML which is conditional on the grant of a new ML over the surrendered area to the other party. It is possible that the overarching agreement to achieve that outcome would be prohibited under the proposed amendment. Further, to the extent that the parties seek to treat the relevant area(s) as being for the benefit of the other, pending the transfer, that would also potentially be caught.

The prohibition in proposed section 318AAQ would have the effect of making a potentially large number of existing commercial agreements unlawful and void – creating a great deal of legal uncertainty for parties to those agreements.

The flexibility to contract and to structure tenure holdings in ways that work best for business encourages investment in the State, and should not be constrained as proposed by section 318AAQ, unless there are compelling public policy reasons. No particular reasons have been identified in the explanatory materials – and while consistency is desirable it should not be at the cost of business certainty and investment.

QRC appreciates that State's desire for increased control over (and an ability to charge duty on) such dealings. Another approach to achieve this would be to *expressly permit* transfers of parts of tenements, with Ministerial consent. Having clear mechanisms permitting such transfers would also provide additional legal certainty to parties who wish to deal with parts of tenements in order to optimise resource use.

QRC therefore requests that the proposed amendment in 318AAQ be removed, or replaced with provisions expressly permitting transfers of parts of tenements with Ministerial consent.

Removal of Indications
The Bill proposes to remove indications from the MRA, P&G Act, *Petroleum Act 1923* and the *Greenhouse Gas Storage Act 2009.* Again, this was one aspect of the proposed amendments on which QRC members were consulted, however the full implications of the amendment have just become apparent given longer time to consider the consequences.

Indicative approvals are currently a cornerstone of commercial transactions involving sale or purchase of resource tenements. Indicative approvals enable such transactions to complete (the point at which the contract is unconditional, the transfer is signed and money exchanged) with confidence that the transfer will occur. Removing indicative approvals will introduce a high degree of uncertainty and practical difficulties into such transactions, potentially undermining the confidence with which investments are made in the State. While the QRC supports streamlining as a principle, it should not be done at the cost of business certainty. QRC therefore requests this amendment be reconsidered.

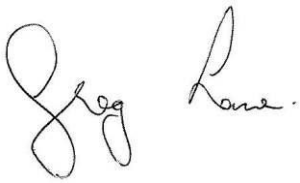
Examples

3. At the point at which a sale contract for a mining tenement is signed, the contract will typically be conditional on various approvals (including Foreign Investment Review Board and Australian Competition and Consumer Commission approvals), the most important of which is the indicative approval to the transfer of the tenement under of the MRA (eg s300 (6) for MLs). Once an indicative approval is given, the parties are confident the transfer will be approved (if lodged within three months). The contract can then complete (transfers signed and lodged, and purchase price paid simultaneously) with confidence.

4. Under the Bill, a signed transfer must be lodged with the transfer application, and there is no provision for getting an indicative approval in advance of doing so. This would mean that at the time the transfer is signed, the parties do not know if the transfer will be approved. This has particular implications for the buyer who will likely be unwilling to pay the sometimes significant sum of money until they have confidence the transfer will be approved. Conversely the seller would also be left in a difficult position considering a transfer is irrevocable regardless of receiving any money from the buyer. Commercially, the solution would be for the buyer to pay the purchase money to an escrow until the transfer is approved, however this is not ideal as it may sit in the escrow for an indeterminate period (potentially months) pending approval of the transfer.

Thank you again for the opportunity to comment on the Bill and QRC would be more than pleased to appear at the public hearings. If you have any questions about any of the issues raised in this submission, or would like any further information, please feel free to contact QRC's Industry Policy Adviser, Katie-Anne Mulder, on 07 3316 2519 or katie-annem@qrc.org.au.

Yours sincerely



Greg Lane
Deputy Chief Executive

ENCLOSED: **Attachment:** QRC's comments on specific sections of the Bill

ATTACHMENT

Resources Legislation (Balance, Certainty and Efficiency) Amendment Bill 2011

Specific Comments

Chapter 2 - Proposed amendments commencing on assent

Part 2 - *Greenhouse Gas Storage Act 2009*

Section	Effect	QRC comment	Recommendation
Clause 9 Amendment of s 277B(2)	Approved form of consent for restricted land	Unnecessarily repeats s 277C(v).	Delete s 277B(2) and instead include 'as per s 277C(v)' under s 277B(1)(b)
Clause 9 Amendment of s 277E(3)(b)(i)	Local Government consent	The delegation of the Minister's power to Local Government to approve mining activity goes against the Crown's exclusive right to approve land to be explored, developed or mined.	Remove s 277E(3)(b)(i) that enables a Local Government to approve exploration, development and mining in a Urban Restricted Area (URA).
Cluse 9 Amendment of s 277E(4)	Approved form of consent for Urban Restricted Area (URA).	Unnecessarily repeats s 277F(b)(v).	Amend s 277E(4) to – 'consent must be given in the approved form under s 277F(b)(v)'.
Clause 9 Amendment of s 277G(1)(b)	Local Government given 40 days to 'consent' to notice (s 277E(3)(b)(i)).	This timeframe is excessive. Land access provides for 20 business days to negotiate a conduct and compensation agreement.	Amend for Local Government to respond within 20 days.

Section	Effect	QRC comment	Recommendation
Clause 9 Amendment of s 277G(1)(b)	Application to Land Court	'Consent' to notice implies the Local Government has responded to the notice. Need further clarification in the Bill that this also means responding. The explanatory notes accompanying the Bill do further explain the section also includes responding, however an amendment would clear up any confusion upon assent.	*Insert-* 'either respond or provide consent.'
Clause 9 Amendment of s 277H(2)(c), (3) & (7) Minister decides whether to approve authorised activities in URA	Criteria for Ministerial decision on grant of Greenhouse Gas (GHG) authority in URA a matter of State interest. ***overall State interest*** means an interest that the Minister considers affects the economic, environmental or social interest of all or part of the State.'	The term 'overall State interest' is inconsistent with the language used in the GHG Act - uses 'public interest.' Similar definitions of terms. This is contrary to s 277D, where the Minister can declare a URA based on the public interest.	Replace 'overall State interest' with 'public interest.'
Part 3 – *Mineral Resources Act 1989*			
Clause 19 Amendment of S 235(b)	An authorised activity for the mining lease that is open cut mining may not be carried out in the URA.'	QRC does not accept a blanket restriction on open cut mining. There is no explanation of this policy in the explanatory notes – has the government made this decision in the public interest?	Delete this section. Open cut mining operations on a mining lease should undergo the same process as other mining operations in a URA – obtain Local Government consent.
Clause 20 Amendment of s 386C(2)	Approved form of consent for restricted land.	Unnecessarily repeats s 386D(b)(v).	Delete s 386C(2) and instead include 'as per s 386D(b)(v)' under s 386C(1)(b).

Section	Effect	QRC comment	Recommendation
Clause 20 Amendment of s 386F(3)(b)(i)	Local Government consent	The delegation of the Minister's power to Local Government to approve mining activity goes against the Crown's exclusive right to approve land to be explored, developed or mined (s 9 MRA).	Remove s 386F(3)(b)(i) that enables a Local Government to approve exploration, development and mining in a URA.
Clause 20 Amendment of s 386F(4)	Approved form of consent for URA.	Unnecessarily repeats s 386G(b)(v).	Amend s 386F(4) to – 'consent must be given in the approved form under s 386G(b)(v)'.
Clause 20 Amendment of s 386H(1)(b)	Local Government given 40 days to 'consent' to notice.	This timeframe is excessive. Land access provides for 20 business days to negotiate a conduct and compensation agreement.	Land access provides for 20 business days to negotiate a conduct and compensation agreement.
Clause 20 Amendment of s 386H(1)(b)	Application to Land Court	'consent' to notice implies the Local Government has responded to the notice. Need further clarification in the Bill that this also means responding. The explanatory notes accompanying the Bill do further explain the section also includes responding, however an amendment would clear up any confusion upon assent.	*Insert-* 'either respond or consent.'

Section	Effect	QRC comment	Recommendation
Clause 20 Amendment of s 386I	Criteria for Ministerial decision on grant of MRA authority in URA a matter of State interest. ***overall State interest*** means an interest that the Minister considers affects the economic, environmental or social interest of all or part of the State.'	The term 'overall State interest' is inconsistent with the language used in the GHG Act - uses 'public interest.' Similar definitions of terms. This is contrary to s 286I(7), where the Minister can declare a URA based on the public interest.	Replace 'overall State interest' with 'public interest.'

Part 4 - *Petroleum Act 1923*

Clause 27 Amendment of s 78KB(2)	Approved form of consent for restricted land.	Unnecessarily repeats s 78KC(b)(v).	Delete s 78KB(2) and instead include 'as per s 78KC(b)(v)' under s 78KB(1)(b).
Clause 27 Amendment of s 78KE(3)(b)(i)	Local Government consent	The delegation of the Minister's power to Local Government to approve petroleum activities goes against the Crown's exclusive right to approve land to be explored, developed or mined.	Remove s 78KE(3)(b)(i) that enables a Local Government to approve exploration, development and mining in a URA.
Clause 27 Amendment of s 78KE(4)	Approved form of consent in a URA.	Unnecessarily repeats s 78KF(b)(v).	Amend s 78KE to – 'consent must be given in the approved form under s 78KF(b)(v)'.
Clause 27 Amendment of s 78KG(1)(b)	Local Government given 40 days to 'consent' to notice.	This timeframe is excessive. Land access provides for 20 business days to negotiate a conduct and compensation agreement.	Land access provides for 20 business days to negotiate a conduct and compensation agreement.

Section	Effect	QRC comment	Recommendation
Clause 27 Amendment of s 78KG(1)(b)	Application to Land Court	'consent' to notice implies the Local Government has responded to the notice. Need further clarification in the Bill that this also means responding. The explanatory notes accompanying the Bill do further explain the section also includes responding, however an amendment would clear up any confusion upon assent.	*Insert-* 'either respond or consent.'
Clause 27 Amendment of s 78KH(2)(c)	Criteria for Ministerial decision on grant of GHG authority in URA a matter of State interest. ***overall State interest*** means an interest that the Minister considers affects the economic, environmental or social interest of all or part of the State.'	The term 'overall State interest' is inconsistent with the language used in the *Petroleum Act 1923* - uses 'public interest.' Similar definitions of terms. This is contrary to s 78KD, where the Minister can declare a URA based on the public interest.	Replace 'overall State interest' with 'public interest.'

Part 5 – *Petroleum and Gas (Production & Safety) Act 2004*

Clause 46 Amendment of s 494B(2)	Approved form of consent for restricted land.	Unnecessarily repeats s 494C(b)(v).	Delete s 494B(2) and instead include 'as per s 494C(b)(v)' under s 494B(1)(b).
Clause 46 Amendment of s 494E(3)(b)(i)	Local Government consent	The delegation of the Minister's power to Local Government to approve petroleum activities goes against the Crown's exclusive right to approve land to be explored, developed or mined.	Remove s 494E(3)(b)(i) that enables a Local Government to approve exploration, development and mining in a URA.

Section	Effect	QRC comment	Recommendation
Clause 46 Amendment of s 494E(4)	Approved form of consent for URA.	Unnecessarily repeats s 494F(b)(v).	Amend s 494E(4) to – 'consent must be given in the approved form under s 494F(b)(v)'.
Clause 46 Amendment of s 494G(1)(b)	Local Government given 40 days to 'consent' to notice.	This timeframe is excessive. Land access provides for 20 business days to negotiate a conduct and compensation agreement.	Land access provides for 20 business days to negotiate a conduct and compensation agreement.
Clause 46 Amendment of s 494G(1)(b)	Application to Land Court	'consent' to notice implies the Local Government has responded to the notice. Need further clarification in the Bill that this also means responding. The explanatory notes accompanying the Bill do further explain the section also includes responding, however an amendment would clear up any confusion upon assent.	*Insert-* 'either respond or consent.'
Clause 46 Amendment of s 494H(2)(c)	Criteria for Ministerial decision on grant of authority in URA a matter of State interest. ***overall State interest*** means an interest that the Minister considers affects the economic, environmental or social interest of all or part of the State.'	The term 'overall State interest' is inconsistent with the language used in the GHG Act - uses 'public interest.' Similar definitions of terms. This is contrary to s 494D, where the Minister can declare a URA based on the public interest.	Replace 'overall State interest' with 'public interest.'

Chapter 3 – Amendments commencing by proclamation

Part 4 – *Mineral Resources Act 1989*

Clause 110 Amendment of s 147A	Exploration permit for coal and mineral shall not exceed a cumulative term of 15 years.	Request confirmation: Interaction of cumulative term with conditional surrender, transfers etc. Would a transfer of ownership of tenure be a special circumstance?	Clarification for criteria for special circumstance in the *Mineral Resources Regulations* 2003.
Clause 110 Amendment of 147A	Exploration permit for coal and mineral shall not exceed a cumulative term of 15 years.	Confirm proclamation date to ensure sufficient time for tenure holders to maximise opportunity.	
Clause 110 Amendment of 147A	Exploration permit for coal and mineral shall not exceed a cumulative term of 15 years.	Include additional transitional provision for EPs over the cumulative 15 years that have changed ownership or complied with the terms of their tenure.	Additional transitional provision allowable one additional term
Clause 133 Amendment of s 269(2)(b)(i)	Governor in Council to consent to mining over surface of land.	The Bill transfers the Governor in Council power to grant and renew mining leases to the Minister. This section is inconsistent with this amendments outlined in s 271A.	Amend s 133(2) proposed amendment to '*a recommendation to the Minister as to whether they should consent to the grant over the surface area.'*
Clause 134 Amendment of s 271A(2)(b)	Governor in Council consent to grant of Mining Leave of surface of a reserve.	See proposed amendment to the Bill in s 271A which transfers the power to grant mining leases to the Minister.	Remove proposed amendment s 271A(s)(b) from the Bill.
Clause 146 Amendment of s 300	Indicative approvals.	QRC requests reconsideration of the removal of indications.	

Clause 152 Amendment of s 318AAQ	Prohibited dealings	Transferring a divided part of mining tenure should be allowed for reasons outlined in QRC's submission. This would be consistent with being allowed to transfer a 'share' of the tenure – see proposed amendment s 318AAV.	Remove s 318AAQ from the Bill or alternatively provide for Ministerial approval of such dealings.
Clause 164 Amendment of s 386L(1)	Notice to progress application	Inconsistent with the same amendment to each resource Act in the Bill. The MRA amendment requires only a 'relevant person', however other amendment require 'the Minister'.	Amend for consistency throughout the Acts.
Clause 180 Amendment of s 791	Transitional provisions	Include additional transitional provision for EPs over the cumulative 15 years that have changed ownership or complied with the terms of their tenure.	Additional transitional provision allowable one additional term that meet criteria – either changed ownership or complied with s 141 of the MRA.