

QRC Submission

Parliamentary Committee Inquiry into the Long-Term Financial Sustainability of Local Government

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Introduction

The Queensland Resources Council (QRC) is the peak representative organisation of the Queensland minerals and energy sector. QRC's membership encompasses minerals and energy explorers, producers 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.

QRC supports the recommendations of the Auditor General in both reports 2 and 13, understanding that they aim to encourage greater governance and transparency to ratepayers and other stakeholder about the financial health of their local government and how their rate contributions are managed.

The resources sector is just one cohort of industry ratepayers in regional Queensland. The resources industry is a proud member of regional Queensland communities and understands the important contribution to local governments through rates.

This inquiry into the long-term financial sustainability of local governments provides for a timely review of the financial health of local governments in Queensland. Other jurisdictions are undertaking similar reviews (for example NSW IPART review). Given the findings of the Auditor-General's report, coupled with reviews and reforms initiated by other States, Queensland should be proactive in understanding the full set of issues, including the lack of funding to local governments in recent years, and how this is impacting regional Queensland.

QRC has identified there is a need for greater transparency and governance around local government budgets and revenue raising. As the resources industry peak body, it is common to hear of situations where a company, or more broadly an entire local government area, has significantly increased their rates on the sector. This has a direct flow on impact on jobs and supporting local business and more broadly future investment in the region. Like every other business, large and small, costs must be predictable and justifiable. Unfortunately, evidence provided to QRC from its members shows the sector is the target of inequitable and unpredictable rate amounts and increases year on year.

QRC understands the resources industry is not alone in issues it has faced with rates and limited transparency of determining budgets and rates. The examples of significant rates increases (ranging from 20 percent to 250 percent) and the application of capacity to pay mechanisms to certain rate payers is a practice that has also been outlined in the submissions of the Property Council of Australia, Queensland Farmers' Federation and the Shopping Centre Council of Australia.

QRC hopes the information provided in this submission is useful to the Committee. Together with other industry submissions, it provides strong evidence for reform.

Background

Queensland's resources sector contributes one in five dollars to the Queensland economy, and one in every seven jobs is supported across the sector, in addition to more than 20,000 Queensland businesses.

For Queensland to be globally competitive, the cost of doing business in Queensland needs to reflect market and economic conditions of the day. QRC understands there are significant cost pressures on local governments, however the broad and unfettered ability of local governments to plug budget holes by charging individual operators and industries exorbitant rates is not an equitable and sustainable practice.

The resources industry is cyclical with long-term project investment timeframes often in excess of 20-30 years. Resource project investment decisions are based on clearly defined assumptions including operating costs of which government rates are a significant component. Unpredictable, unjustified and inequitable increases in rates create a risk to the viability of existing operations. Furthermore, heightened uncertainty can deter future investment in Queensland by raising the level of sovereign risk for investors.

Concerns with the current framework

Unfettered powers to rate

In recent years, QRC member organisations have reported a range of concerns relating to local government rates which all stem from an unfettered ability of local governments to determine rate amounts. The high increases in rates over recent years, coupled by the unpredictability of the increases as valuations have become an irrelevant variable, are prominent issues for the resources industry.

A number of court cases have applied principles that provide some guidance on the limitations of how a local government should determine their rates. Where a local government fails to comply with these principles, the courts have found that this will render the exercise of the rating power invalid.

A brief summary of these principles is provided below:

- a rating system which imposes an excessively high proportion of the overall rates upon a particular rate payer or group of rate payers will be an unreasonable exercise of a local government's power to make and levy rates and will be invalid (*Sunwater v Burdekin Shire Council* (2002) 125 LGERA 263);
- a substantial increase in rates does not by itself render a decision unreasonable (*Tarong Energy Corporation Ltd v South Burnett Regional Council* (2011) 181 LGERA 77);
- the wealth of the ratepayer (that is, their capacity to pay greater rates) is an irrelevant consideration which, if taken into account, will render the levying of such rates unlawful (*Xstrata Coal Qld Pty Ltd & Ors v Council of the Shire of Bowen* [2010] QCA 170); and
- the potential for the land to produce revenue (as distinct from the landowner) may be a relevant consideration (*Xstrata*).

It is evident that some of these principles are not being taken onboard given there are still a number of local governments that specify 'capacity to pay' as one of their approaches when determining their rates and rating categories. While the revenue statements of some councils do not explicitly advocate a capacity to pay approach, the application of rating categories appear to implicitly incorporate capacity to pay considerations.

There are numerous examples that can be provided confidentially to the Committee where the activity on the land does not change (i.e. agriculture) however as soon as the ownership changes to a resources company, the new rate on that land is at a mining or petroleum rate.

Limited transparency on budgets

Like other ratepayers, the resources industry seeks transparency in relation to the level of rates payable and the level of services provided by local government. Resource projects are subject to stringent sets of conditions including agreements with councils which capture the extent to which the project's operations impact council assets (e.g. public roads). While operators in the resources industry typically pay a higher rate through the application of differential ratings, they are also required to make road impact agreements with their local government to mitigate the costs of the impacts on roads i.e. money is usually provided for upgrade of roads, road maintenance and impacts to roads caused by increased activity from a resource company. Greater transparency is necessary to ensure the level of rates paid is commensurate to the level

of service provided by the council once these separate agreements which compensate local government for road maintenance and so forth are taken into account.

There is limited transparency of how local governments determine their budgets for the coming financial year. For a company operating in these regional areas there is little predictability on what might be in the budget and sought from the company through rates. Resource sector operators frequently report instances of large increases in rates that are clearly not commensurate to impacts on local government services. As one example, the Gladstone Regional Council undertook a \$35 million-dollar transformation of its entertainment and convention centre in 2014. Since then, each year the Gladstone Entertainment Convention Centre runs at an approximate \$3.7million deficit. In 2016 the Gladstone Regional Council general rate revenue increased by \$4.7million from the previous year to \$82.6million. This was the same year the Gladstone Regional Council increased rates (through new differential rating categories) for the Liquefied Natural Gas (LNG) sector by approximately 250 per cent.

The new differential rating categories created in the 2015/16 year specifically targeted the LNG operations and sought to link the rate amounts (c/\$) to production volumes and/or profit (i.e. capacity to pay) rather than characteristics of the land. One resources proponent operating in the Gladstone Regional Council area reported the 2015-16 rates bill is likely to be more than 500 percent higher than what was paid in 2012-13 for the same parcel of land.

When a company seeks to appeal a rates decision there are barriers to access relevant information relating to the decision of rates (new rating categories for example). There is limited transparency of how these resource sector rate charges are being used.

No appeal rights for differential rates

Queensland's rating system has an inadequate dispute resolution and appeal process. For differential rates, there is no avenue for an appeal for the ratepayer, however all other categories have a process in place for review and appeal. Typically, the largest increases in rates are exercised through the differential rating categories.

QRC understands local government need to be able to adequately raise revenue to manage services and assets for their community, however this should not be at the cost of stakeholders given a fair opportunity to question their rate. It is unclear why these rates are exempt from scrutiny of ratepayers.

Long-term financial sustainability and rates

The Auditor General's report outlines serious concerns about the short and long term financial sustainability of the majority of local governments in Queensland.¹ QRC sympathises with the fiscal plight of local governments who have been confronted with systematic reductions in funding from both federal and state governments over several years. The local economies of regional Queensland are also highly dynamic and changes can happen quickly, so plans can be quickly outdated.

In 2012, the (former) Queensland Government established the *Royalties to Regions* program and the current Government has continued this regional focus with a differently configured program now called *Building our Regions*. *Building our Regions* is a \$375 million targeted regional infrastructure program for local government. While this is a welcome injection of funds for local government infrastructure, it is available to all local governments. QRC was particularly supportive of the previous initiative that provided a share of royalties back into the regions that generated resource wealth.

The *Building our Regions* program has been a successful initiative, however QRC has concerns it does little to provide support to resource regions. Firstly, the funding is open to all local governments and therefore there is no guarantee resource regions see any of the royalty money flow back into their region. There is also no vetting of, or connection with, the financial planning of the local government (i.e. do they have a long term financial plan in place?). In the absence of these governance considerations, local governments may be at financial risk and need intervention. At page 39 the Auditor-General highlights the issue of the transparency in the financial management of local governments and the oversight and triggers for intervention -

"The department does not have a comprehensive approach to monitoring the financial sustainability of councils and, as a result, cannot identify councils at financial risk and provide early support or intervention."

Funding initiatives, such as *Building our Regions*, are critical to ensuring local governments have reliable and sustainable funding to upgrade and maintain existing infrastructure which is pivotal to the future investment for the State. Without this critical funding, local governments must find this funding elsewhere. Evidently this gap has been partially filled by revenue raising through excessive rates on industry.

QRC does not believe the excessive rates the industry has experienced over the past several years is entirely a symptom of reduced federal and state funding. As outlined in the Auditor-General's report, there is a lack of accurate forecasting and preparing a long-term financial plan.

"In many councils, those charged with governance are making decisions based on inaccurate forecasting. These councils treat financial planning as a compliance exercise, because of either a lack of resources, lack of skills, or leadership" (page 19)

¹ "Thirty-nine councils forecast deficits in 2015–16, with 24 of these forecasting deficits for the next 10 years." (page 1)

This is a concerning finding and warrants further consideration about the transparency of local government budgeting and general financial management, including decisions on the determination of rates. The Auditor-General went further to say that those councils that *don't prepare a long-term plan are depriving their community of understanding their financial strategy.*²

QRC would also like to acknowledge there are a number of local governments that have exceptional financial management practices, some of these are in resource regions.

QRC provides the following comments on the relevant recommendations in the Auditor General's report as they relate to transparency of revenue raising and expenditure. QRC is also seeking further reforms on how rates are determined and providing for appropriate review mechanisms and offers a number of further recommendations for the Committee to consider.

Transparency of revenue raising and expenditure

QRC notes this inquiry follows the tabling of reports (2 & 13) by the Queensland Audit Office which raised concerns about the majority of councils' financial management practices. Under the terms of reference for this inquiry, the Committee considers the findings of the Queensland Audit Office, including consideration of the following:

- asset condition data and asset management plans
- decision-making frameworks for major infrastructure asset investments
- community engagement on future service levels
- financial sustainability targets
- organisational governance
- strategic planning and organisational capacity
- budget transparency
- financial sustainability ratios
- procurement policy and value for money
- other matters the committee determines are relevant to the inquiry.

QRC supports all of the Auditor General's recommendations in Report 2³ and particularly supports the following recommendations in report 13⁴ in the aim of increasing transparency in financial processes:

Recommendation 1 - make the financial statements of their controlled entities publicly available

Recommendation 2 - assess their processes for ensuring that their asset registers are complete and remain current over time

Recommendation 4 - critically examine their service levels and costs for service delivery and plan in the longer term to be able to earn enough operating revenue to meet operational expenditure

Recommendation 5 - assess the maturity of their risk management practices, develop an action plan for improvements, and track progress towards agreed targets

Recommendation 7 - retain or re-establish their audit committees to ensure there is effective oversight of their internal control frameworks, financial reporting, and legislative compliance.

² At page 19.

³ Auditor-General's Report 2: 2016-17 *Financial sustainability of local government*

⁴ Local government entities: 2015-16 results of financial audits (Report 13: 2016-17)

QRC supports the Auditor General's comments -

"The absence of long-term financial plans limits the ability of councils and the community to understand the:

1. effects of rate increases
2. consequences on asset condition of council's asset management policies
3. way debt is being used to build infrastructure to support the local community in the years to come"⁵

The Audit Office reports noted that a large proportion of Queensland's local governments face issues relating to financial sustainability. Without reform, ratepayers in many regions will remain exposed to risks posed by inequitable and an opaque approach to ratings. As part of reforms to address these issues we believe the introduction of an independent umpire may be useful. We believe a broad review of current ratings practices should be undertaken by the Queensland Competition Authority (QCA). This would help to identify the extent to which ratings practices are problematic for all ratepayers. Furthermore, current limitations on ratepayers to appeal ratings decisions suggest the QCA could also play a role in cases of disputed ratings where it could help resolve issues through arbitration. QRC advocates the following principles be applied by the QCA in relation to this proposed oversight role:

Principles for rate reform

1. A rates determination and valuation process and outcome that is transparent, predictable and fair (including consultation and an avenue for appeal).
2. Greater transparency of Local Government budgets and how rates are determined, including a requirement to adequately justify (i.e. based on economic valuation principles not on a capacity to pay) new rating categories and increases.
3. Equitable treatment and consistency with other land users and uses.

In addition to the above recommendations that support increased transparency QRC recommends the Committee examine the exemptions of local governments from Right to Information laws in Queensland.

Under the *Right to Information Act 2009* (see section 4B below) information relating to local government budgets is exempt from being released under right to information laws. This creates a total lack of transparency about local government budget processes.

4B Budgetary information for local governments

- (1) Information brought into existence in the course of a local government's budgetary processes is exempt information for 10 years after the date it was brought into existence.
- (2) Subsection (1) does not apply to information officially published by decision of the local government

It is unclear why information on local government budgets would be exempt from Right to Information processes. Local government budgets are placed in the same (excluded) category as sovereign communications, legal professional privilege and national and State security information. It is difficult to determine how government have justified this. The explanatory memorandum for the relevant section offers no explanation as to why local government budgets are excluded from right to information processes.

⁵ Page 21

The explanatory memorandum for the relevant section states:

New section 4B refers to information brought into existence in the course of a local government's budgetary process. This information will be exempt for 10 years after the date it was brought into existence. The exemption does not apply to information officially published by decision of the local government.

Therefore, without communicating a logical reason or explanation, local government budgets have been made exempt from public scrutiny. The barrier which has been put in place through the right to information exemption is unnecessary and provides for a certain degree of distrust, particularly in light of the Auditor-General's findings regarding the long-term financial stability of local government. Clearly some level of oversight for Local Government budgets is required. Public scrutiny of budgetary information would ensure that Local Governments remain accountable to their community, and operate in a transparent way. QRC recommends legislative amendment to the *Right to Information Act 2009* to remove the exemption for the budgetary information of local governments.

Determining rates & review mechanisms

Statutory Guidelines

The issues around the determination of rates has been the subject of reforms across Australia recently, with the exception to Queensland. In recent years, Victoria imposed a Ministerial Guideline to promote fairness when determining differential rating.

The Victorian Guideline outlines the need for transparent decision making and QRC believes the instruction given to provide evidence for council rating determinations in the Guideline should be adopted in Queensland. QRC believes a Statutory Guideline would go a long way in meeting the Queensland Government's 2015 election commitment to "*ensuring that local governments have access to guidance on good practice taxation principles.*"⁶

QRC understands there is work being done by the Queensland Government to develop a Guideline on Equity and Fairness in calculating ratings for Queensland Local Governments. QRC is highly supportive of the development of this guideline and is disappointed it has not been released sooner to guide local governments prior to the development of their budgets and rate determinations for the 2017-18 year. The Guideline should be a regulatory instrument to ensure rating practices meet the expectations of stakeholders on what is fair and equitable. Such rating practices like 'capacity to pay' have been determined as an inappropriate rating approach however it is a practice still enjoyed by a number of local governments. QRC's position is the Queensland Government has a role to play in ensuring the sustainability of local governments and the industries that operate in the regions.

QRC seeks the urgent introduction of a mandatory guideline for fair and equitable rating in Queensland.

Consultation with ratepayers on significant increases

Many of QRC's member companies have experienced significant increases in their rates bills annually. These increases range from 20 per cent up to 250 per cent year-on-year increase for one company. These are large sums of money, generally in the millions and there is no

⁶ Tim Mulherin MP, *Response to the Property Council's election priorities document*, 22 January 2015.

consultation on these significant increases, only a 10-business day period to pay the bill. This is an unsustainable practice for any company, large or small.

QRC recommends the Committee investigate the option to introduce mandatory consultation processes and timeframes to engage with stakeholders. Unlike all other levels of government, local governments in Queensland are not bound by any process to consult or measure impact on stakeholders for newly imposed regulatory and/or financial burdens. This lack of process removes credibility and transparency of Queensland's rating system. Consultation with stakeholders is an important characteristic of good governance and government processes that local governments are exempt from undertaking.

Recommendations

The findings of the Audit Office are alarming. Its reports are damning of local government financial management and have rightly escalated the level of public awareness into the overall issue. QRC has been calling for reforms to local government practices for several years. The reports verify the concerns of industry raised over recent years.

QRC has called for reforms in areas such as the local government process of determining rates, especially differential rates. Reforms must deliver transparency across the board, particularly in relation to:

1. Local governments' revenue raising and expenditure; and
2. The process for determining rates and a review of the appeal mechanisms.

In relation to (2) above, the Queensland Government is committed to developing a Best Practice Guideline for Fair and Equitable ratings in Queensland. Further consideration should be given to making the Guideline mandatory, to ensure a fair and equitable process that fosters regional development.

1. Urgently publish a mandatory Guideline for Fair and Equitable Rating in Queensland;
2. Implement all recommendations from Reports 2 & 13, particularly recommendations 1, 2, 4, 5, 7 of Report 13;
3. The Queensland Competition Authority to review the current ratings practices in line with the three suggested principles for reform;
4. Extend Right to Information (RTI) laws to Local Government budgets;
5. Consider a mandatory consultation processes and timeframes to engage with stakeholders; and
6. Allow for a dispute resolution/appeal process for all rate categories.