



Working together for a **shared future**

9 December 2016

Ms Mary Westcott
A/Research Director
Infrastructure, Planning and Natural Resources Committee
Parliament House
George Street
Brisbane Qld 4000

Email: ipnrc@parliament.qld.gov.au

Dear Ms Westcott

Thank you for the opportunity to comment on the *Strong and Sustainable Resource Communities Bill 2016*. The Bill is a significant piece of legislation for the resources sector given on one hand it extraordinarily extends discrimination in hiring processes for resource projects to location as well as calls out the explicit ban of a potential vibrant new industry in Queensland for Underground Coal Gasification (UGC).

QRC's submission to the Parliamentary inquiry into the Bill outlines three key areas:

1. The provisions of the SSRC Bill relating to hiring practices for resource projects;
2. The provisions of the SSRC Bill relating to the ban of mineral (f) or UGC in Queensland; and
3. Industry comment on the Social Impact Assessment (SIA) Guideline which was tabled in Parliament at the introduction of the Bill.

Bill provisions relating to hiring practices for resource projects (sections 6 to 20)

QRC has previously made a submission to the Coordinator-General on the SSRC framework on 8 August 2016 and another submission on the Bill's provisions when it was an exposure draft (submission dated 5 September 2016). These submissions are in attachments 1 and 2.

QRC's position on the Bill has remained unchanged since its introduction. QRC is still of the view that it is an unnecessary piece of legislation and concerns regarding retrospectivity and residence as a ground of 'discrimination', still remain strong. Additionally, QRC believes that the Bill raises questions regarding compliance with section 92 of the Australian constitution as it potentially creates a barrier to trade and commerce between States.

As previously outlined, QRC argues that the retrospective application of the Bill undermines existing investment decisions made on the basis of approvals granted after 30 June 2009. In addition and not to be understated, retrospective laws increase Queensland's sovereign risk profile. Not only does this contribute to a continuous erosion of investor confidence in Queensland but it also breaches fundamental legislative principles which should be taken seriously by this committee.

The Bills' own Explanatory Notes are unbecoming where they describe a risk of trusting one of the highest profile bureaucrat positions in the Queensland Public Service. This is poor justification for this legislation. At page 3 of the Explanatory Notes it states that –

The determination has been that resource companies and future Coordinators-General cannot be relied upon to implement the policy objectives without a legislative obligation. This would be an inconsistent and inappropriate approach to the management of social impacts of large resource projects.

QRC questions whether the purpose of the *Anti-Discrimination Act 1991* (Qld) (AD Act) is being trivialised by these amendments. The purpose of AD Act is to:

Promote equality of opportunity for everyone by protecting them from unfair discrimination in certain areas of activity, including work, education and accommodation.¹

The AD Act prohibits discrimination on the basis of attributes such as race, age, impairment and religious beliefs.² These attributes typically reflect characteristics of a person that are immutable or which a person has a fundamental right to. It is QRC's understanding that the driving factor behind the use of 100% FIFO is a commercial one, and given a person theoretically has a choice about where they reside, it is difficult to treat the new provisions as being concerned with discrimination in the same sense. QRC submits that widening the AD Act to include "resident of the nearby regional community" dilutes the effectiveness of the legislation, and trivialises its intent.

Further, the inclusion of the reverse onus in section 131F of the AD Act flies in the face of existing commercial and contractual relationships. A respondent to an action will not be in a position to discharge the reverse onus when it may not be the one making the relevant decision. It is not appropriate for joint and several liability to be imposed through this legislation.

Bill provisions relating to the ban of Mineral (f) activity in Queensland

QRC does not support the explicit ban of UCG in Queensland, an innovative industry where great progress was being made specifically by the company Carbon Energy.

When the Government made the announcement earlier this year, former Australian Chief Scientist, Robin Batterham, publicly condemned the decision and questioned whether it is politics that determines the outcomes of innovation or is a sound base of science and technology a better driver.³ Batterham went on to talk about how one of three trial projects has made huge progress and had met all of the Independent Scientific Panel's recommendations. QRC agrees with Batterham's statements that the Queensland Government, although proud of its innovation agenda on one hand, stifles world leading innovation in the resources sector on another. Batterham states -

Queensland which has previously been a proud innovator and supporter of the coal industry has now banned one of its most significant scientific advancements in coal and effectively thrown its baby out with the bath water.

¹ *Anti-Discrimination Act 1991* (Qld) s 6(1).

² *Ibid*, s 7.

³ Robin Batterham, 'Ex-Chief Scientist lashes Qld UCG ban' (16 May 2016), Energy News.

At attachment 3 is a full article written by Batterham on the ban of Queensland's UCG industry.

SIA Guideline

Given a new version of the SIA Guideline was tabled in Parliament when the Bill was introduced, QRC would like to take this opportunity to make comment on the Guideline given no consultation process has been undertaken on this new version. QRC understands the Coordinator-General's office will be consulting with stakeholders early in 2017 on the new draft version of the Guideline. Attached is a separate submission on the SIA Guideline.

Overall the Guideline requires further amendment to ensure it is consistent with an outcomes based approach to social impact assessments and conditioning. The Guideline, as drafted, is often confusing as it switches from an outcomes approach to detailed prescriptive processes and conditions. QRC also finds the Guideline requires further clarification in some areas and questions why there is a separate consultation process, explicating calling out submission from certain stakeholders, when this is part of the overall Environmental Impact Statement process.

QRC welcomes the opportunity to be further consulted in the new year in the expectation that all stakeholder feedback on the Guideline will be considered and the guideline amended as necessary.

Thank you for the opportunity to comment on the SSRC Bill and the SIA Guidelines. QRC looks forward to providing any further evidence at a public hearing in due course. The QRC contact on this work is QRC's Deputy Chief Executive, Ms Judy Bertram, [REDACTED]

Yours sincerely

[REDACTED]

Ian Macfarlane
Chief Executive

Attachments

- 1 – QRC letter to the Coordinator-General – 8 August 2016
- 2 - QRC Submission to the Strong and Sustainable Resource Communities Exposure Draft Bill – 5 September 2016
- 3 – Article by Robin Batterham
- 4 – QRC submission on the Draft SIA Guideline

8 August 2016

Mr Barry Broe
Coordinator-General
[REDACTED]
CITY EAST QLD 4002
[REDACTED]

Dear Mr Broe

Thank you for the opportunity to comment on the draft Strong and Sustainable Resource Communities (SSRC) Policy Framework and the outline of the draft SSRC Bill.

Queensland Resources Council (QRC) appreciates the opportunity to be consulted on reforms affecting the resource sector. QRC has however been extremely concerned about the limited timeframes allocated for comment on legislation that has the potential to have serious adverse consequences for the resources sector. It was therefore appreciated that in recent discussions, Minister Lynham advised, both at the Resources Community Roundtable on 2 August and subsequently at QRC's regular catch-up with the Minister on 3 August, that there will be further opportunities for consultation, beyond the 5 August deadline when the draft of the Bill becomes available. Consequently, comments provided in this correspondence represent initial comments from QRC on behalf of our members.

Context

As you know, a healthy and vibrant resources sector is a key contributor to Queensland's economic prosperity. Despite the downturn, the resources sector continues to be a major contributor to Queensland's economy through employment, purchase of goods and services and the payment of royalties and taxes. We know from the latest expenditure data (www.qrc.org.au/economiccontribution) that the Queensland resources sector procured \$24.5 billion in goods and services from more than 24,000 local businesses in 2014-15. In addition to the 38,500 direct employees, the Queensland resources sector's spending indirectly supports 1 in 6 of all Queensland jobs.

Excessive red tape or unnecessary changes to the legislative framework makes the industry less competitive through additional costs, which ultimately curtails job creation and can lead to sovereign risk as a result of the lack of certainty in the operating environment. Recent [QRC Sentiment survey](#) revealed resource companies are now more concerned about excessive or inappropriate regulation than they are about the global macro economy.

QRC seeks genuine consultation on the proposed SSRC Bill and policy framework. The two weeks initially provided to comment on simply an outline of a new piece of legislation that has bypassed the best practice regulation Regulatory Impact Statement (RIS) process, is not genuine consultation. Given the Minister has committed to enabling a further opportunity for consultation beyond 5 August, these comments should be taken as preliminary until more detail becomes available on the SSRC Bill and Policy Framework.

More detailed comments will also be provided on the draft Social Impact Assessment (SIA) Guideline in due course.

Key concerns

QRC has a range of concerns regarding the proposed SSRC Policy Framework and SSRC Bill. A summary of our key issues is listed below while a more detailed analysis of further concerns and questions is set out at **Appendix 1**.

1. Unnecessary increase in red tape

QRC cannot support the proposed SSRC Policy Framework and SSRC Bill as currently outlined. QRC considers that the proposed changes are unjustified and are an unnecessary addition to the regulatory burden which is being placed on the resources sector in Queensland.

The lack of a RIS process conflicts with the Council of Australian Governments (COAG) best practice principles for regulatory reform. In the absence of a RIS, the rationale for the regulatory response has not been demonstrated, the alternative solutions have not been identified, the likely costs for stakeholders have not been assessed and there has been no opportunity for genuine consultation.

Excessive red tape and unnecessary regulation ultimately leads to increased costs. As a result, the resources sector becomes less competitive and Queensland becomes less prosperous and less attractive to investors.

QRC contends that the SSRC Policy Framework and SSRC Bill seek to address misperceptions and populist rhetoric rather than solve genuine problems.

2. Fatigue related safety concerns

The SSRC Bill and Policy Framework aim to encourage recruitment of local workers and prohibit the use of 100 per cent fly-in, fly-out (FIFO) if projects are located within 100km of a town with a population of greater than 200 people.

In practical terms, this may mean that some locals would be required to travel up to 200kms per day just to get to and from work. This raises serious concerns regarding fatigue.

A company's FIFO and bus-in, bus-out (BIBO) commuting arrangements are in part driven by the responsibility of employers to keep workers safe and to ensure any issues of fatigue are managed. Companies must comply with the provisions set out in the Fatigue Management Guidance note¹ which, in many instances, means that even local workers are required to live in accommodation villages while they are on shift as a safety measure to eliminate the risk associated with lengthy daily commutes.

¹ QGN 16 Guidance Note for Fatigue Risk Management.

QRC urges the government to reconsider the specific details and unintended consequences of this particular prescriptive policy requirement.

3. *Retrospective application and increased costs*

QRC cannot support any new legislation that is applied retrospectively to projects. While Government approvals through an EIS process are given at a particular point in time, it is acknowledged that the operating environment will change over time (e.g. the competition for and availability of skilled labour). QRC contends that it is unfair and unjust for companies to be penalised for complying with conditions that were issued at a point in time. Threatening retrospective changes to those conditions is not supported.

In addition, future investment is likely to be adversely impacted by the proposed legislation. This is further compounded by the fact that the legislation is being introduced at a time when policy and regulatory uncertainty and negative sentiment in Queensland's resources sector is already acute.

Of grave concern is that the retrospective application of this legislation potentially exposes resource companies to the risk of litigation (including group actions encouraged by unions), despite the fact they have complied with legislation at the time that the project approval was given.

4. *Discrimination provisions on the grounds of location*

In the absence of a RIS or a draft Bill, it is extremely difficult for the resources sector to respond to the proposal to outlaw discrimination on the grounds of location without access to the draft Bill.

From the outset however, it is clear that there are likely to be a range of unintended consequences that emerge as a result of outlawing discrimination on the grounds of location. For example, this proposal fails to recognise the common practice of companies to transfer workers across operational sites and for movement across companies.

The proposed approach also raises concerns for QCAT to be under more pressure with a larger volume of cases and increased potential for vexatious claims.

The direct cost on companies will significantly increase in responding to and defending these types of claims. The fact that QCAT is a no costs jurisdiction means there is limited downside for complainants in making spurious complaints.

5. *Overly prescriptive approach*

The proposed legislation is overly prescriptive and legislates practices that industry already meets on a voluntary basis (most of which are already undertaken through the existing Social Impact Assessment process).

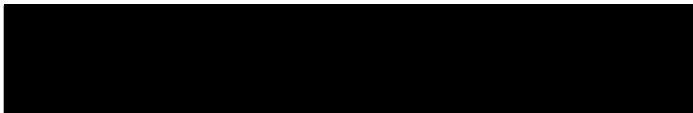
Some of the prescription, such as the reference to very small towns of 200 and distance of 100 kms, are both arbitrary and potentially problematic.

This overly prescriptive legislative approach will limit flexibility of companies to cope with changing economic circumstances, including in future boom times when adequate numbers of appropriately skilled workers may once again not be available in the resource regions.

Summary

The prospect of a new SSRC policy framework and associated legislation is a matter of great concern to industry at a time when industry leaders already perceive increasingly burdensome new layers of state regulation as the highest risk to doing business in Queensland. We look forward to receiving more information on the SSRC Policy Framework and the draft SSRC Bill shortly and to an opportunity for genuine consultation.

Yours sincerely



Michael Roche
Chief Executive

APPENDIX 1

Overview - Unnecessary regulation and poor government process

QRC members are already concerned about the regulatory burden being placed on the resources sector and believe the Strong and Sustainable Resource Communities (SSRC) Policy Framework including a new SSRC Act, is both unnecessary and will add to the existing regulatory burden. Unnecessary regulation ultimately leads to increased costs and reduced competitiveness of industry.

The development of the proposed legislation does not reflect the Council of Australian Governments (COAG) best practice principles for regulatory reform (to which the Queensland Government is a signatory) including:

- **No articulation of a policy failure (Principle 1)¹**

The failures/issues that the policy framework aims to address have not been clearly demonstrated, rather QRC is of the view the proposed legislation is based on a misperception of an issue, as no deficiency in the existing legislative framework has been identified. This is fundamentally at odds with the COAG best practice **principle 1**.

- **Will it stand the test of time (or cycles)?**

COAG best practice **principle 6** emphasises the need for regulation to remain relevant and effective over time. QRC understands that this is one of the Government's objectives in this legislation. However, it is important to note that back in 2009, when two projects were approved to be up to 100 per cent FIFO, the relevant approval decisions were properly made in accordance with statutory process and following community consultation. The resources industry is cyclical, so when circumstances in the industry again change, the proposed legislation runs the risk of being ill-fitting through unnecessary prescription. This exposes the Government to significant criticism in the future.

- **Inadequate consultation with affected stakeholders**

COAG best practice **principle 7** outlines the need to consult effectively with key stakeholders at all stages of the regulatory cycle. As no Regulatory Impact Statement (RIS) has been prepared, the nature and extent of the problems that the new legislation is attempting to remedy, the alternative

¹ Council of Australian Governments, October 2007, *Best Practice Regulation – A Guide for Ministerial Councils and National Standard Setting Bodies*, p 4.

options available and the anticipated costs have not been outlined. Without a RIS there is significant risk of legislation having unintended consequences.

Further, it has been suggested to QRC that the Parliamentary Committee process will provide an opportunity to be consulted on the SSRC Policy Framework and Bill. While it is acknowledged that Parliamentary Committees ensure the policy and administrative functions of Government are more open and accountable, the Committee's main role is to ensure legislation is drafted in a way that meets the intent of the policy. Parliamentary committees are not intended to be a default consultation process on policy frameworks with key stakeholders. It is difficult to consult effectively once legislation has been drafted because the scope of discussion has been substantially narrowed. This is particularly true in the case of this proposed Bill where the policy aim remains unclear.

QRC would also like to put on record the direct conflict of interest the Bill will likely face when it is introduced and referred to a Parliamentary Committee. The likely Committee the Bill will be referred to, is the same Committee whose Chair also led the FIFO Inquiry. QRC will be writing to the Leader of the House to recommend that the SSRC Bill be referred to the Parliamentary Finance and Administration Committee.

- **Changing the goal posts poses sovereign risk**

The retrospective application of the proposed legislation raises a substantial concern regarding sovereign risk. As well as being a breach of Fundamental Legislative Principles (FLP), the COAG best practice regulation guide states that the date of commencement for regulation should be carefully planned to avoid or mitigate unintended or unnecessary market consequences and allow for the transition to compliance with new regulatory requirements.

QRC cannot support any new legislation that is applied retrospectively to projects that were granted approvals at a certain period in time. Changing the rules for existing projects raises sovereign risk for Queensland as a competitive resource investment jurisdiction.

A stable investment environment cannot be ensured if resource companies are held liable to two legislative standards at one point in time, and further, are not given the opportunity to comply with the incoming legislation.

Should the legislation proceed, QRC seeks genuine consultation from this point on to minimise further negative and unintended consequences through the implementation of yet another example of unnecessary red tape.

SSRC Draft Policy Framework

Note in this QRC response the use of fly-in, fly-out (FIFO) includes bus-in, bus-out (BIBO) and drive-in, drive-out (DIDO), as was the case in the Parliamentary Inquiry report.

SSRC POLICY FRAMEWORK	QRC RESPONSE
<p>Limit use of fly-in, fly-out (FIFO) workforce arrangements</p> <p>1. The future use of 100 per cent FIFO operational workforce practices for large resource projects near regional centres will be prohibited by law.</p>	<ul style="list-style-type: none"> • Overly prescriptive legislative approach which will limit flexibility to cope with changing economic circumstances including future boom times where adequate numbers of appropriately skilled workers are once again simply not available in the resource regions. • As indicated in the 2014 Productivity Commission report, the Australian labour market needs greater flexibility rather than more restrictions if Australia is to be competitive in the 21st century. • This approach represents an overreaction, driven by two resource sector operations which were approved during the boom times to have up to 100 per cent FIFO workforces (although this didn't eventuate) with support from all major stakeholders. • Details around what is 100 per cent FIFO needs to be explained (i.e. does the 100 per cent refer to the whole project? Does it allow for a contractor to be 100 per cent FIFO, as some contractors are specialists on short term contracts that may genuinely need to be 100 per cent FIFO)? <p>Retrospective application</p> <ul style="list-style-type: none"> • While it is claimed that this policy shift is not retrospective, companies which have developed business models including contractual commitments consistent with their EIS approvals, have the potential to be adversely impacted both operationally and financially. • If an existing project seeks an amendment/modification to its current Environment Authority requiring the submission of an EIS, it is suspected that this may enliven the FIFO prohibition outlined in the SSRC policy and therefore the proposed legislation does impact retrospectively on existing projects and may compromise the future extension or expansion of existing projects. • Based on EIS approvals given, companies made significant investment in infrastructure such as village accommodation and entered into bus and flight contracts to service mines. Retrospective application of this legislation has the potential over time to erode this investment resulting in higher costs and lower competitiveness.

SSRC POLICY FRAMEWORK	QRC RESPONSE
	<ul style="list-style-type: none"> • Retrospective laws are generally considered poor legislative practice as they create uncertainty and can lead to sovereign risk. <p>Fatigue concerns</p> <ul style="list-style-type: none"> • The policy encourages recruitment of local workers and prohibits the use of 100 per cent FIFO if projects are located within 100km of a town with a population of greater than 200 people. In practical terms, this may mean that some locals would be required to travel up to 200kms per day just to get to and from work. This raises serious concerns regarding fatigue and would conflict with the existing Fatigue Management Guideline. • The fact that BIBO is captured in the scope is very concerning given buses can be used as a way to eliminate driver fatigue and road safety issues. <p>Regional centres</p> <ul style="list-style-type: none"> • The policy refers to large resource projects 'near regional centres'. Is it intended that a regional centre includes a town of 200 people which conflicts with ABS definitions? • How is a "large" project defined? • 200 people does not in and of itself represent a regional centre. Rather than defining a regional centre as a town of 200 people, there should be a minimum set of requirements regarding government agencies and local services (i.e. hospitals, schools, access to specialists, employment agencies etc) or a much larger population size utilised.
<p>2. Discrimination against local residents in future recruitment processes for replacement operational workers will be prohibited by law.</p>	<ul style="list-style-type: none"> • In the absence of a RIS or a draft Bill, it is extremely difficult for the resources sector to respond to this policy proposition without understanding the specific details/issues. • There are likely to be a range of unintended consequences that emerge as a result of outlawing discrimination on the grounds of location (for example, the approach does not recognise common place practices in the resources sector to transfer workers between operational sites). • The proposed approach will place additional resourcing burden on QCAT and there are concerns within Industry in regards to whether QCAT is adequately equipped to deal with increased numbers of discrimination cases. • The direct cost on companies will significantly increase in responding to and defending these types of claims. There is also concern that the new provisions may be exploited to pursue representative or class action alleging discrimination even

SSRC POLICY FRAMEWORK	QRC RESPONSE
	<p>where a company makes recruitment decisions lawfully. The fact that QCAT is a no costs jurisdiction means there is limited downside for complainants in making spurious complaints.</p> <ul style="list-style-type: none"> • The compensation regime, if discrimination can be established, is unclear and further detail is required. It is difficult to identify the 'loss' a prospective job applicant would suffer, given the result of a company breaching this provision would be to remove the candidate from a recruitment process only (i.e. there is no certainty of employment).
<p>Formalise requirements for SIA</p> <p>3. The requirement for an SIA as part of the EIS for resource projects will be prescribed in legislation.</p>	<ul style="list-style-type: none"> • A new approval mechanism comes with unnecessary risks and delay. • Without a RIS, QRC finds it difficult to see why the Government is choosing to implement new legislation instead of amending the existing legislation to give effect to the policy proposals. • Neither of the Government's responses to the FIFO Inquiry or Expert Panel committed to introducing new legislation (only referred to amending legislation). This new direction represents a major increase in red tape and new-hurdles for projects which will drive greater process costs and project delays. • The COAG Best Practice Regulation guide states that Government should recognise the cumulative burden regulation places on business, and as part of the consideration of alternatives to new regulation, have regard to whether the existing regulatory regimes of other jurisdictions might offer a viable alternative. Introducing new legislation has many adverse effects for resource businesses, particularly in relation to a new approval process introducing new fees, new processes which may not be entirely streamlined with existing processes as well as new pathways for appeal. • A new avenue for appeals is one of QRC's key concerns with the proposed SSRC Act. • QRC supports the proposal to exclude the explicit application of the Judicial Review Act 1991 in the SSRC Act, however this does not provide sufficient confidence this new pathway will not be used vexatiously against resource projects. • QRC suggests the new SSRC Act explicitly state social conditions are not open to objection or appeal in the Land Court. • When is an SIA required and in what instances are there exemptions?
<p>Improve participation by local government in the SIA process</p>	

SSRC POLICY FRAMEWORK	QRC RESPONSE
4. Affected local governments will be invited to participate in state agency meetings on the assessment of individual resource projects.	<ul style="list-style-type: none"> This issue is part of the SIA Guideline. Comments will be provided by QRC at a later date.
5. Where concerns arise about potentially significant cumulative social impacts of projects in a particular region, the Coordinator-General will establish a cross-agency reference group (CAR) for that region.	<ul style="list-style-type: none"> This issue is part of the SIA Guideline. Comments will be provided by QRC at a later date.
6. The membership of each Regional CAR will include relevant local governments and state agencies, with other participants (e.g. project proponents or technical experts) invited as required.	<ul style="list-style-type: none"> This issue is part of the SIA Guideline. Comments will be provided by QRC at a later date.
Build stronger resource communities	
7. As part of the SIA process, proponents must liaise with the Office of the Coordinator-General, Jobs Queensland and other relevant stakeholders regarding future workforce planning and development requirements, including the adequacy of training programs within the region to support employment opportunities for local workers on large resource projects. Partnerships between the resource companies and training providers are encouraged where feasible.	<ul style="list-style-type: none"> In its latest workforce analysis and forecast (July 2016)² the national industry skills body, SkillsDMC recognised that, in line with the focus on productivity and efficiency, demand will remain for a highly skilled operational workforce in the resources sector. In many cases, adequate numbers of higher skilled operational workers are not readily available in small resource communities, especially small towns of 200 people. Invariably significant training through the Vocational Education and Training and higher education systems is required. While the sector supports its vocational pipeline (with apprentices making up 3.9 per cent of the mining workforce nationally compared to the all industries average of 2.5 percent), formal off the job training is often not available through local TAFE or other registered training providers.³ Industry requires a responsive, flexible system with preferred providers routinely entering into industry partnerships based on this capability to deliver and produce credible training outcomes regardless of their location. The provision and delivery of training is a shared responsibility with government and industry, with the resources sector routinely providing diverse and ongoing training opportunities for its workforce, as evidenced in the \$1.5 billion spend on training

² Resources and Infrastructure, Industry Workforce Analysis and Forecast , SkillsDMC July 2016

³ NCVET Training and education activities in the minerals sector, MCA 2013

SSRC POLICY FRAMEWORK	QRC RESPONSE
	<p>nationally or 5.5 per cent of the total payroll in 2011-12 and five times more than official government benchmarks.⁴</p> <ul style="list-style-type: none"> The state's training investment should complement that of industry in providing training capacity that encourages individuals to gain the skills needed by the sector to drive growth in the state's economy.
<p>8. Procurement programs should provide a full and fair opportunity for competitive local businesses by:</p> <ol style="list-style-type: none"> detailing the programs that will be implemented to build the capability of local businesses to tender for the provision of goods and services maximising contract certainty for local suppliers to enable them to finance and scale up their operations to bid for contracts where feasible, structuring tender packages to provide greater opportunities for local businesses, and adopting payment terms that provide regular cash flow to service providers. 	<ul style="list-style-type: none"> There exists a robust and successful industry led and self regulated regime which is unique to the resources sector and is leading practice in Australia. The principle of 'full, fair and reasonable' opportunity for capable local businesses to participate in the delivery of resources and energy projects is fundamental to the <i>Queensland Resources and Energy Sector Code of Practice for Local Content</i> which has been in place since 2013. QRC is of the view that local content policy is best delivered under a shared responsibility framework as adopted in the Code of Practice which clearly distributes the accountability to QRC, industry, government, suppliers and regional economic development groups. The rationale for establishing the industry led approach in 2013 was a belief that this approach would produce better local content outcomes as companies have a vested interest in developing local supply chains. Furthermore, successful implementation has the potential to achieve a number of broader benefits including employment and business growth in Queensland by expanding market opportunities for local industry, long term sustainability of local economies and achieving a consistently renewed social licence to operate in Queensland. QRC is critical of the suggestion for mandating payment terms or tender packages and does not believe Government has a role to play in dictating such business decisions. QRC is also cautious that under Federal legislation some aspects of clause 8 may be contrary to project's Australian Industry Participation (AIP) requirements (i.e. the AIP defines local as Australia and New Zealand and requires a fair and reasonable process for all businesses. Any requirements requiring commercial advantages or support for more localised businesses may go against the AIP).
<p>9. The Queensland Government will work collaboratively with the Queensland Resources Council and the Australian Petroleum Production and Exploration Association to explore opportunities to adapt existing data collection and reporting</p>	<ul style="list-style-type: none"> There already exists a robust structure including a reporting framework and feedback Forum which allows for suggested improvements to the Code. As a participant in the shared responsibility framework there are opportunities for such changes to be discussed collaboratively. QRC welcomes constructive improvements to the Code of Practice.

⁴ Ibid

SSRC POLICY FRAMEWORK	QRC RESPONSE
<p>arrangements under the Queensland Resources and Energy Sector Code of Practice for Local Content, to better contribute to SIA processes and any proponent reporting requirements related to local procurement.</p>	<ul style="list-style-type: none"> • QRC is reluctant to adapt existing data collection arrangements unless a clear justification for such changes are provided. QRC reminds Government that under a voluntary regime, such as the Code of Practice, QRC and Government are very fortunate to have such a high number of participants voluntarily participating but do so because of the demonstrated benefit in participating in this industry-led regime. Any significant changes to the arrangements including the use and access of data may have a detrimental effect on participation. • QRC also notes that additional reporting requirements may come at a cost to industry at a time when the regulatory burden in Queensland is already a significant barrier for investment.
<p>Encourage recruitment of local workers</p>	
<p>10. Where a competitive and capable workforce is available, the proponent should, in priority order, recruit:</p> <ol style="list-style-type: none"> a. from the local and regional community b. to the region (i.e. relocation to live locally) c. from priority regions, such as areas of high unemployment and socio-economic disadvantage d. from other areas within Queensland. 	<ul style="list-style-type: none"> • Labour is a key input into resources and energy projects and businesses reserve the right to make recruitment decisions based on the merit of each candidate. • As is the case in procurement for goods and services, there exist a number of economic and social benefits for recruiting local workers where there is a competitive and capable workforce available. • This level of prescription is unnecessary and excessive. • For many, the perception of lesser standards of government funded services such as health and education in resource communities drives the decision for workers to commute rather than live locally. • In terms of the priority 'order', does that list intend to prohibit the recruitment of employees from interstate?
<p>Optimise worker accomodation arrangements</p>	
<p>11. To support a proposed worker accommodation strategy, a project proponent should:</p> <ol style="list-style-type: none"> a. undertake a review of the housing market to identify available accommodation within proximity of the project b. where a new worker accommodation village is proposed: <ul style="list-style-type: none"> - consider co-location of the village within or adjacent to existing communities - justify the location of the proposed facility, with consideration of worker health and community wellbeing 	<ul style="list-style-type: none"> • Companies going through an EIS process already undertake an SIA which includes an analysis of the local housing market and workforce accommodation options. • This is an example of prescribing in legislation what already exists in practice. • Companies make decisions based on a number of factors, including consideration of a workers' health and wellbeing as well as commercial/operational factors. • Much of this detail is not always available at the stage when workforce plans and accommodation plans are being developed. • Accommodation villages can often deliver positive benefits to the local resource community such as serving as a buffer to help control the "boom and bust" effect on the housing market, especially where access to land for development is limited. • This level of prescription is not needed.

SSRC POLICY FRAMEWORK	QRC RESPONSE
<ul style="list-style-type: none"> - wherever feasible, provide individual storage and use of the same quarters for each roster - exclude the option of 'hot-bedding' in worker villages. c. include a workforce plan and an accommodation plan that: <ul style="list-style-type: none"> - apply to the life of the project, but with a capacity to review the plans subject to changing labour market and regional accommodation conditions - consider the provision of accommodation for workers and their families who wish to live locally. 	
<p>12. The proponent's recruitment and accommodation programs should be regularly monitored to ensure they are responsive to, and are effectively achieving, the planned outcomes.</p>	<ul style="list-style-type: none"> • This level of prescription is not needed.
<p>13. All new villages should be designed and managed to ensure they provide a safe, clean and healthy environment for resource workers and village staff.</p>	<ul style="list-style-type: none"> • Current villages are already of a very high standard – new villages will undoubtedly follow suit. • Resource companies recognise the importance of providing high quality accommodation villages to attract and retain employees, and surveys of worker satisfaction with their accommodation are undertaken regularly. • Camps adhere to the various state and local government policies and procedures that guide the construction and operation of quality accommodation facilities. For example, certification to ISO 22000 – the International Standard for Food Safety Management – is often applied in accommodation village kitchen and mess facilities. • Many camps provide the opportunity for residents and village staff to improve their well-being with access to nutrition information, exercise equipment, lifestyle coordinators and personal trainers.
<p>Support worker health and wellbeing</p>	
<p>14. Within the context of feasible project costs, worker rosters and fatigue management arrangements should encourage family-friendly arrangements that support long-term worker health and wellbeing.</p>	<ul style="list-style-type: none"> • In order to encourage family-friendly arrangements and long-term health and wellbeing, 'choice' is essential. All workers are different – an arrangement that suits one person may not suit another. The importance of choice has been demonstrated conclusively by two major worker accommodation studies undertaken by QRC - in 2012 and in 2015.

SSRC POLICY FRAMEWORK	QRC RESPONSE
	<ul style="list-style-type: none"> • FIFO (or other long distance commuting arrangements) is a choice that many workers make in preference to relocating, as it minimises disruption to family living arrangements including children’s schooling and their partner’s employment. • Work rosters do not usually differ between FIFO workers and residential employees. • Safe practices and fatigue management are considered extremely important by resource companies and are driven by associated safety legislation. Work hours and rosters are designed to comply with fatigue management requirements and support workers’ health and wellbeing.
<p>15. Industry-led programs should be used to foster the good mental health of workers and encourage proponents to:</p> <ol style="list-style-type: none"> a. make available and promote the confidential use of employee assistance programs b. engage in and raise awareness of other mental health initiatives run by not-for-profit organisations. 	<ul style="list-style-type: none"> • QRC members understand the statistics when it comes to mental health - one in five Australians will experience symptoms of a mental health disorder during a 12 month period. However, this problem is not unique to the resource sector. • Many companies have strategies and services in place to promote mental health, remove stigmas around help-seeking behaviour, and provide services such as on-site occupational health nurses and employee assistance programs 24/7. Many resources companies also put significant effort into managing fatigue and providing sleep, health and nutrition options that encourage a healthy lifestyle. • In some cases, FIFO arrangements are actually seen as an advantage by workers, as it improves the quality and quantity of sleep and promotes healthier lifestyles. • Many resources companies use a range of strategies both before and during employment to provide additional support for not just employees (whether they are FIFO or residential), but also their families and communities. These include strategies to: <ul style="list-style-type: none"> • ensure prospective employees and their families understand the potential impacts on personal and family life of long-distance commuting • encourage networking and support for families • guide management of family relationships • access to confidential counselling support • maintain awareness of importance of mental wellbeing and detecting signs of stresses on your colleagues • assist local communities such as local buy programs. • The resources sector is proactive in the mental health area - QRC recently developed a Mental Health Toolkit which supports the QRC Blueprint for Mental Health and Wellbeing.

2 September 2016

Mr Barry Broe
Coordinator-General
Department of State Development

CITY EAST QLD 4002

Dear Mr Broe

Thank you for the opportunity to comment on the Exposure draft of the Strong and Sustainable Resource Communities (SSRC) Bill.

QRC has a range of concerns regarding the proposed draft SSRC Bill which are outlined in the attached submission. These concerns are in line with and build on the key areas of concern that were raised in our submission of 8 August 2015 (also attached).

In particular the resources sector seeks a legislative environment that is certain, consistent and conducive to a strong and productive industry. Unnecessary changes to the legislative framework such as through the creation of the SSRC Bill has the potential to make industry less competitive which ultimately reduces the resources sector's positive contribution to Queensland's economy. Retrospective change to legislation, which QRC cannot support, is of even greater concern to the resources sector by introducing sovereign risk and threatening investor confidence.

Industry concerns about excessive or inappropriate regulation are now so strong that they are greater than concerns about the global macro economy and the highest risk to doing business in Queensland. The rationale for change must be clearly demonstrated with changes capable of withstanding the test of time and without unintended consequences. It is in this context that the comments outlined in the attached should be considered.

More detailed comments will also be provided on the draft Social Impact Assessment (SIA) Guideline in due course.

Yours sincerely

Michael Roche
Chief Executive

QRC Submission on the Draft Exposure Bill

*Strong and Sustainable Resource
Communities Bill 2016*

5 September 2016

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QUEENSLAND
resources
COUNCIL

1. Section 6 – Prohibition on 100% FIFO workers for large resource projects

QRC does not support the provision to prohibit 100% FIFO workers for large resource projects as drafted.

Section 6(1)

In accordance with the definition contained in Schedule 1, a 'nearby regional community' means a town that has a population of more than 200 people and is located within 100 kilometres from the project. The definition in section 6(1) of nearby regional community raises serious concerns.

Distance

In practical terms by imposing a distance measure it is implied that some local residents may potentially be travelling up to 200 kilometres per day to get to and from work. Companies are extremely vigilant about safety and must comply with safety legislation including fatigue management. This measure does not take into account the various factors that, in addition to distance, may impact a commute to work. For example, if the average speed limit was 80 kilometres per hour, at best a 200 kilometre commute would represent 2 hours and 40 minutes of driving per day.

As noted in QRC's 8 August submission, there are a number of instances where risk assessments carried out by companies have resulted in all workers, including local workers, being required to live in accommodation villages while they are on shift as a safety measure to eliminate the risk associated with lengthy daily commutes. Compliance with safety law including the *Fatigue Management Guidance note*¹ is non-negotiable. Hence to use a distance of 100 kilometres is both arbitrary and potentially problematic.

The arbitrary 100km distance measure also fails to specify what is meant by 'project entrance'. For example, it could be 100 kilometres to the mine lease, the mine gate or main operational facilities. Depending on the specification of the boundary, the difference could be in excess of 40 kilometres in some instances.

Limitation arising from size of town

To prescribe a population measure of 200 people for the nearby regional community in legislation is also potentially problematic. It is difficult to understand the rationale for such a small population measure to be selected as a town of this size will be severely limited in its capacity to provide labour for a resource project, especially given the skill level that is characteristic of resource sector workers.

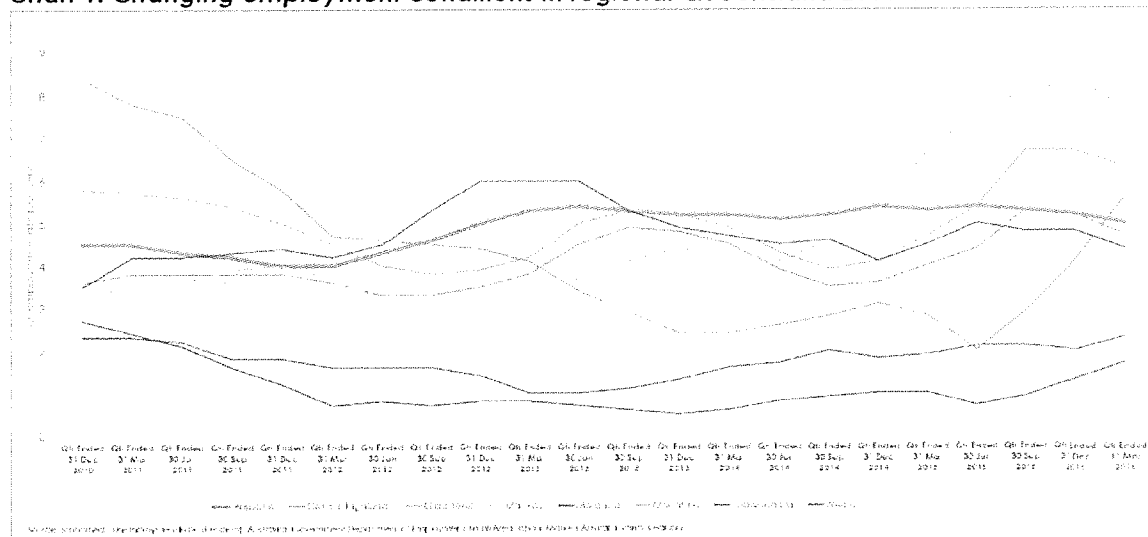
As an example, using the latest Queensland population age profile and an unemployment rate of 6.2% (2015-16)², in a town of 200 there are likely to be 160 people aged 15 and over, with 104 in the labour force and of those, 6 are likely to be unemployed. Given approximately 60 percent of Queenslanders have post school qualifications and in view of the skill requirements of the resources sector workforce it is unlikely that anyone would have appropriate skills and be available to be employed by a resources company.

¹ QGN 16 Guidance Note for Fatigue Risk Management.

² ABS 6291.0.55.001, *Labour Force, Australia, Detailed, Jun 2016*

Examination of the characteristics of regional and remote parts of Queensland demonstrates greater constraints on the availability of labour as the population is on average older, the proportion of those with post school qualifications lower and, in resource communities the unemployment rates are characteristically lower than Queensland as a whole.

Chart 1: Changing employment conditions in regional Queensland 2010-16



The above chart shows the fluctuations in unemployment rates throughout Queensland over the last 6 years. Unemployment in resource regions is consistently below the Queensland average and below Brisbane levels while employment conditions in supply hubs such as Mackay and Gladstone fluctuate significantly more with the economic conditions affecting the resources sector than in communities with a resources operation/s. The limited supply of workers in resource towns where demand, especially in peak periods, significantly outweighs supply demonstrates the importance of flexible hiring practices in a cyclical industry. In the argument around population the fact that the majority of resource sector workers are NOT FIFO workers, appears to have been lost.

Prescription around population and distance is both arbitrary and problematic and will limit flexibility to deal with changing circumstances. For example if boom times return and a number of resource projects are developed near a small town of 200, it is highly likely that the only option for attracting an adequate number of appropriately skilled people will be through FIFO, BIBO and DIDO. These projects may then be in breach of this provision of the Act.

Other issues that may arise from the population measure include data inaccuracies - often data that is released publically is several years old. It is unclear if it will be the resources company or government's responsibility to validate the population data. In addition, there is no ability for local communities and resource companies to opt-out, if a mutual agreement can be reached (i.e. some communities may not want further development to occur).

QRC contends that the distance and population measures are overly prescriptive and will be unable to cope with changing circumstances. The population measure needs to be substantially increased or preferably removed and a risk based approach adopted. The distance measure should be removed.

Section 6(2)

From prior discussions with representatives from the Office of the Coordinator General, QRC understands that while the intention is to prohibit 100% FIFO, 99% FIFO will be lawful (i.e. a workforce that contains only 1 worker from a nearby regional community is acceptable).

To avoid ambiguity in the future this section needs to include further detail to confirm the intention to allow 99% FIFO. As demonstrated above there may be circumstances in the future which lead to no labour being available in nearby resource communities to support a large resource project/s. To prescribe a figure of 200 is likely to be unworkable.

The act needs to provide further clarity as to what constitutes a 'worker'. The current definition of a worker is 'for a large resource project, means a person employed, or to be employed, for more than 25 hours a week to perform work during the operational phase of the project' - this does not define the length of engagement (e.g. shut labour), whether it includes direct employees and/or contractors, and at what point in the year the ratio will be applied.

QRC contends that this provision should be redrafted to include further clarity around what constitutes '100% of workers who are FIFO'.

2. Section 8 - Prohibition on discrimination against residents in nearby regional communities in recruiting for large resource projects and limiting where workers live

QRC cannot support any new legislation that is applied retrospectively to projects that were granted approvals at a certain period in time.

Section 8(1)

This section should not apply to large resource projects that have been through an EIS evaluation under the State Development and Public Works Organisation Act 1971 or an EIS assessment under the Environmental Protection Act 1994 prior to commencement of the SSRC Act.

The retrospective application of the proposed legislation not only raises a significant concern regarding sovereign risk but is also a breach of Fundamental Legislative Principles and simply is not good government.

Companies have legitimately and lawfully developed business models consistent with their project approvals including long term airline contracts and committed significant funds such as in the construction of accommodation villages. To subsequently change the rules of engagement is simply unjust.

QRC contends that the words 'after 30 June 2009' be amended to read 'from assent of this Act'.

Sections 8(2) and 8(4)

QRC's comments in relation to this provision are consistent with the issues raised in our previous submission. QRC's primary concerns include the fact that the proposed approach to outlaw discrimination of locals has the potential to result in a wide range of unintended consequences. For example, the approach does not recognise common place practices in the resources sector to transfer workers between operational sites which, while under the same corporate umbrella, are classified as different legal entities and may deem an existing worker as a new worker for purposes of this Act. Potentially to simply transfer workers without considering workers from nearby communities, would be unlawful.

As shown above a company may have no choice but to recruit a worker/s from outside a nearby regional community given the limited availability of appropriately skilled workers in such small towns.

In addition, a company should not be penalised for employing a worker who is not from a nearby regional community if that candidate was chosen based on merit and by way of a fair and reasonable recruitment process. Section 8(4) is not overly clear on this point. QRC suggests that section 8(4) be amended to include a possible subsection (c) to provide clarity around when a local is *not* discriminated against (i.e. if evidence can be provided to support a merit based selection).

It is also relevant to note that project owners generally have little or no control over the recruitment processes of its contractors or service providers (including, for example, recruitment agencies) and should not be held responsible for potentially discriminatory recruitment activities of third parties.

Overall, QRC's view is that section 8 is unnecessary and overly prescriptive. A possible alternative would be to include, through the social impact assessment process, a condition that a local will be eligible to apply for positions.

3. Section 9 – Remedy for resident of nearby regional community discriminated against by owner of large resource project

The remedy provisions contained in section 9 raise a number of concerns. For instance, the ability of the Queensland Civil and Administrative Tribunal (QCAT) to deal with the increased number of cases is questionable. In addition, the direct cost on companies to respond and defend these types of claims is concerning. Complainants are not deterred from making vexatious claims given the no cost jurisdiction of QCAT which could exceed tens of thousands of dollars to respond to and defend a claim.

The compensation regime, if discrimination can be established, is also unclear and further detail is required. It is difficult to identify the 'loss' a prospective job applicant would suffer, given the result of a company breaching this provision would be to remove the candidate from a recruitment process only (i.e. there is no certainty of employment).

In addition, QRC is extremely concerned that any prohibition on discrimination against residents of nearby regional communities may be in direct conflict with QRC and industry's commitment to workforce diversity, and in particular industry's focus on

recruiting more women and indigenous Australians. For example, if a nearby regional community only has white males who are suitably qualified for a role, an owner should not be prohibited from being able to pursue their diversity commitments because of this provision.

QRC recommends that in the event this provision remains, further consideration be given to the drafting of this section in order to provide clarity and avoid any potential issues including those raised above.

4. *Section 10 – Offence relating to advertising or document about recruitment for a large resource project*

Section 10(2)(a)

There may be a range of unintended consequences that flow from this provision, particularly in regards to the implications for an owner who may be in breach of this provision for advertising a position internally within the company.

In addition, while every reasonable effort may be made to recruit from a nearby regional community, industry recognises there may be shortcomings in the provision of communication services/infrastructure in regional areas (for example, poor phone reception, internet connection, limited newspaper circulation etc.), and should not be held responsible for any perceived disadvantage associated with a recruitment process that may be attributable to failures of those services and/or infrastructure.

QRC suggests this provision be amended to include appropriate qualifiers to limit the reach of this subsection.

5. *Section 11 – Requirement for owner of a large resource project to prepare a social impact (SIA) assessment*

As outlined in our previous submission, QRC is cautious about the introduction of a new approval mechanism. QRC acknowledges the drafting of the Bill does not create a new approval process, however reiterates there is little justification in prescribing the SIA process in legislation given the SIA process already exists through the SIA Guideline. QRC understands government's intentions for this prescription – to give effect to the recommendations made by the FIFO review and inquiry. With this in mind, further comments relating to the SIA process in this submission are purely to ensure the process is streamlined and not used to further frustrate the approval process for resource projects.

The draft Bill is silent on the requirement for an SIA where an update to the EIS is required from a 'material change'. Unlike assessments for environmental impacts, QRC finds it would be extremely difficult to apply a trigger for SIAs in these instances. QRC will provide further feedback on this issue through the SIA Guideline process.

QRC supports a streamlined SIA process that is carried out as part of the Environmental Impact Assessment process – based on genuine direct impacts created by the company rather than a 'wish-list' approach as has been the case in

the past. QRC will provide further detailed comments on the revised SIA Guideline at a later date.

As an example, in the area of Local Content, the voluntary *Queensland Resources and Energy Sector Code of Practice for Local Content 2013* has delivered greater benefits to local industry than the previous prescriptive Local Industry Procurement Plan approach which only applied to project proponents going through the EIS process.

QRC does not support the SIA process being prescribed in legislation, however will work with government to ensure this reform is as streamlined as possible through comments on the SIA Guideline. One area for further thought is how project changes will be managed.

6. Section 13 - Coordinator-General may state conditions for large resource projects generally

QRC understands for EIS projects under the *Environmental Protection Act 1994* (EP Act), social conditions will become part of the Environmental Authority (however issued and managed by the Coordinator-General).

Subsection (7) of section 13 states that neither the Planning and Environment Court nor the Land Court have jurisdiction as to conditions set for social impact. QRC supports this subsection, however suggests that it will require further drafting to ensure the outcome meets the intent – that no social conditions can be objected to.

As you would be aware, many Coordinator-General EIS projects are delayed in the courts for Coordinator-General related conditions, even though the courts have no jurisdiction on making recommendations conditions on a coordinated project. The current loophole in legislation is that broad objections are made through the EP Act and the *Mineral Resources Act 1989* (MRA). At the end of the court hearings, after these matters have been heard, there is no recommendation made by the courts on these matters as they are considered out of their jurisdiction. QRC suggests, as drafted, the stated social conditions will still be able to be used to frustrate the approval process.

The current drafting stating the jurisdiction of the Land Court and Planning and Environment Court is insufficient to prevent legal challenges. Broader and tougher reforms are required to ensure this is a timely process and out of scope matters for the Courts are not continually heard.

7. Schedule 1 - Definition section

Nearby regional community

As stated above, to specify a population of 200 for a nearby town and a distance of 100km is overly prescriptive and will limit flexibility to deal with changing future circumstances. In addition, the words 'road commonly used' and 'entrance to the project that is closest to the town's boundary' is ambiguous and require further clarity.

Owner

This term along with associated terms such "person acting for the owner" will also require definition, consistent with other related legislation.

Resident

In the definition of resident, "principal place of residence" is referenced but requires definition in itself.

Worker

Refer to the comments set out at section 6(2) above.

8 August 2016

Mr Barry Broe
Coordinator-General
[REDACTED]
CITY EAST QLD 4002
[REDACTED]

Dear Mr Broe

Thank you for the opportunity to comment on the draft Strong and Sustainable Resource Communities (SSRC) Policy Framework and the outline of the draft SSRC Bill.

Queensland Resources Council (QRC) appreciates the opportunity to be consulted on reforms affecting the resource sector. QRC has however been extremely concerned about the limited timeframes allocated for comment on legislation that has the potential to have serious adverse consequences for the resources sector. It was therefore appreciated that in recent discussions, Minister Lynham advised, both at the Resources Community Roundtable on 2 August and subsequently at QRC's regular catch-up with the Minister on 3 August, that there will be further opportunities for consultation, beyond the 5 August deadline when the draft of the Bill becomes available. Consequently, comments provided in this correspondence represent initial comments from QRC on behalf of our members.

Context

As you know, a healthy and vibrant resources sector is a key contributor to Queensland's economic prosperity. Despite the downturn, the resources sector continues to be a major contributor to Queensland's economy through employment, purchase of goods and services and the payment of royalties and taxes. We know from the latest expenditure data (www.qrc.org.au/economiccontribution) that the Queensland resources sector procured \$24.5 billion in goods and services from more than 24,000 local businesses in 2014-15. In addition to the 38,500 direct employees, the Queensland resources sector's spending indirectly supports 1 in 6 of all Queensland jobs.

Excessive red tape or unnecessary changes to the legislative framework makes the industry less competitive through additional costs, which ultimately curtails job creation and can lead to sovereign risk as a result of the lack of certainty in the operating environment. Recent [QRC Sentiment survey](#) revealed resource companies are now more concerned about excessive or inappropriate regulation than they are about the global macro economy.

QRC seeks genuine consultation on the proposed SSRC Bill and policy framework. The two weeks initially provided to comment on simply an outline of a new piece of legislation that has bypassed the best practice regulation Regulatory Impact Statement (RIS) process, is not genuine consultation. Given the Minister has committed to enabling a further opportunity for consultation beyond 5 August, these comments should be taken as preliminary until more detail becomes available on the SSRC Bill and Policy Framework.

More detailed comments will also be provided on the draft Social Impact Assessment (SIA) Guideline in due course.

Key concerns

QRC has a range of concerns regarding the proposed SSRC Policy Framework and SSRC Bill. A summary of our key issues is listed below while a more detailed analysis of further concerns and questions is set out at **Appendix 1**.

1. Unnecessary increase in red tape

QRC cannot support the proposed SSRC Policy Framework and SSRC Bill as currently outlined. QRC considers that the proposed changes are unjustified and are an unnecessary addition to the regulatory burden which is being placed on the resources sector in Queensland.

The lack of a RIS process conflicts with the Council of Australian Governments (COAG) best practice principles for regulatory reform. In the absence of a RIS, the rationale for the regulatory response has not been demonstrated, the alternative solutions have not been identified, the likely costs for stakeholders have not been assessed and there has been no opportunity for genuine consultation.

Excessive red tape and unnecessary regulation ultimately leads to increased costs. As a result, the resources sector becomes less competitive and Queensland becomes less prosperous and less attractive to investors.

QRC contends that the SSRC Policy Framework and SSRC Bill seek to address misperceptions and populist rhetoric rather than solve genuine problems.

2. Fatigue related safety concerns

The SSRC Bill and Policy Framework aim to encourage recruitment of local workers and prohibit the use of 100 per cent fly-in, fly-out (FIFO) if projects are located within 100km of a town with a population of greater than 200 people.

In practical terms, this may mean that some locals would be required to travel up to 200kms per day just to get to and from work. This raises serious concerns regarding fatigue.

A company's FIFO and bus-in, bus-out (BIBO) commuting arrangements are in part driven by the responsibility of employers to keep workers safe and to ensure any issues of fatigue are managed. Companies must comply with the provisions set out in the Fatigue Management Guidance note¹ which, in many instances, means that even local workers are required to live in accommodation villages while they are on shift as a safety measure to eliminate the risk associated with lengthy daily commutes.

¹ QGN 16 Guidance Note for Fatigue Risk Management.

QRC urges the government to reconsider the specific details and unintended consequences of this particular prescriptive policy requirement.

3. Retrospective application and increased costs

QRC cannot support any new legislation that is applied retrospectively to projects. While Government approvals through an EIS process are given at a particular point in time, it is acknowledged that the operating environment will change over time (e.g. the competition for and availability of skilled labour). QRC contends that it is unfair and unjust for companies to be penalised for complying with conditions that were issued at a point in time. Threatening retrospective changes to those conditions is not supported.

In addition, future investment is likely to be adversely impacted by the proposed legislation. This is further compounded by the fact that the legislation is being introduced at a time when policy and regulatory uncertainty and negative sentiment in Queensland's resources sector is already acute.

Of grave concern is that the retrospective application of this legislation potentially exposes resource companies to the risk of litigation (including group actions encouraged by unions), despite the fact they have complied with legislation at the time that the project approval was given.

4. Discrimination provisions on the grounds of location

In the absence of a RIS or a draft Bill, it is extremely difficult for the resources sector to respond to the proposal to outlaw discrimination on the grounds of location without access to the draft Bill.

From the outset however, it is clear that there are likely to be a range of unintended consequences that emerge as a result of outlawing discrimination on the grounds of location. For example, this proposal fails to recognise the common practice of companies to transfer workers across operational sites and for movement across companies.

The proposed approach also raises concerns for QCAT to be under more pressure with a larger volume of cases and increased potential for vexatious claims.

The direct cost on companies will significantly increase in responding to and defending these types of claims. The fact that QCAT is a no costs jurisdiction means there is limited downside for complainants in making spurious complaints.

5. Overly prescriptive approach

The proposed legislation is overly prescriptive and legislates practices that industry already meets on a voluntary basis (most of which are already undertaken through the existing Social Impact Assessment process).

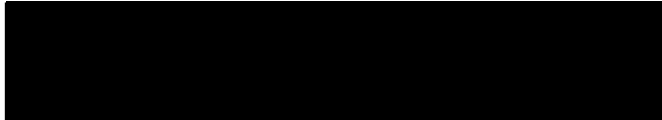
Some of the prescription, such as the reference to very small towns of 200 and distance of 100 kms, are both arbitrary and potentially problematic.

This overly prescriptive legislative approach will limit flexibility of companies to cope with changing economic circumstances, including in future boom times when adequate numbers of appropriately skilled workers may once again not be available in the resource regions.

Summary

The prospect of a new SSRC policy framework and associated legislation is a matter of great concern to industry at a time when industry leaders already perceive increasingly burdensome new layers of state regulation as the highest risk to doing business in Queensland. We look forward to receiving more information on the SSRC Policy Framework and the draft SSRC Bill shortly and to an opportunity for genuine consultation.

Yours sincerely



Michael Roche
Chief Executive

APPENDIX 1

Overview - Unnecessary regulation and poor government process

QRC members are already concerned about the regulatory burden being placed on the resources sector and believe the Strong and Sustainable Resource Communities (SSRC) Policy Framework including a new SSRC Act, is both unnecessary and will add to the existing regulatory burden. Unnecessary regulation ultimately leads to increased costs and reduced competitiveness of industry.

The development of the proposed legislation does not reflect the Council of Australian Governments (COAG) best practice principles for regulatory reform (to which the Queensland Government is a signatory) including:

- **No articulation of a policy failure (Principle 1)¹**

The failures/issues that the policy framework aims to address have not been clearly demonstrated, rather QRC is of the view the proposed legislation is based on a misperception of an issue, as no deficiency in the existing legislative framework has been identified. This is fundamentally at odds with the COAG best practice **principle 1**.

- **Will it stand the test of time (or cycles)?**

COAG best practice **principle 6** emphasises the need for regulation to remain relevant and effective over time. QRC understands that this is one of the Government's objectives in this legislation. However, it is important to note that back in 2009, when two projects were approved to be up to 100 per cent FIFO, the relevant approval decisions were properly made in accordance with statutory process and following community consultation. The resources industry is cyclical, so when circumstances in the industry again change, the proposed legislation runs the risk of being ill-fitting through unnecessary prescription. This exposes the Government to significant criticism in the future.

- **Inadequate consultation with affected stakeholders**

COAG best practice **principle 7** outlines the need to consult effectively with key stakeholders at all stages of the regulatory cycle. As no Regulatory Impact Statement (RIS) has been prepared, the nature and extent of the problems that the new legislation is attempting to remedy, the alternative

¹ Council of Australian Governments, October 2007, *Best Practice Regulation – A Guide for Ministerial Councils and National Standard Setting Bodies*, p 4.

options available and the anticipated costs have not been outlined. Without a RIS there is significant risk of legislation having unintended consequences.

Further, it has been suggested to QRC that the Parliamentary Committee process will provide an opportunity to be consulted on the SSRC Policy Framework and Bill. While it is acknowledged that Parliamentary Committees ensure the policy and administrative functions of Government are more open and accountable, the Committee's main role is to ensure legislation is drafted in a way that meets the intent of the policy. Parliamentary committees are not intended to be a default consultation process on policy frameworks with key stakeholders. It is difficult to consult effectively once legislation has been drafted because the scope of discussion has been substantially narrowed. This is particularly true in the case of this proposed Bill where the policy aim remains unclear.

QRC would also like to put on record the direct conflict of interest the Bill will likely face when it is introduced and referred to a Parliamentary Committee. The likely Committee the Bill will be referred to, is the same Committee whose Chair also led the FIFO Inquiry. QRC will be writing to the Leader of the House to recommend that the SSRC Bill be referred to the Parliamentary Finance and Administration Committee.

- **Changing the goal posts poses sovereign risk**

The retrospective application of the proposed legislation raises a substantial concern regarding sovereign risk. As well as being a breach of Fundamental Legislative Principles (FLP), the COAG best practice regulation guide states that the date of commencement for regulation should be carefully planned to avoid or mitigate unintended or unnecessary market consequences and allow for the transition to compliance with new regulatory requirements.

QRC cannot support any new legislation that is applied retrospectively to projects that were granted approvals at a certain period in time. Changing the rules for existing projects raises sovereign risk for Queensland as a competitive resource investment jurisdiction.

A stable investment environment cannot be ensured if resource companies are held liable to two legislative standards at one point in time, and further, are not given the opportunity to comply with the incoming legislation.

Should the legislation proceed, QRC seeks genuine consultation from this point on to minimise further negative and unintended consequences through the implementation of yet another example of unnecessary red tape.

SSRC Draft Policy Framework

Note in this QRC response the use of fly-in, fly-out (FIFO) includes bus-in, bus-out (BIBO) and drive-in, drive-out (DIDO), as was the case in the Parliamentary Inquiry report.

SSRC POLICY FRAMEWORK	QRC RESPONSE
<p>Limit use of fly-in, fly-out (FIFO) workforce arrangements</p> <p>1. The future use of 100 per cent FIFO operational workforce practices for large resource projects near regional centres will be prohibited by law.</p>	<ul style="list-style-type: none"> • Overly prescriptive legislative approach which will limit flexibility to cope with changing economic circumstances including future boom times where adequate numbers of appropriately skilled workers are once again simply not available in the resource regions. • As indicated in the 2014 Productivity Commission report, the Australian labour market needs greater flexibility rather than more restrictions if Australia is to be competitive in the 21st century. • This approach represents an overreaction, driven by two resource sector operations which were approved during the boom times to have up to 100 per cent FIFO workforces (although this didn't eventuate) with support from all major stakeholders. • Details around what is 100 per cent FIFO needs to be explained (i.e. does the 100 per cent refer to the whole project? Does it allow for a contractor to be 100 per cent FIFO, as some contractors are specialists on short term contracts that may genuinely need to be 100 per cent FIFO)? <p>Retrospective application</p> <ul style="list-style-type: none"> • While it is claimed that this policy shift is not retrospective, companies which have developed business models including contractual commitments consistent with their EIS approvals, have the potential to be adversely impacted both operationally and financially. • If an existing project seeks an amendment/modification to its current Environment Authority requiring the submission of an EIS, it is suspected that this may enliven the FIFO prohibition outlined in the SSRC policy and therefore the proposed legislation does impact retrospectively on existing projects and may compromise the future extension or expansion of existing projects. • Based on EIS approvals given, companies made significant investment in infrastructure such as village accommodation and entered into bus and flight contracts to service mines. Retrospective application of this legislation has the potential over time to erode this investment resulting in higher costs and lower competitiveness.

SSRC POLICY FRAMEWORK	QRC RESPONSE
	<ul style="list-style-type: none"> • Retrospective laws are generally considered poor legislative practice as they create uncertainty and can lead to sovereign risk. <p>Fatigue concerns</p> <ul style="list-style-type: none"> • The policy encourages recruitment of local workers and prohibits the use of 100 per cent FIFO if projects are located within 100km of a town with a population of greater than 200 people. In practical terms, this may mean that some locals would be required to travel up to 200kms per day just to get to and from work. This raises serious concerns regarding fatigue and would conflict with the existing Fatigue Management Guideline. • The fact that BIBO is captured in the scope is very concerning given buses can be used as a way to eliminate driver fatigue and road safety issues. <p>Regional centres</p> <ul style="list-style-type: none"> • The policy refers to large resource projects 'near regional centres'. Is it intended that a regional centre includes a town of 200 people which conflicts with ABS definitions? • How is a "large" project defined? • 200 people does not in and of itself represent a regional centre. Rather than defining a regional centre as a town of 200 people, there should be a minimum set of requirements regarding government agencies and local services (i.e. hospitals, schools, access to specialists, employment agencies etc) or a much larger population size utilised.
<p>2. Discrimination against local residents in future recruitment processes for replacement operational workers will be prohibited by law.</p>	<ul style="list-style-type: none"> • In the absence of a RIS or a draft Bill, it is extremely difficult for the resources sector to respond to this policy proposition without understanding the specific details/issues. • There are likely to be a range of unintended consequences that emerge as a result of outlawing discrimination on the grounds of location (for example, the approach does not recognise common place practices in the resources sector to transfer workers between operational sites). • The proposed approach will place additional resourcing burden on QCAT and there are concerns within Industry in regards to whether QCAT is adequately equipped to deal with increased numbers of discrimination cases. • The direct cost on companies will significantly increase in responding to and defending these types of claims. There is also concern that the new provisions may be exploited to pursue representative or class action alleging discrimination even

SSRC POLICY FRAMEWORK	QRC RESPONSE
	<p>where a company makes recruitment decisions lawfully. The fact that QCAT is a no costs jurisdiction means there is limited downside for complainants in making spurious complaints.</p> <ul style="list-style-type: none"> • The compensation regime, if discrimination can be established, is unclear and further detail is required. It is difficult to identify the 'loss' a prospective job applicant would suffer, given the result of a company breaching this provision would be to remove the candidate from a recruitment process only (i.e. there is no certainty of employment).
<p>Formalise requirements for SIA</p> <p>3. The requirement for an SIA as part of the EIS for resource projects will be prescribed in legislation.</p>	<ul style="list-style-type: none"> • A new approval mechanism comes with unnecessary risks and delay. • Without a RIS, QRC finds it difficult to see why the Government is choosing to implement new legislation instead of amending the existing legislation to give effect to the policy proposals. • Neither of the Government's responses to the FIFO Inquiry or Expert Panel committed to introducing new legislation (only referred to amending legislation). This new direction represents a major increase in red tape and new-hurdles for projects which will drive greater process costs and project delays. • The COAG Best Practice Regulation guide states that Government should recognise the cumulative burden regulation places on business, and as part of the consideration of alternatives to new regulation, have regard to whether the existing regulatory regimes of other jurisdictions might offer a viable alternative. Introducing new legislation has many adverse effects for resource businesses, particularly in relation to a new approval process introducing new fees, new processes which may not be entirely streamlined with existing processes as well as new pathways for appeal. • A new avenue for appeals is one of QRC's key concerns with the proposed SSRC Act. • QRC supports the proposal to exclude the explicit application of the Judicial Review Act 1991 in the SSRC Act, however this does not provide sufficient confidence this new pathway will not be used vexatiously against resource projects. • QRC suggests the new SSRC Act explicitly state social conditions are not open to objection or appeal in the Land Court. • When is an SIA required and in what instances are there exemptions?
<p>Improve participation by local government in the SIA process</p>	

SSRC POLICY FRAMEWORK	QRC RESPONSE
4. Affected local governments will be invited to participate in state agency meetings on the assessment of individual resource projects.	<ul style="list-style-type: none"> This issue is part of the SIA Guideline. Comments will be provided by QRC at a later date.
5. Where concerns arise about potentially significant cumulative social impacts of projects in a particular region, the Coordinator-General will establish a cross-agency reference group (CAR) for that region.	<ul style="list-style-type: none"> This issue is part of the SIA Guideline. Comments will be provided by QRC at a later date.
6. The membership of each Regional CAR will include relevant local governments and state agencies, with other participants (e.g. project proponents or technical experts) invited as required.	<ul style="list-style-type: none"> This issue is part of the SIA Guideline. Comments will be provided by QRC at a later date.
Build stronger resource communities	
7. As part of the SIA process, proponents must liaise with the Office of the Coordinator-General, Jobs Queensland and other relevant stakeholders regarding future workforce planning and development requirements, including the adequacy of training programs within the region to support employment opportunities for local workers on large resource projects. Partnerships between the resource companies and training providers are encouraged where feasible.	<ul style="list-style-type: none"> In its latest workforce analysis and forecast (July 2016)² the national industry skills body, SkillsDMC recognised that, in line with the focus on productivity and efficiency, demand will remain for a highly skilled operational workforce in the resources sector. In many cases, adequate numbers of higher skilled operational workers are not readily available in small resource communities, especially small towns of 200 people. Invariably significant training through the Vocational Education and Training and higher education systems is required. While the sector supports its vocational pipeline (with apprentices making up 3.9 per cent of the mining workforce nationally compared to the all industries average of 2.5 per cent), formal off the job training is often not available through local TAFE or other registered training providers.³ Industry requires a responsive, flexible system with preferred providers routinely entering into industry partnerships based on this capability to deliver and produce credible training outcomes regardless of their location. The provision and delivery of training is a shared responsibility with government and industry, with the resources sector routinely providing diverse and ongoing training opportunities for its workforce, as evidenced in the \$1.5 billion spend on training

² Resources and Infrastructure, Industry Workforce Analysis and Forecast , SkillsDMC July 2016

³ NCVET Training and education activities in the minerals sector, MCA 2013

SSRC POLICY FRAMEWORK	QRC RESPONSE
	<p>nationally or 5.5 per cent of the total payroll in 2011-12 and five times more than official government benchmarks.⁴</p> <ul style="list-style-type: none"> The state's training investment should complement that of industry in providing training capacity that encourages individuals to gain the skills needed by the sector to drive growth in the state's economy.
<p>8. Procurement programs should provide a full and fair opportunity for competitive local businesses by:</p> <ol style="list-style-type: none"> detailing the programs that will be implemented to build the capability of local businesses to tender for the provision of goods and services maximising contract certainty for local suppliers to enable them to finance and scale up their operations to bid for contracts where feasible, structuring tender packages to provide greater opportunities for local businesses, and adopting payment terms that provide regular cash flow to service providers. 	<ul style="list-style-type: none"> There exists a robust and successful industry led and self regulated regime which is unique to the resources sector and is leading practice in Australia. The principle of 'full, fair and reasonable' opportunity for capable local businesses to participate in the delivery of resources and energy projects is fundamental to the <i>Queensland Resources and Energy Sector Code of Practice for Local Content</i> which has been in place since 2013. QRC is of the view that local content policy is best delivered under a shared responsibility framework as adopted in the Code of Practice which clearly distributes the accountability to QRC, industry, government, suppliers and regional economic development groups. The rationale for establishing the industry led approach in 2013 was a belief that this approach would produce better local content outcomes as companies have a vested interest in developing local supply chains. Furthermore, successful implementation has the potential to achieve a number of broader benefits including employment and business growth in Queensland by expanding market opportunities for local industry, long term sustainability of local economies and achieving a consistently renewed social licence to operate in Queensland. QRC is critical of the suggestion for mandating payment terms or tender packages and does not believe Government has a role to play in dictating such business decisions. QRC is also cautious that under Federal legislation some aspects of clause 8 may be contrary to project's Australian Industry Participation (AIP) requirements (i.e. the AIP defines local as Australia and New Zealand and requires a fair and reasonable process for all businesses. Any requirements requiring commercial advantages or support for more localised businesses may go against the AIP).
<p>9. The Queensland Government will work collaboratively with the Queensland Resources Council and the Australian Petroleum Production and Exploration Association to explore opportunities to adapt existing data collection and reporting</p>	<ul style="list-style-type: none"> There already exists a robust structure including a reporting framework and feedback Forum which allows for suggested improvements to the Code. As a participant in the shared responsibility framework there are opportunities for such changes to be discussed collaboratively. QRC welcomes constructive improvements to the Code of Practice.

⁴ Ibid

SSRC POLICY FRAMEWORK	QRC RESPONSE
<p>arrangements under the Queensland Resources and Energy Sector Code of Practice for Local Content, to better contribute to SIA processes and any proponent reporting requirements related to local procurement.</p>	<ul style="list-style-type: none"> • QRC is reluctant to adapt existing data collection arrangements unless a clear justification for such changes are provided. QRC reminds Government that under a voluntary regime, such as the Code of Practice, QRC and Government are very fortunate to have such a high number of participants voluntarily participating but do so because of the demonstrated benefit in participating in this industry-led regime. Any significant changes to the arrangements including the use and access of data may have a detrimental effect on participation. • QRC also notes that additional reporting requirements may come at a cost to industry at a time when the regulatory burden in Queensland is already a significant barrier for investment.
Encourage recruitment of local workers	
<p>10. Where a competitive and capable workforce is available, the proponent should, in priority order, recruit:</p> <ol style="list-style-type: none"> a. from the local and regional community b. to the region (i.e. relocation to live locally) c. from priority regions, such as areas of high unemployment and socio-economic disadvantage d. from other areas within Queensland. 	<ul style="list-style-type: none"> • Labour is a key input into resources and energy projects and businesses reserve the right to make recruitment decisions based on the merit of each candidate. • As is the case in procurement for goods and services, there exist a number of economic and social benefits for recruiting local workers where there is a competitive and capable workforce available. • This level of prescription is unnecessary and excessive. • For many, the perception of lesser standards of government funded services such as health and education in resource communities drives the decision for workers to commute rather than live locally. • In terms of the priority 'order', does that list intend to prohibit the recruitment of employees from interstate?
Optimise worker accommodation arrangements	
<p>11. To support a proposed worker accommodation strategy, a project proponent should:</p> <ol style="list-style-type: none"> a. undertake a review of the housing market to identify available accommodation within proximity of the project b. where a new worker accommodation village is proposed: <ul style="list-style-type: none"> - consider co-location of the village within or adjacent to existing communities - justify the location of the proposed facility, with consideration of worker health and community wellbeing 	<ul style="list-style-type: none"> • Companies going through an EIS process already undertake an SIA which includes an analysis of the local housing market and workforce accommodation options. • This is an example of prescribing in legislation what already exists in practice. • Companies make decisions based on a number of factors, including consideration of a workers' health and wellbeing as well as commercial/operational factors. • Much of this detail is not always available at the stage when workforce plans and accommodation plans are being developed. • Accommodation villages can often deliver positive benefits to the local resource community such as serving as a buffer to help control the "boom and bust" effect on the housing market, especially where access to land for development is limited. • This level of prescription is not needed.

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<ul style="list-style-type: none"> - wherever feasible, provide individual storage and use of the same quarters for each roster - exclude the option of 'hot-bedding' in worker villages. <p>c. include a workforce plan and an accommodation plan that:</p> <ul style="list-style-type: none"> - apply to the life of the project, but with a capacity to review the plans subject to changing labour market and regional accommodation conditions - consider the provision of accommodation for workers and their families who wish to live locally. 	
<p>12. The proponent's recruitment and accommodation programs should be regularly monitored to ensure they are responsive to, and are effectively achieving, the planned outcomes.</p>	<ul style="list-style-type: none"> • This level of prescription is not needed.
<p>13. All new villages should be designed and managed to ensure they provide a safe, clean and healthy environment for resource workers and village staff.</p>	<ul style="list-style-type: none"> • Current villages are already of a very high standard – new villages will undoubtedly follow suit. • Resource companies recognise the importance of providing high quality accommodation villages to attract and retain employees, and surveys of worker satisfaction with their accommodation are undertaken regularly. • Camps adhere to the various state and local government policies and procedures that guide the construction and operation of quality accommodation facilities. For example, certification to ISO 22000 – the International Standard for Food Safety Management – is often applied in accommodation village kitchen and mess facilities. • Many camps provide the opportunity for residents and village staff to improve their well-being with access to nutrition information, exercise equipment, lifestyle coordinators and personal trainers.
<p>Support worker health and wellbeing</p>	
<p>14. Within the context of feasible project costs, worker rosters and fatigue management arrangements should encourage family-friendly arrangements that support long-term worker health and wellbeing.</p>	<ul style="list-style-type: none"> • In order to encourage family-friendly arrangements and long-term health and wellbeing, 'choice' is essential. All workers are different – an arrangement that suits one person may not suit another. The importance of choice has been demonstrated conclusively by two major worker accommodation studies undertaken by QRC - in 2012 and in 2015.

SSRC POLICY FRAMEWORK	QRC RESPONSE
	<ul style="list-style-type: none"> • FIFO (or other long distance commuting arrangements) is a choice that many workers make in preference to relocating, as it minimises disruption to family living arrangements including children's schooling and their partner's employment. • Work rosters do not usually differ between FIFO workers and residential employees. • Safe practices and fatigue management are considered extremely important by resource companies and are driven by associated safety legislation. Work hours and rosters are designed to comply with fatigue management requirements and support workers' health and wellbeing.
<p>15. Industry-led programs should be used to foster the good mental health of workers and encourage proponents to:</p> <ol style="list-style-type: none"> a. make available and promote the confidential use of employee assistance programs b. engage in and raise awareness of other mental health initiatives run by not-for-profit organisations. 	<ul style="list-style-type: none"> • QRC members understand the statistics when it comes to mental health - one in five Australians will experience symptoms of a mental health disorder during a 12 month period. However, this problem is not unique to the resource sector. • Many companies have strategies and services in place to promote mental health, remove stigmas around help-seeking behaviour, and provide services such as on-site occupational health nurses and employee assistance programs 24/7. Many resources companies also put significant effort into managing fatigue and providing sleep, health and nutrition options that encourage a healthy lifestyle. • In some cases, FIFO arrangements are actually seen as an advantage by workers, as it improves the quality and quantity of sleep and promotes healthier lifestyles. • Many resources companies use a range of strategies both before and during employment to provide additional support for not just employees (whether they are FIFO or residential), but also their families and communities. These include strategies to: <ul style="list-style-type: none"> • ensure prospective employees and their families understand the potential impacts on personal and family life of long-distance commuting • encourage networking and support for families • guide management of family relationships • access to confidential counselling support • maintain awareness of importance of mental wellbeing and detecting signs of stresses on your colleagues • assist local communities such as local buy programs. • The resources sector is proactive in the mental health area - QRC recently developed a Mental Health Toolkit which supports the QRC Blueprint for Mental Health and Wellbeing.

ATTACHMENT 3

Ex-Chief Scientist lashes Qld UCG ban

Thursday, 19 May 2016

FORMER Australian Chief Scientist (1999-2005) Professor Robin Batterham, who was on the review team for the report of the Independent Scientific Panel Queensland's government set up to examine UCG operations to ensure a safe and reliable path towards commercialisation, writes exclusively for *Energy News* criticising the state's knee-jerk reaction by banning UCG extraction.

Innovation is the buzz word of politics right now. That is most encouraging as it is what Australia needs, but should it be politics that determines the outcomes of innovation or is a sound base of science and technology a better driver?

A recent policy decision in Queensland banned an emerging industry, underground coal gasification, due to two trial participants not having the appropriate process controls in place.

There was also another company, Carbon Energy, which did demonstrate solid environmental results and followed a transparent and scientific methodology. Despite this it was also banned from operating in the state, posing the question – what was the purpose of the trials?

Large scale trials that are first of their kind, by nature, always take time to develop and successes are renowned for coming after a series of failures. As we have discovered not all technological trials are created equal nor do they have the same adequate risk based controls in place.

The Queensland UCG trials began in the late 2000s and were seen as an opportunity to demonstrate innovation on extracting gas from coal without the need for mining. Since then a very different process, CSG, has mushroomed and the shine from coal to gas operations has dulled.

Carbon Energy is a relatively small company of about 15 employees now, and about 5000 mum and dad investors who strongly believe in its technology, investing over \$150 million which has been developed with over 10 years of research with the CSIRO.

This innovative company has utilised a rigorous and scientific methodology that it appears other trials in Australia have not.

- Firstly, its process identified early on that site selection and depth of operations was critical to success.
- Process controls and design of its technology meant it was fully in control of operations. Its unique technology allowed for control that was environmentally safe and could be managed in a responsible risk-based manner.
- Its trial included decommissioning and a rehabilitation plan (which involved allowing for natural remediation), which no other proponent has done and now Carbon Energy can demonstrate.

This all adds up to a world first scientific demonstration of an emerging technology from site selection, underground coal gasification with no deleterious impact and finally rehabilitation to conditions no worse than what existed at the start. In my opinion it is simply irrational to ban such a process based on the evidence available.

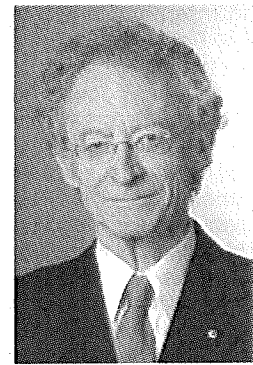
I first came into contact with Carbon Energy in 2011 when I was asked to peer review a report developed by a government-appointed Independent Scientific Panel on the UCG industry. At the time I was impressed by the company's scientific rigor, the results of its gas quality and the low environmental impact of its operations.

Carbon Energy's results opened my eyes to a modern and responsible way to harness energy from coal in a way that outperformed competitor technologies.

The ISP Report positively viewed the potential of UCG, however it further challenged the proponents to extend their results and go on to decommission and provide a plan for rehabilitation. This recommendation set a new benchmark for the proving of a resources technology.

Previously, decommissioning (the stopping of operations) and rehabilitation (determining what is required to return a site to a benchmark level) are only considered once resource operations are coming to an end. Nowadays, such matters are considered up front and it was appropriate that Carbon Energy had to jump this hurdle, despite the technology being new.

Carbon Energy was the only company to complete the recommendations of the ISP and in doing so have become a trailblazer in resources innovation, setting a new bench mark in trial innovation testing in the resources industry.



Robin Batterham

The technology used (Keyseam) is now more advanced than other unconventional mining technologies in that it has proven its entire lifecycle process to be under control. Where others companies failed, Carbon Energy and its science based methodology succeeded.

Queensland which has previously been a proud innovator and supporter of the coal industry has now banned one of its most significant scientific advancements in coal and effectively thrown its baby out with the bath water. Why?

Carbon Energy is a relative minnow in comparison to the giant companies in the same industry, but not all innovations come from billion dollar conglomerations and this quiet achiever warranted support. If we are going to seriously foster innovation, and propose companies invest heavily on scientific methodologies, we need to nurture those that demonstrate achievements and not disregard the science. This company's 5000 investors did.

Carbon Energy, by its own admissions, advises the ISP process gave it "great confidence" in its technology and it is now focussed on developing projects in China where it has been invited to head up an International UCG Research Centre.

The Centre has been established by China's largest mining institute, the China University of Mining Technology.

The Chinese government is leading the world having identified UCG as one of the technologies that can safely and responsibly utilise the country's significant coal reserves for energy generation.

As another of our bold and ever so important innovations heads off-shore I feel for Carbon Energy which has been pushed to prove its innovation in Queensland, following a path outlined by scientific experts appointed by the State and then shunned by the policy makers who defined the path.

Even if Queensland policy makers have chosen not to use this successful technology locally in a political response to issues unrelated to Carbon Energy, then let's hope the Queensland Government can still recognise this local innovation and its technology success.

Otherwise why would others seek to partner and invest in Queensland and risk innovation success being sacrificed for politics?

Professor Batterham was recently appointed to the technical advisory committee to oversee the UCG centre in China.

http://www.energynewsbulletin.net/StoryView.asp?storyID=826963625§ion=On+the+Record§ionsource=s121&aspdsc=yes&utm_medium=email&utm_campaign=ENB+Standard2016%2D5%2D19&utm_content=ENB+Standard2016%2D5%2D19+CID%5Fc1ed3ec913f9c6776bec3c32ad812a88&utm_source=Campaign+Monitor&utm_term=Ex%2DChief+Scientist+Ishes+Qld+UCG+ban

QRC Submission on the SIA Guidelines

Social Impact Assessment Guideline

12 December 2016

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QUEENSLAND
resources
COUNCIL

Introduction

QRC appreciates the opportunity to provide comments on the draft SIA Guideline. QRC understands the Coordinator-General's office will be consulting further with stakeholders early in 2017 on the new draft version of the Guideline.

A dynamic and productive resources sector delivers significant benefits to the Queensland economy. In 2015/16 the resources sector contributed \$55.7 billion to the Queensland economy which equates to 1 in every \$5 in the Queensland economy and 1 in every 7 jobs. A thriving resources sector is fundamental to a thriving economy.

A key component of creating an environment conducive to a thriving resources sector includes an appropriate regulatory environment. It has long been recognised that overly prescriptive and onerous red tape can add significant and unnecessary additional costs to industry which deters companies from doing business in Queensland and ultimately stifles economic growth.

In providing this submission on the SIA Guideline, QRC's members recognise they have a responsibility to mitigate the social impacts that their operations create. It must also be acknowledged that resource projects create significant positive impacts including jobs and payment of taxes and royalties as well negative. Government clearly benefits from the resources sector, and needs to deliver services to resource communities in the same way it delivers services to non-resource communities.

Clarity

QRC is concerned regarding the overall clarity of the Guideline. As drafted, the Guideline is often confusing as it switches from detailing prescriptive processes to broad, ambiguous statements. QRC also finds the Guideline unclear in some areas and questions why there is a separate consultation process, explicating calling out submission from certain stakeholders, when this is part of the overall Environmental Impact Statement process.

Role of Government

Companies recognise that they have a responsibility to identify, assess and mitigate the direct social impacts within their control. However, the SIA Guideline can be interpreted as skewing business 'responsibility' towards supplementing government agency service delivery capacity rather than focusing on mitigation of significant identified impacts of major projects. The Guideline also does not take into account the **positive** impacts which result from resource projects.

Government is responsible for the delivery of services to the community. The role of business and the role of Government must not be confused. QRC is concerned the Guideline attempts to shift the onus of service delivery and for issues such as socio economic disadvantage, from the Government onto industry. The details required in the management plans blur the boundaries of the Government's responsibility to provide basic services for growing communities by seeking to shift these costs onto major projects. In order to have thriving regional communities, Government must, for example, provide adequate health and educational services. This responsibility does not rest with business.

Prescriptive Regulations / Outcomes based approach

The Guideline requires further amendment to ensure it is consistent with an outcomes based approach to social impact assessments and conditioning. In order to foster a competitive environment where industry can flourish, red tape and administrative burden must be kept to a minimum. As drafted, the Guidelines are quite prescriptive. The management plans require information regarding what are essentially business decisions. Requiring such an extensive amount of information increases the administrative burden on all parties, including the communities and interest groups who are required to comment and be consulted. Additionally, there is little acknowledgement that many of the decisions companies have to make about projects are point-in-time decisions, with many factors that must be taken into account including factors such as world demand for commodities and availability and

competition for skilled labour. The context in which decisions are made is an important consideration and will clearly vary over time.

QRC is also concerned the Guideline does not take into account the significant administrative burden that the Guideline will place on companies going through the approvals process, particularly small to mid-tier resources companies. Implementing the requirements of the Guideline may border on prohibitive for mid-sized and smaller companies as the Guideline assumes every resource project is a large scale project. Excessive assessment requirements impose unnecessary costs on proponents and the community, with no clear offsetting benefits.¹

Future Proof

The Guideline unnecessarily requires a proponent to submit various management plans to mitigate impacts. Front-ending management plans makes no sense as the project itself has not been conditioned to manage the impacts assessed by the Coordinator-General. Requiring plans upfront assumes they are approved as static documents when in fact management plans must evolve with changing circumstances. The Guideline needs to acknowledge that management plans are not a static document and rather than requiring them upfront with an SIA, maintain the existing process where management plans are provided after the project is approved and the company has a better understanding of issues such as workforce planning.

The Guideline makes many references and requirements for data collection. QRC queries whether any of the work which was done developing a data warehouse in recent years by the Office of the Coordinator General and Department of State Development has been or will be utilised? Given the significant administrative burden on all parties for the collection of various data, this initiative would be worthwhile. A data warehouse would also provide key centralised data for Government planning, budgeting and decision-making.

Industry would appreciate guidance from the Government regarding access to and treatment of cumulative impact data. Assessing the impact of other projects with any confidence requires access to detailed commercially sensitive information and in many cases competing projects are not disposed to cooperate with the provision of data. As such, the Government is better placed than industry to assess cumulative impact.

QRC also has broad queries regarding the application of the Guideline. How will the Guideline be implemented and for which projects? Additionally, who will be responsible within the Office of the CG for the SIA's? How will this be resourced?

QRC expects all stakeholder feedback on the Guideline will be considered and the Guideline amended as necessary in the new year of 2017.

1. Outcomes Focused

QRC submits the Guideline has fallen short of its stated aim to be "outcomes focused". While the Guideline explicitly states this intent, the detail in the Guideline is often contrary to this goal. Several examples of where the Guideline strays away from an "outcomes focus" are detailed below.

Examples:

¹ Productivity Commission Research Report 2013, p 170.

- Page 4, SIA cross agency reference groups: *"To the extent that is possible, the SIA CAR group meetings will be convened in the relevant region, but practical constraints may necessitate that some meetings will be held in Brisbane."*
- Page 4, Impact and opportunity assessment: *"The proponent's approach and methodology for identifying and rating social impacts should be agreed within its organisation."*
- Page 8, Community stakeholder engagement plan: *"This plan needs to incorporate an inclusive and continuous process between the proponent and the communities of interest that identifies social opportunities and impacts that are directly related to the project".*

2. Application to resources

QRC believes there is no rationale behind confining the application of the Guideline to the resources sector. If a development is significant enough to warrant an EIS, there is little reason for different industries to be subject to different rules.

QRC suggests removing specific mention to resource projects.

3. Clarity

Intended Audience

Section 1.3 outlines who should use the Guideline, including proponents, state agencies, local government and NGOs. However, despite stating this, the Guideline is actually a regulatory instrument targeted at proponents. The result is a disjointed document that is at times difficult to understand. The Guideline would benefit from more contextual information regarding how the various elements of the Guideline and SIA process interact (similar to the Economic Impact Assessment Guideline) including how the impact assessment regulatory framework sits together overall – perhaps using a diagram.

There are a number of contextual and language amendments QRC will suggest in a marked-up version of the Guideline to the Coordinator-General's office. It is QRC's understanding that the Coordinator-General will be undertaking a formal consultation process on the SIA Guideline in early 2017.

Further to the above, QRC suggests removing the section that outlines consultation with Government as being mandatory. In QRC's view this goes without saying as consultation with Government is required throughout the whole process in order to meet requirements. The prescriptive nature of this Guideline is atypical when compared to other guidelines.

Clear Requirements & Assessment process

QRC feels the Guideline needs to provide more details for many of the requirements, in order to provide proponents (and government) a real understanding of what is sought.

3.1 Social Baseline

QRC notes that the function of the social baseline is not made explicit in the Guideline. If the Guideline is to be used by a variety of stakeholders, making this clear would be valuable. Further, perhaps a term such as "current condition" (as used in Great Barrier Reef assessments) as opposed to "baseline" would provide direction as to the function of the study. Without specifying that the study relates to the current status of the project region, there is the

possibility for impacts outside the scope to be included (i.e. condition before all mining versus condition before specific mining project).

Additionally, the responsibility of the proponent is not made clear as to how they could receive assistance from the government in accessing relevant data. Government should be actively identifying its contribution points. Previous work regarding the data warehouse is relevant here. It is clearly inefficient for various project proponents to undertake the same process of collecting population data, housing data and other relevant information.

QRC believes that the social baseline section of the Guideline has the potential to create a very broad scope for the assessment. QRC believes that clarification should be provided as to what constitutes a "community of interest", to ensure this does not extend beyond the scope of such an assessment. Similarly guidance is sought as to what would constitute "key events that have shaped economic and social development, reliance and trends", as this could seemingly include many broad factors.

QRC suggests that it is more appropriate for Government itself to identify 'trends', as is done for the Great Barrier Reef regulation. QRC raises the same suggestion for "an overview of state government legislation and policies relevant to the SIA".

3.2 SIA Requirements

3.2.1 Data Sources and Data Collection

Regarding the collection of data, what constitutes "recent on the ground research" needs to be clarified. "Recent" can be subjective. Further, relating to data, this section makes the following statement: "Desktop research is not sufficient to provide baseline data." This is a broad statement, which may not be applicable to certain situations. QRC recommends a statement such as: "Proponents should be mindful of the shortcomings of desktop research" or "Desktop research may not always be sufficient to provide baseline data".

Further, the broad data categories are, true to their description, very broad. For example, "Technology" is a data category. In the interests of not creating an enormous amount of SIA material for no reason, a better definition of these categories is required. QRC recommends that the data collection should correlate to the expected impact of the project, rather than a general socio-economic scanning report. Agreed deliverables must be focused on mitigation of identified project impacts rather than attempting to address additional environmental or social goals.

In addition, the category of "existing cumulative impact data" is much more likely to be held by Government rather than proponents. QRC suggests this should be reflected in section 3.3.2 which details state agency requirements, as well as acknowledged in the social baseline section. Further, industry would welcome guidance from Government as to how cumulative impact is to be assessed and addressed.

3.2.2 SIA cross agency reference groups

Context would be appreciated in this section to clarify what a "relevant region" is and how said regions are defined e.g. size. Additionally, the wording of this section implies that there could be scenarios where a collaborative approach is not required. What are examples of these?

QRC would also appreciate some clarity around the role of the CAR groups. Does the guideline envisage a Terms of Reference for these groups? QRC is concerned that without guidance, the CAR process could revert to a wish-list process for government enquiries and blow out

consultation timeframes as has occurred in some instances in the past. There is a concern that this will lead to conditions which are not based on direct impacts. For example, in the boom time, one of a proponent's conditions was to provide equipment for the renal unit in the Gladstone hospital.

There is also a prescriptive requirement regarding meeting locations which is counter to the purpose of the Guideline being outcomes focused.

3.2.3 Impact and opportunity assessment

This section contains a prescriptive requirement detailing what should be agreed within an organisation regarding methodology. This is not outcomes focused and has been noted in the below section. Government prescription as to what should be agreed within an organisation in a market economy is unreasonable and inappropriate and runs counter to an outcomes based framework.

When considering the impacts and therefore the potential "changes to the areas", QRC seeks clarity as to whether the "areas" definition is consistent with SSRC legislation (i.e. 100km distance of towns over 200).

3.2.4 Impact management strategies

Regarding the proposed mitigation measures, this section of the Guideline states that those measures should incorporate adaptive management to address changes in the socio-economic environment that *may* occur during the construction and operation of the project. The scope of changes that *may* occur is very wide. Do proponents have to address all possible changes? If not, the wording of this section needs to be more specific to outline significant changes relative to the project, not an open ended instruction.

Further, QRC is concerned that management strategies are to be provided before approval as potential mitigation measures. Without assessment and approval, the proponent will not have clarity regarding what management strategies are required. This confusion is a recurring theme through the draft Guideline, which is also addressed in the management plan section of this document

If the government is also looking for final plans, then this will make the already substantial EIS documentation even more of an administrative burden for proponents, and for stakeholders reviewing the EIS. In addition, setting out that a company must embed the strategies across the proponent's business is a redundant statement, especially in an outcomes focussed system, which the government purports to support.

Need for Definitions

- Page 3: "Communities of interest"
- Page 3: "Key events that have shaped economic and social development, resilience and trends" (conceivably this could include federation and wars)
- Page 3: "Recent" (relating to data collection)
- Page 5: "Relevant stakeholders"

4. Role of Stakeholders

QRC has many concerns regarding the role of stakeholders as set out in the draft Guideline. QRC also queries whether there is a troubleshooting process in place should stakeholders disagree?

4.3.1 Project Proponents

Regarding the requirements for mitigation measures, QRC queries the requirement for continuous improvement of the SIAs themselves. Presumably this would not require companies to redo the SIA? If so, perhaps this section should read "continuous improvement in *social impact management strategies*" rather than in SIAs themselves.

Further, a definition for "relevant stakeholders" would be beneficial for clarity.

QRC also requests clarification regarding the reference to the Regional Cross Agency Reference (CAR) Group. Proponents, on request, must present information to the Regional CAR Group. Does this indicate that the CAR Group is an ongoing process, which proponents may have to continuously update on changes? It is suggested that a Terms of Reference for the CAR groups would provide clarity of their role.

4.3.2 State Agencies

As indicated above, there is data which would be more appropriate for Government to provide given they hold, and are better placed to hold, the data. The work that went into the development of a data warehouse in 2013/14 led by the OCG and State Development should be revisited. This section also references collaboration and negotiation with proponents as part of the Regional CAR Group process. QRC suggests that collaboration and negotiation with state government may be required outside of this process as well.

3.3.4 Non-government Organisations

QRC requests clarification of the types of organisations government sees as being included in the definition of non-government organisations.

QRC is not convinced of the need for a separate and additional submission process on the SIA to the process already afforded in the EIS system.

Additionally, presumably the definition of non-government organisations includes unions? QRC would be interested in understanding the rationale behind separating unions out as a separate stakeholder? Again unions have an opportunity to provide submissions through the EIS process and QRC finds it inappropriate to specifically call out unions to provide submissions on the SIA. Stating that unions may also "represent employee groups" is plainly evident and therefore redundant to state in a statutory guideline. Unions are clearly engaged through the industrial process.

3.3.6 Landholders, residents, community and Indigenous groups

Again, these stakeholders can make a submission on the EIS. QRC also recommends providing clarification as to whether there are any requirements that individuals who wish to make a submission have to be directly impacted / in the area of the project?

The government is more than aware that legal standing is being misused and the extensive delays being caused by objections lodged by parties that have nothing to do with the proposed project.

5. Management Plans

QRC is not convinced of the need for the new requirement of five separate work plans as it will increase the administrative burden on proponents as well as government. QRC also queries the reasoning behind the change. What issue is being addressed by requiring separate plans?

QRC is also concerned regarding the wording of the management plan requirements. Is the development of these plans required **before** approval is granted? If so, this is premature as part of the SIA process because it would be prior to the review of the impact assessment, mitigation measures, and consultation as part of the EIS process.

The normal approach would be to consider the impact and proposed mitigation measures and, having regard to the community feedback, set the necessary conditions in the authorisation. These approval conditions would set the "outcomes" that the management plan would need to address. A typical condition would require the development and publication/submission of a management plan prior to commencement but after the approval/authorisation had been issued. Requiring management plans before approval is granted is counter-productive, and will create a significant, unnecessary administrative burden.

3.4.1 Community stakeholder engagement plan

QRC requests clarification on how an "appropriate range" of stakeholder and community engagement techniques is demonstrated?

The draft Guideline states that the plan should include responses from communities of interest regarding the mitigation of impacts and the transparent integration of these responses in the project's SIA. Based on this wording, it is difficult to understand where these plans sit in context of the Guideline as a whole, i.e. is it part of the assessment process or the operation going forward and referred to in the conditions of the project?

3.4.2 Workforce management plan

QRC considers it inappropriate for proponents to be required to submit workforce management plans to Government or recruit from certain areas. This is a business decision, not a role for government.

Addressing social disadvantage is a matter for government and in no way relevant to the impacts of a resource project.

Businesses continue to acknowledge and honour their responsibilities to their workforce. A management plan does not need to be provided as part of this process to ensure businesses do this. If a workforce management plan is held to be required, it should not require a detailed plan, as the details of workforce management and organisation are business decisions.

The reordering of this section is recommended to provide clarity. Additionally, QRC requests clarity around who will decide and define "priority areas", and what "details" of all operational employees are required.

3.4.3 Housing and accommodation plan

QRC has concerns about the long-term economic implications of the requirements of this plan. Decisions about housing and accommodation are point-in-time, and must be understood in the context of the cyclical resource industry, to ensure that housing markets are not distorted. For example, a project that was approved in boom times may have no alternative but to build worker accommodation, however in downtimes, a greater supply of existing accommodation may be available.

There should also be a link to the temporary accommodation code in this section.

3.4.4 Local business and industry content (Procurement) plan

The QRC has an active role in administering the Resources and Energy Sector Code of Practice for Local Content (2013). Administration requirements include the facilitation of an annual Local Content Participation Forum, comprehensive annual reporting and the compilation of a Code Effectiveness Report for the Minister for State Development each year. The

QRC has offered to consider additional questions to be added to the annual reporting framework and is open to appropriate amendments to the Code of Practice that recognise the importance and success of an outcomes focused, industry led regime such as the Code of Practice. QRC acknowledges the Government commitment to continue to support the Code of Practice as the best mechanism to improving local content outcomes in Queensland.

QRC is concerned that the local industry participation and procurement plans will result in more paperwork rather than outcomes. The prescription around the processes is not outcomes focused.

3.4.5 Health and community wellbeing plan

QRC is concerned about the broad scope of requirements for this plan. QRC argues that many of the requirements, such as detailing "how impacted community services and facilities will be maintained for the community" is effectively shifting responsibility from governments. Additionally, the way this section is written assumes that the project creates the total impact upon services. There is no qualification of the broader cumulative socio-economic impacts, which are not just from resources activities.

Further, qualification of 'community concerns' and 'community health impacts' is required. The wording assumes that all concerns are valid and legitimate, as 'any' community concerns resulting from the project must be addressed. Some qualification mechanism is needed.

6. Monitoring, review and compliance

QRC recommends reconsideration of the requirement to amend the reporting regime if more than two years has elapsed between the evaluation report and the commencement of construction. As projects are often subjected to long delays due to various factors, it is more appropriate to require amendment if there have been significant changes to the project. Additionally, what constitutes a "significant change to the economic and social environment" needs to be clarified.

The Guideline should be specific as what "key operational changes" will trigger reporting. Clarification is appropriate as some operational changes such as "large quantum increases in production" do not equate to an increase in social impacts. For example, increases in production could be a result of deeper drilling or the quality of the resource, which has no impact on the number of workers employed by the project.

The wording of this section implies that the five plans are on-going, and not just a plan for the SIA. Is this accurate? If so, the Guideline should make allowances for the situation where not all plans are relevant, and therefore only a sub-set will be required.

QRC is concerned regarding the risk of retrospective or additional conditions being added to projects on the basis of reporting, long after approvals have been granted. Businesses make investment decisions based on conditions at the time of approval. Additional or retrospective conditions are unacceptable, and create a considerable business risk.

QRC calls for some consideration of the administrative burden, and the need to balance this with reporting requirements. On what basis has the government proposed a review of reporting requirements every two years? Guidance regarding the frequency of third party reporting would also be appreciated. For example, will such a requirement be based on the project lifecycle?

7. Recommendations:

In addition to the above specific comments, QRC offers the following broad recommendations:

- Definitions need to be provided for ambiguous words such as "recent".
- An outcomes focus needs to permeate the whole Guideline, not just referenced in certain points as an aim.
- The Guideline needs to provide clarity around its intended audience and its purpose. At the moment, the document reads as a regulatory instrument for proponents, when it states that the Guideline is intended to be used by a range of stakeholders.
- Clarity needs to be provided around the process of the assessment of the SIA and the development of the plans. The Guideline is confusing in this regard. It is unclear whether the plans are part of the EI assessment, or an ongoing obligation, or both.