QUEENSLAND resources COUNCIL

Working together for a **shared future**

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Dear Dr Munro

Thank you for your letter of 6 December inviting the Queensland Resources Council to make a submission to the inquiry into the *Gasfields Commission Bill 2012 (*the Bill).

As you know, the Queensland Resources Council (QRC) is the peak representative organisation of the Queensland minerals and energy sector. QRC's membership encompasses exploration, production, and processing companies, energy production and associated service companies. The QRC works on behalf of members to ensure Queensland's resources are developed profitably and competitively, in a socially and environmentally sustainable way.

QRC's membership encompasses a number of companies operating in Queensland's onshore gas industry, including all the proponents of the Liquid Natural Gas (LNG) export facilities. While QRC's coal seam gas (CSG) members are also members of the peak *national* body for the oil and gas sector, the Australian Petroleum Production and Exploration Association (APPEA), QRC's membership base is broader than APPEA and encompasses many of the professional and technical service companies who contract to the onshore gas industry in Queensland. Furthermore, QRC's mineral and energy members take a keen interest in the manner in which CSG operations are regulated and assessed as many of the requirements which are developed specifically for CSG tend to be applied more generically across the broader resource industry.

As noted in the explanatory notes to the Bill (page 3), QRC made a submission to the GasFields Commission on 25 May 2012 which supported the establishment of the GasFields Commission and its purpose to manage and improve the sustainable coexistence of landholders, regional communities and the onshore gas industry in Queensland. Having now had the chance to review the Bill, QRC maintains this support for the work of the Commission and the intent of the Bill.

QRC is an active member of the GasFields Community Leaders Council (section 27) and was heavily involved in the work of the CSG Engagement Committee which preceded the establishment of the GasFields Commission, particularly on land access issues. QRC supports the process of open and transparent engagement, facilitated by a respected and independent

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chair, which has characterised all of these processes. In QRC's view, the Commission's approach has already demonstrated its merits for establishing constructive and effective dialogue between Government, industry and community stakeholders.

In reviewing the Bill, QRC members have taken the opportunity to make comments or provide suggestions on a number of specific drafting issues (below).

Section 6 – sets out an impressive list of functions, but these functions are not formally linked back to the Commission's purpose as set out in section 2. For the sake of clarity, it would be useful to explicitly state this connection to the Commission's purpose of sustainable coexistence.

Section 7 – the drafting of this section is unusual in that it grants the Commission "the powers necessary or convenient to perform the commission's functions". QRC questions whether including the phrase "or convenient" might grant the commission too much operational latitude. Further, as the powers vest in the commission rather than the chairperson, it is not clear how these powers might be applied. The dictionary defines the commission with reference to section 5, which doesn't serve to clarify how the commission might apply these powers.

Section 8 (b) – As three of the commissioners are designated to represent specific groups of stakeholders, QRC suggests that the linkage to section 9 which describes the general eligibility for commissioners should specifically set out the Government's expectations for the eligibility of these three Commissioner positions.

Section 13 – As the commission has statutory independence from Government, QRC suggests that section 13 which provides for the removal of a commissioner should include some description of a process for applying this section, particularly as the section's current drafting ("for any reason or none") seems very general.

For example, the *Queensland Competition Act 1997*, section 211(3) sets out a series of conditions for a member of the Authority to be ended such as misbehaviour, incapacity, bankruptcy or insolvency or is absent from three consecutive meetings. However, the wording of the Gasfields Commission Bill seems to draw more on the *Government Owned Corporations Act* 1993, which uses the same phrasing ("for any reason or none") in sections 39(2), and section (16) as does section 474(3) of the *Residential Tenancies and Rooming Accommodation Act* 2008 in relation to the Board of the Residential Tenancies Authority.

Section 17 (2) – In ensuring that any interests are disclosed, QRC cannot see a reason to differentiate between the disclosure to all commissioners in the case of the chairperson under (2)(a) versus the disclosure to the chairperson alone in the case of part-time commissioners. QRC suggests that (2)(b) be deleted.

Section 20 – QRC notes that a quorum for the purposes of a commission board meeting is 4 [s20(4)], but that in section 8(1) the maximum membership is 7, and in the absence of any dual portfolios, the minimum membership is 4 [s8(2)(b)]. Given the requirement to meet at least six times a year [s18], QRC suggests that some contingency may need to be made for a quorum to be achieved if there are only 4 commissioners.

Section 21 and 22 – the two sections seem to establish parallel processes for seeking first information [s21] and then advice [s22]. In the absence of a reason for maintaining this distinction; QRC suggests that the two sections be merged to cover both types of request under the same process. Further, QRC suggests that the Bill should consider describing a process of determining what a reasonable period might be for providing the information or advice.

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QRC is concerned that the definition of confidential information referenced in both sections, as defined in the dictionary on page 23, is inadequate in that it doesn't anticipate the need to protect commercially sensitive or proprietary information which is provided to the commission. QRC suggests that this definition needs to be amended to specifically address the issue of treating commercially in confidence material appropriately.

Section 23 – As drafted, this section has considerable ambiguity in the tension between part (1) and (2). While part (1) instructs that a government entity "must consult with the commission... during the development" of "policy or legislation intended to affect the onshore gas industry"; whereas part (2) would seem to undo much of that compulsion by clarifying that subsection (1) "is directory only".

Given the emphasis placed in the Deputy Premier's speech in introducing the Bill (page 2754 of Hansard 27 November 2012) that the commission "has the teeth it needs to get the job done", QRC questions whether subsection (2) undermines an important aspect of the Bill's intent. QRC can understand the need for some latitude as there will be policies and decisions which will affect the industry where the Government may not wish to consult with the Commission – for example royalty increases, however QRC suggests that subsection (2) does not seem to strike the appropriate balance.

Section 24 – the phrase "relevant material" is presented in this section in bold italics, yet the term is not defined in the dictionary in schedule 1.

Further, in subsection (2), QRC suggests that given the powers of the commission to compel prescribed entities that it would be useful to describe a process for deciding what is a "reasonable period" for a response.

Subsection (3)(c) and (3)(e) both reference "confidential information" and QRC again recommends that the current Bill's dictionary definition be redrafted to describe the need to protect commercial in confidence information.

Section 25 – once again in subsection (2), QRC recommends amendment to the definition of "confidential information". Further, QRC suggests that it might be prudent to add to this subsection a process for the commission to check with the source of information whether they regard it as confidential *before* publishing that information.

Section 28 – Given the important role of the general manager, QRC questions subsection (3) which allows that person to be removed from office "at any time" and "for any reason or for none". As noted in the discussion under section 13, there is a range of approaches adopted in other legislation and given the importance of the role of general manager, QRC suggests that this discretion should perhaps be exercised by the Minister rather than the commission.

Subsection (4) is oddly structured in referencing section 16 in describing the appointment of the general manager. QRC suggests that the Committee seek assurance from the Office of Queensland Parliamentary Counsel that this cross-reference doesn't generate unexpected consequence, for example would the application of subsection (8) (appointing an acting general manager) still invoke section 16?

Section 33 – Subsection (4) part (c) encompasses a description of prosecutions undertaken as part of the Annual Report. As the functions of the commission in section 6 make no reference to prosecutions, QRC assumes that section 33 will need to be amended. Once again, subsection (6) makes reference to confidential information and QRC repeats the recommendation that this definition be amended.

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Section 34 – the ability to delegate any of the chairperson's functions or powers to a part-time commissioner is a considerable one; particularly in light of the broad drafting of section 7 which grants "powers necessary or convenient to perform the commission's function". QRC questions whether the delegation process should be formalised to avert the risk of misunderstandings.

Section 35 – QRC suggests that rather than referencing the entire Act, that this section should be amended to reference to specific sections which provide for the commission to request information – for example sections 21,22 and 24. That would provide a framework around the commission formally requesting information in writing, which could help to prevent subsection (2) being invoked by a person's statement rather than the provision of formal written advice or information.

Section 36 - Similarly for subsection (3)(a), QRC suggests that advice that information is false or misleading should be provided in writing rather than telling the chairperson.

Section 37 – Once again, QRC notes the need to amend the definition of confidential information. Further QRC suggests that subsection (2) should be amended so that parts (a), (b) and (c) are described as "and" rather than "or" so that all three conditions must be met before confidential information is revealed.

Section 43 – subsection (2) describes the commission's powers with reference to part 2B of *the Statutory Bodies Financial Arrangements Act 1982*. QRC's reading of that section suggests that perhaps only sections 13 and 13A of part 2B of that Act would be relevant to the commission's operations. If that is the case, then QRC suggests that perhaps a more specific reference would help to prevent future misunderstandings.

Section 44 – QRC suggests that it is very unusual for legislation to establish an independent statutory authority to also make provisions for regulations to be subsequently made under that Act. QRC suggests that this section could usefully provide some guidance as to the type of regulations which might be appropriate and also the process by which Governor in Council might approve such regulations.

Dictionary – schedule 1 – the definition of the ***onshore gas industry*** is essential to understanding the scope of the Commission's role. The definition is a bit circular in that it relies on the definition of ***onshore gas operator*** and also ***petroleum***. The definition of petroleum then references section 10 of the Petroleum and Gas Act.

> ***onshore gas industry*** means the businesses that—
> (a) carry out the exploration or production of petroleum, within the meaning of the *Petroleum and Gas (Production and Safety) Act 2004*, on land within Queensland (other than submerged land); or
> (b) carry out the transportation of petroleum, within Queensland, using a pipeline with the meaning of the *Petroleum and Gas (Production and Safety) Act 2004*, section 16.

> ***onshore gas operator*** means an entity that—
> (a) carries out the exploration or production of petroleum, within the meaning of the Petroleum and Gas (Production and Safety) Act 2004, on land within Queensland (other than submerged land); or

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(b) carries out the transportation of petroleum, within Queensland, using a pipeline with the meaning of the Petroleum and Gas (Production and Safety) Act 2004, section 16.

petroleum see the *Petroleum and Gas (Production and Safety)Act 2004*, section 10

Section 10 is quite a complex definition. It seems to define petroleum partly by exclusion, but clearly includes underground coal gassification, gassification, and hydrocarbons. It seems to define petroleum as a hydrocarbon s10(1)(a) which is produced s10(1)(b). The emphasis on production of petroleum (which is also echoed in the *Gasfields Commission Bill*) means that section 15 of the *Petroleum and Gas Act* may also be considered, specifically:

15 When petroleum is *produced*

(2) If, under the Mineral Resources Act a coal or oil shale mining lease holder mines coal seam gas, for this Act, the lease holder ***produces*** it

QRC suggests that there are a number of activities occurring on a mining lease which would satisfy this definition of petroleum being produced under section 15(2) which could see the Commission's scope encompass pre-mine drainage, the production of incidental coal mine gas and a whole range of other activities which have no relation to the Commission's purpose (section 2) to "manage and improve the coexistence of landholders, regional communities and the onshore gas industry."

QRC can see no reference in the explanatory notes or the second reading speech which considers such a broad application of the Commission's powers and suggests that this broad definition may be inadvertent. For the avoidance of doubt, QRC suggest that gas activities within coal tenures should be excluded. The area of coal production tenures would be very small and in most cases the coal companies will already own the land, so the potential for friction with landholders and regional communities will be limited.

In summary, not withstanding a number of clarifications and refinements suggested to specific sections of drafting, QRC remains supportive of the role of the GasFields Commission and of the broad thrust of this Bill. Perhaps the only recurrent concern which bears restating is the importance of ensuring that commercially sensitive information is appropriately managed by the Commission. QRC remains concerned that the current definition of confidential information appears inadequate.

If you have any questions about this submission, the contact officer at QRC is Andrew Barger, who can be contacted on 3316 2502 or andrewb@qrc.org.au

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