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The Research Director
State Development, Infrastructure and Industry Committee
Parliament House
George Street
Brisbane QLD 4000

BY EMAIL sdiic@parliament.qld.gov.au

Dear Sir/Madam

Regional Planning Interests Bill 2013 submission

The Australian Petroleum Production & Exploration Association (**APPEA**) welcomes the opportunity to provide a submission to the Queensland Parliament's State Development, Infrastructure and Industry Committee (**Committee**) on the *Regional Planning Interests Bill 2013* (Qld) (**Bill**).

APPEA is the peak national body representing the Australian upstream oil and gas industry. APPEA member companies collectively produce around 98 per cent of Australia's oil and gas. In Queensland, APPEA's membership includes most of the large, medium and small companies with exploration and production interests in oil, condensate, liquefied petroleum gas, conventional gas, coal seam gas and liquefied natural gas developments. Further details about APPEA can be found at our website: www.appea.com.au.

APPEA's detailed submission on the Bill is attached to this letter. In brief however APPEA is concerned that the Bill as drafted would have a severe, but we believe unintended, impact on investment in Queensland's petroleum industry. APPEA considers that passage of the Bill in its current form would see the halting of a large section of Queensland's petroleum industry. This would have a hugely detrimental effect on Queensland's petroleum industry, with a commensurate knock-on effect to the State economy.

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APPEA urges the Committee to closely review the attached submission, and the submissions made by its individual members to the Committee on the Bill.

APPEA and our members look forward to working with the Committee and the Queensland government to consider the Bill and ensure that it is a proper reflection of the government's and the resources and agricultural industries' goal of coexistence.

If you would like to discuss any of the matters raised in this letter please contact Mr Matthew Paull on mpaull@appea.com.au or (07)3231-0502.

Yours sincerely

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appea the voice of australia's oil and gas industry

Submission

January 2014

Regional Planning Interests Bill 2013

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KEY POINTS

- APPEA supports the Queensland government's promotion of coexistence and wishes to continue working closely with government, the agricultural industry, rural and regional communities and other stakeholders to develop a regional planning regime that improves outcomes for all concerned.

- APPEA is concerned however that the Regional Planning Interests Bill 2013 (**Bill**) as drafted could have a severe, but we believe unintended, impact on investment in Queensland's petroleum industry.

- The key reason for APPEA's concern is that the exemptions and transitional provisions in the Bill are ineffective for petroleum projects, meaning that already approved (and in many cases operational) projects within affected areas may be required to obtain approvals under the Bill, or cease operation until they do so. Given that there is the potential for disparate property-scale approvals to be required under the Bill, this may entail hundreds if not thousands of separate approvals for existing operations. Each approval would then appealable by any 'affected landowner' and (as discussed in the body of the submission) because landscape-scale assets are regulated by the Bill, 'affected landowners' could number in the hundreds or even thousands for a single approval. Further, the approvals framework in the Bill does not provide for approval within a set timeframe, and operations are stayed if an appeal in respect of an approval decision is lodged.

- Other concerns APPEA has with the Bill are as follows:

    1. The Bill appears founded on the incorrect assumption that agriculture and other public interest values in Queensland must take priority over petroleum development, and that, in a case of direct conflict, petroleum development is likely to be refused.

    2. The Bill sets out only one process through which all resource activities occurring on areas of regional interest (from a large coal mine to a one hectare well-pad) must be assessed and approved. Unless a resources activity is exempt, the proponent must obtain a regional interests authority through the complex, open ended, and potentially lengthy process in Part 3 of the Bill.

    3. The Bill allows for regulation of both landscape-scale and individual property-scale regional interests on a tenure-by-tenure/property-by-property basis, which will allow for fragmented regulation of landscape-scale public assets. Landscape-scale assets regulated by the Bill are generally already strictly regulated, because their significance has already been recognised.

    4. The Bill's proposed method of dealing with duplication of legislation, approvals and conditions is overly simplistic and will lead to an increased regulatory burden for both government and industry.

    5. The appeal process outlined in the Bill largely duplicates existing processes administered by the Land Court and vests those processes in an entirely different court which has very limited resources industry experience (the Planning and Environment Court). Further, the operation of decisions under the Bill is stayed

pending the outcome of any appeal made in respect of that decision – which is particularly troubling considering the potentially very large number of persons that may appeal decisions as 'affected land owners'.

6. Finally, the Bill proposes to overuse regulations in an inappropriate way, such that important aspects of the Bill are still unknown.

- Passage of the Bill in its current form would therefore see the halting of a large section of Queensland's petroleum industry until approval under the Bill can be obtained. Given the potential for a large number of approvals and appeal actions in respect of each approval, it is unlikely that approvals under the Bill for both current and future petroleum operations could be obtained in a timely manner. This would have a hugely detrimental effect on Queensland's petroleum industry, with a commensurate knock-on effect to the State economy.

- APPEA considers that the above issues can be addressed whilst maintaining the government's intent for the Bill. In this submission, APPEA provides comments and suggestions that would make the Bill function in a manner we believe is more consistent with the goal of 'coexistence'.

- APPEA believes that the regional planning framework should:

    1. Recognise the ability of resource companies and landholders to negotiate workable coexistence outcomes without regulatory interference.

    2. Rely on existing processes, systems, regulation, and legislation as much as possible and minimise the need for additional red tape and/or assessment processes.

    3. Provide a high degree of certainty and appropriate transitional provisions to grandfather already approved and well advanced projects to enable investment decisions to continue to be made with confidence.

    4. Regulate land in the same way irrespective of ownership.

    5. Ensure that approvals and appeals processes have clear and firm timeframes and not be open ended.

- APPEA notes with concern that the Queensland government has chosen to progress the Bill while associated regulations are still being drafted. As outlined above, the Bill sets out a framework with much of the detail of how the system will operate left to those regulations. As such, this submission is based on only partial knowledge of the new regional planning regime proposed by the government. It is essential that the detail of the regulations proposed to be made under the Bill is released before the parliamentary process for the Bill concludes. APPEA urges the government to release this information as soon as possible. APPEA and its individual members reserve their right to make further submissions on the regional planning framework as further details of the framework are outlined and developed through the parliamentary process.

QUEENSLAND'S PETROLEUM INDUSTRY KEY FIGURES

Queensland has enormous quantities of natural gas and the vast potential of these resources is now starting to be realised. The Queensland petroleum industry is involved in exploration and development activities in most parts of Queensland, with a particular focus on south-western and eastern Queensland – specifically, the Cooper-Eromanga Basin, the Bowen and Surat Basins and, more recently, the Galilee Basin.

Natural gas was first produced in Queensland in 1996 and economic demonstrated resources (**EDR**) have expanded rapidly in recent years. At the end of 2011 EDR for natural gas in Queensland was 35,905 petajoules (**PJ**) (or 32.6 trillion cubic feet (**tcf**))[1]. Queensland holds more than 93 per cent of Australia's current reserves of natural gas from coal seams. Total identified resources of natural gas from coal seams are estimated to be around 223,454 PJ (203 tcf), including sub-economic resources (**SDR**) estimated at 65,529 PJ (60 tcf) and inferred of 122,020 PJ (111 tcf).

Significant additions to Queensland's resources estimates are coming at regular intervals. As a result, three liquefied natural gas (**LNG**) projects have reached a Final Investment Decision in Queensland in recent years – the Queensland Curtis LNG[2], Gladstone LNG[3] and Australia-Pacific LNG[4] projects. A fourth CSG-LNG development, proposed by Arrow Energy, has recently received State and Federal government EIS approvals.

The further development of the coal seam gas (**CSG**) industry and the development of a LNG industry will bring a range of enduring economic, employment, government revenue and social benefits to Queensland and especially to a number of regional areas of the State.

In 2012, APPEA commissioned ACIL Tasman to pre are a study on the development of the Queensland CSG industry and an associated Queensland LNG industry. This study, *Economic Significance of Coal Seam Gas in Queensland*[5], was released on 6 June 2012 and found that the expansion of Queensland's gas industry could increase Gross State Product by *half a trillion dollars* in the coming decades, boosting employment and wages.

The report also finds in the years 2015 to 2035, the expansion of the Queensland CSG industry could:

- increase real Australian Gross Domestic Product by $515 billion (in nominal terms);
- place downward pressure on wholesale electricity prices, reducing prices by 10 per cent;

[1] Geoscience Australia and Bureau of Resources and Energy Economics (2012), *Australian Gas Resource Assessment 2012*, 14 May (available at www.ga.gov.au/products/servlet/controller?event=GEOCAT_DETAILS&catno=74032).
[2] See www.qgc.com.au/qclng-project.aspx for further information.
[3] See www.santosglng.com/the-project.aspx for further information.
[4] See www.aplng.com.au/about-project/about-project for further information.
[5] http://www.appea.com.au/wp-content/uploads/2013/05/120606_ACIL-qld-csg-final-report.pdf

- pay up to $32 billion to the Queensland government in royalties and other taxes (in nominal terms);
- pay a further $243 billion in Australian government taxes (in nominal terms);
- result in more than 20,000 full-time equivalent jobs each year by 2035; and
- see Queensland real incomes rise by $342 billion; or $28,300 per person.[6]

[6] Further information on the ACIL Tasman study is available at www.appea.com.au/wp-content/uploads/2013/05/120606_ACIL-qld-csg-final-report.pdf and a copy of the study can be found at Attachment 2 to this submission.

GENERAL COMMENTS ON THE BILL

APPEA appreciates that the Queensland government has, since taking office, sought to actively promote the concept of 'coexistence' between the resources industry, the agricultural industry, and rural and regional communities. The coexistence concept is one that the Queensland petroleum industry has embraced as a necessary prerequisite to obtaining the social licence to operate in this State. As a result, petroleum activities throughout Queensland already coexist with agriculture and other land uses, as well as complying with strict environmental standards.

Coexistence benefits the petroleum industry, agriculture and rural and regional communities, by facilitating investment in regional infrastructure and capability by allowing for managed development to proceed. Coexistence allows for the growth of traditional sources of production, as well as encouraging diversification. An example of this is the partnerships between the CSG industry and the agricultural industry for provision of associated water for irrigation purposes.

To consolidate efforts at coexistence, a supportive regulatory framework is required. From APPEA's perspective, the overall objective of that framework must be to provide the certainty needed to underpin investment and growth in the petroleum and agricultural industries and regional communities. The framework must establish clear and consistent principles, reduce overlap and duplication of other regulation, and establish predictable, transparent, efficient and cost-effective decision pathways.

APPEA recognises that the Queensland government's intent is to re-create Queensland's coexistence framework in order to achieve these aims, through the Bill and the new system of statutory regional plans currently under development.

Despite this intention, the provisions of the Bill as currently drafted introduce uncertainty and complexity into the existing regulatory environment. APPEA's assessment is that enactment of the Bill in its current form would have a severe – but we believe unintended – impact on both existing operations and future growth in the petroleum industry. However, with appropriate amendment, APPEA considers that the framework proposed in the Bill has the potential to provide a sound underpinning for coexistence between the resources and agriculture industries in Queensland.

The following points provide a brief summary of the broad areas of concern for APPEA's members in respect of the Bill, and how these concerns might be addressed by minor changes to the Bill. A detailed, clause-by-clause analysis of the Bill prepared by APPEA with assistance from external legal counsel is contained in Attachment 1 to this submission.

IS PETROLEUM DEVELOPMENT LOWER PRIORITY THAN OTHER ACTIVITIES?

The Bill's underlying assumption appears to be that agriculture and other public interest values in Queensland must take priority over petroleum development, and that, in a case of direct conflict, petroleum development is likely to be refused.

The ability under the Bill for the chief executive to refuse petroleum development runs contrary to the concept of coexistence referred to in the purpose of the Bill (clause 3), which should be the underlying objective of the new regional planning framework.

The history of the concept of coexistence in Queensland shows that petroleum development, expansion of the agricultural sector, growth of regional communities and protection of environmental values are not 'either/or' propositions. These varying elements can – and already

do – exist side-by-side and in the priority agricultural areas identified in the regional plans. For example, towns in the Darling Downs region are booming as a result of the expansion of the petroleum industry and landholders are benefiting from a new source of non-farming income, employment opportunities, and new supplies of water.

APPEA suggests that the Bill should recognise coexistence as a proven concept, and not allow for petroleum activities to be refused outright in areas of coexistence. Rather, government should set the benchmark for operations and give the opportunity to industry to demonstrate it can achieve that benchmark.

Suggested amendments to the Bill

- The ability of the chief executive to refuse an application for a regional interests authority under clause 48(1)(b)) of the Bill should be removed.

NARROW AND UNCERTAIN EXEMPTIONS

APPEA appreciates that the government has included some exemptions from the requirement to obtain a regional interests authority in the Bill. In particular, the inclusion of an exemption recognising the situation where a proponent and the land owner have negotiated and entered into an agreement (such as a Conduct and Compensation Agreement) by which both parties agree on mutually beneficial outcomes in respect of a resources activity on an area of regional interest is positive.

Unfortunately, the exemptions as currently drafted are so narrow and uncertain that do not offer a viable alternative pathway to approval. The key 'agreement of land owner' exemption, for example, is not available where the resources activity will have a 'significant impact' on a priority agricultural area (and what a 'significant impact' is in this context is unclear), or where the activity will have an impact (of any materiality and of any description –positive or negative) on neighbouring land (meaning that only activities that have *no effect whatsoever* on neighbouring land may satisfy the 'agreement of land owner' exemption criteria).

The key transitional exemption, the 'pre-existing resource activity' exemption, may not be available to CSG proponents acting in a cumulative management area (such as the Surat CMA). APPEA notes in this respect that the vast majority of Queensland's CSG industry operates in the Surat CMA – as at June 2012, about 1,700 CSG development wells and about 1,600 CSG appraisal or exploration wells existed in the are.[7] To the extent that these wells are located in a PALU/PAA the key transitional exemption, the 'pre-existing resource activity exemption' may not apply. In any case, this key exemption is unlikely to protect many activities due to its reliance upon 'resource activity work plans', which change over time and which are not recognised for the purposes of Petroleum Pipeline Licenses and Petroleum Facility Licences (meaning that these tenures – many of which have been declared 'State Significant Projects, and which provide crucial services to the domestic gas market and power stations – cannot benefit from the exemption and will require approval under the Bill as soon as it commences).

[7] As recorded in the Department of Natural Resources and Mines online tenure database.

APPEA suggests that the drafting of the exemptions should be amended, clarified and tested with stakeholders to ensure that the exemptions will work as envisaged.

Suggested amendments to the Bill

- Clause 22(1) should be removed as all land should be treated the same irrespective of ownership.
- Clauses 22(2)(b) and 22(2)(c) of the Bill, which qualify the 'agreement of landowner' exemption, should be removed as they are not required. The agreement of the relevant landowner to impacts on his/her land should be sufficient to allow an activity to proceed. Impacts on third parties are already extensively regulated, including under the EP Act.
- The language used in clause 23 of the Bill, relating to the 'activity carried out for less than 1 year' exemption, should be clarified.
- Clause 24 of the Bill, relating to the 'pre-existing resource activity' exemption, should be amended so that is not based upon 'resource activity work plans' (such as work programs or plans of operations). Clause 24(2), which qualifies the broader exemption provided at clause 24(1), should be removed from the Bill as it is unnecessary.

INADEQUATE PROTECTION FOR EXISTING INVESTMENT

The Bill contains transitional provisions relating to the *Strategic Cropping Land Act 2011* (Qld) (**SCL Act**), and also a 'transitional exemption' for existing projects (discussed above). These transitional provisions provide little protection for existing projects and investment by proponents.

APPEA suggests that the following 'grandfathering' provisions should be included in the Bill:

1. provisions protecting already approved and well-advanced (but not commenced) projects (including approved projects that have an EIS);
2. provisions protecting new activities carried out under an existing tenure, where an application is made to amend the EA for the project but no overall additional impact is proposed (as is common);
3. provisions protecting renewal of authorities; and
4. provisions protecting projects from the declaration of areas of regional interest, subsequent to project commencement.

The lack of any effective transitional provisions contained in the Bill means that the Bill risks inconsistency with the fundamental legislative principle as to retrospectivity of regulation, as outlined in the *Legislative Standards Act 1992* (Qld). For investment certainty, the Bill must contain a provision that effectively avoids retrospective imposition of the obligations contained in the Bill to existing resource authorities.

Suggested amendments to the Bill

- The transitional provisions contained in the Bill should be improved and expanded to include the grandfathering provisions outlined above. Clause 24 of the Bill, relating to the 'pre-existing resource activity' exemption, could be removed if more effective transitional provisions are included.

- The SCL-specific transitional provisions contained in Part 8 of the Bill should be expanded so that they incorporate projects and operations that have benefited from the transitional provisions contained in the SCL Act, which is to be repealed.

LACK OF TIMELY APPROVAL OPTIONS

The Bill sets out only one process through which all resource activities occurring on areas of regional interest (from a large coal mine to a one hectare well-pad) must be assessed and approved. Unless a resources activity is exempt, the proponent must obtain a regional interests authority through the complex, open ended, and potentially lengthy process in Part 3 of the Bill.

APPEA acknowledges that some projects that the Bill proposes to regulate will warrant detailed assessment and the provision of appeal rights. However, to avoid unnecessary red tape, APPEA suggests that a two-tier, dichotomous approach to approvals (where a streamlined approval pathway is available to 'low risk' projects, such as those that comply fully with relevant criteria established under regulation) should be established under the Bill. This approach has been adopted successfully under other Queensland legislation.

The approvals process set out currently in the Bill would represent a significant departure from the existing Queensland approvals process, with the very real potential to cause major delays in projects currently under construction, and materially degrading the prospects for yet to be approved projects. Under existing law in Queensland, petroleum proponents have a good degree of investment certainty, and this certainty should not be eroded. We draw the following features of the law to the Committee's attention:

Existing law	**Regional Planning Interests Bill**
There is a defined minimum period for land access of 50 business days from when a CSG company commences land access negotiations. Landholders and proponents may refer compensation issues to the Land Court but proponents are able to access land while the Land Court deliberates. Further, there are non-legal dispute resolution processes in place to resolve differences prior to approaching the Land Court. These play a very important role as neither CSG companies nor landholders wish to end up in court. The CSG industry has not previously gained access to land by referral to the Land Court, but the existence of a defined minimum access period means that companies can commit to multibillion investments with a high degree of confidence.	There are no timeframes for approvals under the Bill, no alternative dispute resolution process, and should an appeal be lodged in the Planning and Environment Court there is likely to be a stay of operations and a consequential project delay of many months.
There are known timeframes for project approvals and little opportunity for litigants to delay projects, for improper or inappropriate	The Bill establishes new classes of land within which there are no clear timeframes for approval. Further, as any affected landholder

purposes, via legal appeals.	can appeal decisions under the Bill and projects are halted while appeals are on foot there is great opportunity for litigation with the sole purpose of project delay. Litigation of this nature is repeatedly touted by the environmental lobby as an effective way to frustrate and delay development in the resources industry and is a real risk to Queensland's economic prosperity.
The provisions in respect of grant of an environmental authority (**EA**) under the *Environmental Protection Act 1994* (Qld) (**EP Act**), in respect of grant of a development approval (**DA**) under the *Sustainable Planning Act 2009* (Qld) (**SPA**), and for approval under the SCL Act allow for low impact activities to be subject to less detailed assessment and approval, for example through the grant of a standard approval with standard conditions, or through self-assessment by the proponent and compliance with a standard conditions code. This means that known and relatively clear environmental conditions are applied to projects. APPEA is also successfully negotiating standard environmental conditions for the petroleum industry with the Department of Environment and Heritage.	While we note that conditions for regional planning will be set by regulation and therefore not in the Bill, we urge the Committee to support the development of 'coexistence criteria' for petroleum projects in line with government moves to establish such conditions in other areas of regulation. The creation of coexistence criteria provide a clear, stable and well thought through basis for operating and enable government to clearly articulate it's expectations. The alternative, case-by-case negotiation of conditions between departmental staff and proponents, is opaque to the public and leads to constantly varying conditions between and within projects.

Suggested amendments to the Bill

- Part 3 of the Bill should be amended to include a second tier of approvals for low impact or temporary activities. This second tier approval would entail an abbreviated approval process (for example, without the requirement for notification or referral to an assessing agency) and would not be subject to mitigation requirements under the Bill.
- The Bill should include more definite timeframes, including for the giving of a requirement notice (clause 44), the chief executive's decision on an application (clause 47), and the provision of notice regarding that decision to the applicant (clause 52).

LANDSCAPE-SCALE IMPACTS REGULATED AT AN INDIVIDUAL PROPERTY SCALE

The Bill's main objective is to manage the impacts of resource activities in 'areas of regional interest'. These 'areas of regional interest' may be landscape-scale and affect the public interest (eg. underground water alluviums), or individual property-scale. The Bill as currently drafted does not recognise this distinction. Instead, the Bill allows for management of landscape-scale, public assets or interests on a tenure-by-tenure/property-by-property basis. This management approach is out of step with current trends of regional and cumulative assessment of landscape-scale

impacts. The approach is also problematic because it removes some of the influence that the government currently has over use of and impacts on landscape-scale assets.

Landscape-scale assets, such as underground water alluviums, should be regulated by government at a broad scale, and impacts on them should be assessed and approved holistically. Allowing separate regulation of landscape-scale impacts at the individual property-scale, as the Bill proposes, can only lead to fragmented, inconsistent and ultimately detrimental outcomes – for government, industry, landholders and the public assets the Bill is aiming to protect.

In addition, the landscape-scale assets regulated by the Bill are generally already strictly regulated, because their significance has already been recognised. For example, impacts on the underground water alluviums by CSG proponents are extensively regulated by provisions of the *Water Act 2000* (Qld) (**Water Act**), the EP Act, and the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**).

APPEA suggests that, wherever possible, the Bill should not duplicate existing regulatory provisions, particularly those which already set a high bar for compliance by proponents. Landscape-scale assets, such as underground water alluviums, should remain regulated by the Water Act and the EP Act, but should not be subject to this Bill.

Suggested amendments to the Bill

- Aspects of the Bill which attempt to regulate landscape-scale assets should be removed. An example of this is clause 8(2)(b) of the Bill, which provides that a priority agricultural area may include 'an area that contains a source of water... necessary for the ongoing use of land in the proposed area for a priority agricultural land use'.

DUPLICATION OF LEGISLATIVE REQUIREMENTS, APPROVALS AND CONDITIONS

The Bill applies despite any resource Act, the EP Act, SPA and the Water Act, and the conditions of a regional interests authority will prevail over any conditions of another authority or permit to the extent of any inconsistency.

APPEA appreciates that the government has included these provisions in part to resolve an issue raised by industry at the initial consultation stage regarding possible conflicts between legislative requirements, approvals and conditions as a result of the Bill. The example given was that of a proponent's resource interests authority may require the placement of wellpads on the edge of a paddock (which is an outcome specified in the "coexistence criteria" published by government). However, paddock edges are also often buffer zones for environmentally sensitive areas. The proponent's EA may therefore forbid the placement of wellpads on the paddock edge, as required by the regional interests authority.

Unfortunately, a simplistic provision such as that stating that 'the conditions of a regional interests authority will prevail over any conditions of another authority or permit to the extent of any inconsistency' does not address this issues, and only causes further problems.

'Inconsistency' is a word that can have several meanings, and it will be difficult to work out which of the various legal tests used to determine inconsistency apply in a given situation. For example, if it is possible (but very expensive or difficult) to comply with EA and Bill conditions, are the conditions inconsistent? If a regional interests authority contains conditions about water, do all the conditions of the EA relating to water become ineffective as the regional interests authority has 'covered the field'?

A further unintended consequence is that an EA that relates to activities carried out on many individual lots may be subject to many slightly different conditions concerning the same issues. For example, a pipeline may be subject to one set of weed management conditions under the EA for the whole pipeline. This is a practical solution. However, individual regional interests authorities in respect of properties along the length of the pipeline may impose further (and different) weed management conditions on the pipeline, on a property-by-property basis. The Bill contains a provision (in clause 100) for the EA to be amended to reflect the regional interests authorities' conditions in this instance – but this could be a huge task. This situation will be difficult for proponents and government to manage, and compliance and enforcement will become almost impossible.

APPEA suggests that government consider this issue further in consultation with industry. If a second tier approval is included in the Bill (see comments made above) then this may assist with the issue, as the conditions imposed on regional interests authorities under the Bill could be made relatively uniform through a coexistence criteria/standard conditions process.

Suggested amendments to the Bill

- Clauses 5 and 56 of the Bill should be reviewed and amended to ensure that they do not impose any additional regulatory and administrative burden on government and industry.

DUPLICATIVE AND OPEN-ENDED APPEAL PROVISIONS

The appeal process outlined in the Bill largely duplicates the existing tenement, land access and EA appeal processes currently administered by the Land Court under the resources Acts and the EP Act, but in an entirely different court which has very limited resources industry experience (the Planning and Environment Court).

It is unnecessary to create an entirely new appeal process in a different court under the Bill, when that process will consider very similar issues – such as land use and coexistence – to those already considered by the Land Court. APPEA suggests that one court – the Land Court – should be empowered to hear all of these matters, preferably through concurrent proceedings. This will not only encourage efficiency in court processes, but will assist development of a body of jurisprudence in the area, and will assist practitioners and members of the Land Court to further develop expertise in relation to these issues.

A second issue in respect of appeals is the fact that any decision in respect of a regional interests authority is stayed under the Bill pending the outcome of any appeal of that decision. This provision appears unnecessary, and has the potential to cause substantial delays for proponents (particularly in light of the broad standings for appeals, discussed below, and the fact that appeals under the Bill are proposed to be made to the Planning and Environment Court – where appeals can extend for many years).

Assuming that third party appeals remain available for low impact activities, APPEA also suggests that these activities should be able to proceed under the Bill, pending the outcome of an appeal in respect of those activities, provided that the activities are immediately concluded and rehabilitated if the outcome of the appeal is that the activity should not proceed.

Suggested amendments to the Bill

- Clause 55 should be amended so that a regional interests authority takes effect on the day it is issued (unless stated otherwise).

- Clause 68 of the Bill should provide that the Land Court, rather than the Planning and Environment Court, is empowered to hear appeals under the Bill.

- Clause 72 of the Bill should be amended to provide that an appeal against a decision does not affect the operation of the decision, including by stay of the decision (unless the decision is expressly stayed by a court). At the very least, a provision of this type should be available to 'low impact activities' conducted under the Bill.

INAPPROPRIATELY BROAD STANDING FOR APPEALS

An appeal in respect of the grant of a regional interests authority can be made not only by persons owning land within the actual area of the resource activity, but also by persons owning land that may be adversely affected by the activity, because of their proximity to the land where the activities will be carried out and the impact the activity may have on an area of regional interests. This is a complicated test with an exceptionally, and we believe unintended, broad effect.

For example, where the area of regional interest protected is a landscape-scale asset, such as an aquifer or underground water basin, then this provision grants any person drawing water from that aquifer or underground water basin the right to appeal a regional interests decision in respect of that asset. Given that there are thousands of persons that fit this description, and the potential for hundreds if not thousands of activities to require a regional interests authority under the Bill, there is potential for many thousands of appeal actions under the Bill. This is an unacceptably broad class of persons who may appeal a regional interests authority decision and creates the risk of abuse of the appeals process under the Bill, of the sort detailed in strategies to frustrate resource industry development promulgated by the environment lobby.

APPEA recognises and supports the desire of adjacent landholders and regional communities to 'have their say' on development in their region. However, this can be achieved in forums other than an appeal court established under the Bill, where the consequence of 'having a say' can mean years of delay to projects, and millions of dollars of lost productivity and investment, for no public gain.

APPEA suggests that the appeal process under the Bill should be available only to the applicant for the regional interests authority (ie. development proponents) and owners of the land the subject of the regional interests decision. 'Adversely affected third parties' should not be able to appeal under the Bill. Alternatively, if an 'adversely affected' third party is allowed to participate in the appeal process, then this should only be available if the third party has made a properly made submission about the relevant application.

APPEA also suggests that costs disincentives should be included in the Bill, to ensure that appellants do not commence proceedings for an improper or inappropriate purpose.

Suggested amendments to the Bill

- Sections 68 and 69 of the Bill should be amended to remove the ability for 'affected land owners' to appeal in respect of a regional interests decision.

- Part 5 of the Bill should be amended to include an ability for the court to make costs orders against appellants who are found to have commenced litigation for an improper or inappropriate purpose.

OVERUSE OF REGULATIONS

APPEA understands that using regulations, rather than primary legislation, to deal with details of a regulatory framework can provide valuable flexibility for government. However, the Bill proposes to overuse regulations in an inappropriate way. For example, regulations may prescribe new areas of regional interest, regulated activities, assessing agencies for regional interests, which applications require notification, fees, and criteria against which applications will be assessed.

Overuse of regulations is an issue in two respects:

1. Because of this heavy reliance on regulations, important aspects of the regional planning regime, and the extent of application of the regime, are unknown now, and can be reviewed, updated and changed at will by government in future, with little or no consultation or Parliamentary scrutiny.

2. Regulations made under the Bill cannot prevail over other legislation (such as the Water Act), leading to the possibility that proponents will be required to comply with inconsistent regimes, or that they will be permitted to carry out projects under one regime but forbidden under others.

APPEA suggests that some elements that are currently set to be outlined in regulation need to be included in the Bill to protect landholders and resources proponents. Further, the detail of the regulations proposed to be made under the Bill should be released before the parliamentary process for the Bill concludes, so that all stakeholders have an opportunity to review and comment on the proposed regime in its entirety.

Suggested amendments to the Bill

- Clauses within the Bill that leave elements to be 'prescribed under a regulation' should, wherever possible, be amended to instead prescribe those elements in the Bill itself. Examples of this are clauses 8, 10, 11, 34, 35, 39, 40, 41, 49 and 61.

ATTACHMENT 1 – COMMENTS AGAINST EACH CLAUSE OF THE BILL

CLAUSE NUMBER/NAME	COMMENTS
3 – Purposes and achievement	Use of the undefined and very broad phrase 'economic, social and environmental prosperity' is unnecessary and introduces uncertainty into this key clause, which may in future be used by courts as an aid to interpretation. APPEA suggests that clause 3(1)(a) should read simply 'identify areas of Queensland that are of regional interest'. APPEA suggests that clause 3(2) should also reference impacts of proposed 'regulated activities' (ie. activities other than resource activities which will be regulated by the Bill). There are several instances such as this throughout the Bill of a missing reference to 'regulated activities'.
5 – Relationship with resource Acts and Environmental Protection Act	APPEA suggests that the title of the clause should be simply 'Relationship with other Acts'. This clause is an example of the Bill's failure to properly deal with duplication of legislative requirements, approvals and conditions. APPEA queries whether a 'restriction or requirement' under the Bill includes a condition, and what happens if it is impossible for a resources authority holder to comply with both sets of requirements. Is this 'inconsistency'?
8 – Priority agricultural area 9 – Priority living area 10 – Strategic cropping area 11 – Strategic environmental area	The references in clause 8(1)(b) and 8(3)(b), 10(4) and 11(1)(b) to elements of the Bill being able to be 'prescribed under a regulation' are examples of the inappropriate overuse of regulations under the Bill. The breadth of the definitions (in particular for 'priority agricultural area' and 'strategic environmental area') contained in these clauses is concerning. The definitions contain no materiality threshold or significance criteria – for example, 'likely to have a negative impact' (in clause 8(2)(c)) does not imply any significant (let alone material) impact and it is impossible to determine with any certainty what areas will be caught. In addition, some phrases used in these clauses are essentially meaningless without further definition. In clause 9, the nature and extent of the 'buffer' imposed through the priority living area process is not specified. In clause 11, reference is made to section 9 of the EP Act to assist with understanding what is 'environmental value' – but this does not assist with determining

CLAUSE NUMBER/NAME	COMMENTS
	what is 'strategic environmental value'. These clauses need more detail, to give more certainty. The definitions as currently worded allow for much if not all of the State to be mapped or prescribed under the Bill, which does not seem to have been the intention. Given that mapped/prescribed areas under the Bill may trigger an assessment process by which resource development may be refused outright (see the recent example of the effective prohibition of mining activities in parts of the Cape York under the Cape York Regional Plan), the breadth of these definitions is concerning for APPEA and the petroleum industry. In relation to clause 10, if the SCL trigger mapping is retained as a means of identifying 'Strategic Cropping Areas', then the accuracy of this mapping must be improved (as per discussions occurring recently in the context of the Review of the Strategic Cropping Land Framework conducted by DNRM) and a way of amending mapping errors, and 'validating' mapping must be introduced into the Bill. APPEA queries why 'Strategic Environmental Areas' are to be regulated under this Bill. Areas with 'environmental value' (whether strategic or not) can already be effectively protected and managed under the auspices of the EP Act. APPEA suggests that the Bill's regulation of 'Strategic Environmental Areas' should be removed. Finally, APPEA queries the inclusion of the dual categories of 'Strategic Cropping Areas' and 'Priority Agricultural Areas' under the Bill. These areas of regional interest would seem to duplicate each other in at least some respects.
12 – Resource Act and resource activity	These definitions replicate those used in the SCL Act, which the Bill proposes to repeal. The Bill should use the same definitions as in the EP Act (recently amended and improved following the greentape reduction legislative program). This approach will ensure legislative consistency going forward and avoid arguments that the Acts regulate different activities.
13 – Resource authority	
17 – References in provisions	Clauses 17(4) – (6) replicate clauses used in the SCL Act, which the Bill proposes to repeal. These clauses need further consideration in the context of the Bill. Areas that need further consideration include the following:

CLAUSE NUMBER/NAME	COMMENTS
	(a) Resource authorities may relate to very large areas of land, not all of which will be in areas of regional interest. A deeming clause like clause 17 can have unintended consequences, and it may not operate correctly in the context of the Bill. For example, is clause 17(4)(b) supposed to work with clause 23(2)(a) to clarify the reference to 'land' in clause? For the purposes of clause 17(4)(b), it is also noted that clause 30 of the Bill does not expressly require that 'land the subject of the application' be identified in the application for a regional interests authority. (b) Under section 17(2), even minor/administrative amendments to a resource authority will trigger a regional interests assessment. This provision essentially renders any grandfathering or transitional provisions under the Bill as useless, and will be very problematic for operators. For example, in 2012, a major oil and gas producer in Queensland had over 130 changes to resources authorities approved (including new applications, transfers, amendments, later work programs and later development plans). This clause is also out of step with clause 17(3), pursuant to which only a 'major amendment' to an environmental authority will trigger a regional interests assessment.
18 – Restrictions on carrying out resource activity or regulated activity 19 – Failure to comply with conditions	As the Explanatory Notes to the Bill acknowledge, the maximum penalties imposed under these clauses are "extremely high". The Explanatory Notes equate the maximum penalty under these clauses of 6250 penalty units to $687,500. This penalty amount would apply to an individual committing the relevant offence. Where a corporation commits the offence, the corporation will be subject to a maximum penalty of $3,437,500 (see section 181B of the *Penalties and Sentences Act 1992* (Qld), which allows a court in the absence of specific provision to the contrary to impose a maximum penalty on a corporation of five times that specified for the individual). By way of comparison, a corporation committing the offence of wilfully and unlawfully causing serious environmental harm under the EP Act is subject to a maximum fine of $2,290,750 – more than $1 million less than the maximum penalty imposed under clause 18 of the Bill. A corporation committing the offence of wilfully contravening a

CLAUSE NUMBER/NAME	COMMENTS
	condition of its environmental authority under the EP Act is subject to a maximum fine of $1,100,000 – more than $2 million less than the maximum penalty imposed under clause 19 of the Bill. APPEA suggests that the maximum penalties imposed under these clauses should be reconsidered.
22 – Exemption: agreement of land owner	The inclusion of an exemption for situations where the landowner and the proponent can agree on the carrying out of an activity on an area of regional interest is positive. Unfortunately, this key exemption is limited and rendered uncertain by the language of clauses 22(1), 22(2)(b) and 22(2)(c), as all of clause 22(2)(a), (b) and (c) must be satisfied for the exemption to be established.The problems with clauses 22(2)(b) and (c) are as follows: (a) The phrase 'significant impact' (used in clause 22(2)(b)) is not defined in the Bill. The phrase is also not used in any substantive way in Queensland law or policy documents, and there is no consistent body of case law that would assist landholders and proponents to understand what the phrase would mean in this context. The phrase is used under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**) but its use in that context is supported by numerous guidelines and case law. (b) The word 'impact' (used in clause 22(2)(c)) is defined in clause 28 of the Bill, but it is unclear whether the definition given in that clause for 'impact' is intended to apply to the use of the word in clause 22(2)(c). In any case, the definition given in clause 28 of the Bill is so broad that it does not assist understanding of clause 22(2)(c) – see commentary on clause 28, below. The provision of clause 22(3), designed to assist with understanding of clause 22(2)(c), only leads another question – how do you determine what constitute an impact on the 'suitability' of land to be used for a PALU? (c) Other than the inclusion of the word 'significant' in clause 22(2)(b), the provisions of clauses 22(2)(b) and (c) contain no express materiality threshold or significance criteria to assist with determination of the level of impact required. (d) There is no requirement that the impact so caused for the purposes of clauses 22(2)(b) and (c) must be a

CLAUSE NUMBER/NAME	COMMENTS
	negative one, and so positive impacts of a resource activity on land (for example, provision of associated water for irrigation purposes) mean the exemption will not apply. (e) Finally, a resource authority holder might not only agree arrangements with a landowner in respect of impacts on a priority agricultural area, but also agree arrangements with persons other than the landowner. In such circumstances, it is hard to see why the fact that the activity will impact on third parties should mean that there is no available exemption. APPEA suggests that the limiting clauses 22(2)(b) and 22(2)(c) should not be required. The agreement of the relevant landowner to impacts on his/her land should be sufficient to allow an activity to proceed. Impacts on third parties are already extensively regulated, including under the EP Act. If clauses 22(2)(b) and 22(2)(c) are retained, the language used in the clauses should be clarified. Further, clause 22(1) should be removed as all land should be treated the same irrespective of ownership.
23 – Exemption: activity carried out for less than 1 year	

APPEA suggests that clause 23(2)(a) should refer to 'starting on the day when the first activity under the authority starts to be carried out on the area'.

Again, as for clause 22, there is no requirement that the impact so caused for the purposes of clauses 23(1)(c) must be a negative one, and so it is possible residual positive impacts of a resource activity on land (for example, re-seeding of grass on the area affected by the activity that continues after the 12-month period has ended) also negate the exemption.

The reference in clause 23(1)(d) to management practice prescribed under a regulation is another example of important parts of the regulatory regime being contained in regulation rather than in the Bill itself.

24 – Exemption: pre-existing resource activity	Clause 24 is designed to provide a 'transitional' exemption for existing resources projects, of the type provided in section 78 of the SCL Act. Unfortunately the exemption may not work given its reliance upon 'resource activity work plans'. As an example – a work program for an Authority to Prospect

(**ATP**) under the *Petroleum and Gas (Production and Safety) Act 2004* (Qld) (**P&G Act**) is a program that generally lasts only four years (see Chapter 2, Part 1, Division 3 of the P&G Act, and Department of Natural Resources and Mines guidance on the issue: http://mines.industry.qld.gov.au/assets/legislation-pdf/later-work-prog-pg-pa11.pdf). Similar, a plan of operations will generally only last five years (and in some cases a little as 12 months). As the current work programs and plan of operations for existing tenures expire and are replaced, this means that the activities under those tenures will lose their exemption. Activity on those tenures will need to stop and go through the regional interests authority assessment process set out under the Bill. This was presumably not intended – for one thing, the government has insufficient resources to conduct the large number of assessments under the Bill that this provision would create.

APPEA suggests that this exemption, if it is retained, would work better if the exemption is based around activities that are already authorised under an existing resource authority or EA. Alternatively, the transitional document for the purposes of the exemption could be a Conduct and Compensation Agreement rather than a work plan. A CCA (or equivalent agreement) is developed at a similar stage to the work plan, but will generally continue for a longer period.

Clause 24(2) also contains a very large potential carve-out of the exemption contain in clause 24(1). The carve out essentially provides that the exemption in clause 24(1) will not apply in circumstances where the activity being carried out is an activity under a petroleum tenure in a CMA (for example, the Surat CMA) that is 'prescribed under a regulation'. This potential carve out is, in APPEA's view, completely unnecessary. CMA tenure holders are already subject to strict regulatory requirements under the EP Act, the Water Act (including monitoring and make good obligations) and the EPBC Act. Their activities, if pre-existing, should be able to continue.

Finally, the clause 24 exemption is not effective for activities conducted under Petroleum Pipeline Licences and Petroleum Facility Licences, as these tenures are not carried out in accordance with a 'resource activity work plan' (as that term is defined in clause 24(3)).

An additional apparent oversight in clause 24 is that a Petroleum Lease issued under the *Petroleum Act 1923* is not included within the definition of a resource authority.

Again, APPEA presumes that thes effects are not intended by government. The wording of clause 24 should be clarified in this respect.

26 – Notice requirement	The wording of this clause is inexact. It could be argued that, simply by holding a resource authority which covers an area of regional interest, the authority holder is evincing an intention to carry out resource activity in the area. At what stage does an 'intention' to carry out activity in an area develop (and therefore at what stage does notice need to be given)? Query also: (f) whether notice must be given within a certain timeframe (eg. at least 10 business days before the activity starts); and (g) how long the notice stays in effect – ie. if the activity starts, stops and then re-starts, will the authority holder be required to provide notice again prior to re-starting the activity? Will a rehabilitation plan produced under an environmental authority or a plan of operations satisfy the requirements of clause 26(2)?
Part 3 – Regional interests authorities	A large amount of machinery provisions are missing from Part 3 of the Bill. Examples of missing provisions include: (h) a provision outlining the term of regional interests authorities (there is a clause stating when they start, but do they end?); (i) a provision stating that a regional interests authority includes the conditions of the authority; (j) provisions regarding amendment, transfer, surrender, cancellation and suspension of regional interests authorities; and (k) provisions dealing with the end of regional interests authorities (eg. any residual risks/liabilities). These provisions should be drafted into the Bill. APPEA queries whether regional interest authorities will run with the land or the resource tenure, or whether they are personal to the holder.
28 – When does a resource activity or regulated activity impact an area of regional interest	The definition given to the term 'impact' under clause 28 is very broad. At the same time, the definition is limited in some inexplicable ways – for example, why is a strategic environmental area prescribed under a regulation not a 'matter' that can be impacted on under clause 28(b)? (See

	clause 28(b)(iv)).
30 – Requirements for making assessment application	APPEA suggests that clause 30 should more clearly specify the content and level of detail required to be contained in the report accompanying the assessment application. For example: (l) Is the proponent expected to assess potential negative and positive impacts on the area of regional interest? (m) What type of 'constraints' on the configuration or operation of the resource activity must be specified? Is this intended to be only constraints in response to the identified area of regional interest? (n) As for an environmental impact statement (**EIS**) under the EP Act, is a proponent expected to propose measures to avoid/minimise/mitigate the impacts of its project on the area of regional interest? The requirements for the report should be outlined generally in the Bill, and then clarified in more detail in guidelines released before the commencement of the Bill, if possible. Note that the report to be provided by the applicant must describe the 'impacts' of its proposed activity. This contrasts with the terminology used in clauses 41 and 49 (regarding assessment of the application by the assessing agencies and the chief executive), which is of 'expected impacts'. This in turn contrasts with terminology used in Part 1 of the Bill, which is of impacts that are 'likely' to occur. APPEA suggests that the same terminology should be used throughout the Bill. APPEA also suggests that the chief executive should have discretion to accept an application that 'substantially complies' with the requirements under this clause. A similar discretion is afforded to the decision maker under section 240(2) of the SCL Act.
31 – Owner of land given copy of assessment application	The practicality of providing a copy of the application to all land owners, particularly for well-advanced projects where other forms of notification (eg. under conduct and compensation agreement) will have already been undertaken, is questionable. APPEA suggests that a similar exemption to that provided for the notification process (under clause 34) should be included here.
32 – Amending	The Explanatory Notes to the Bill give some examples of what constitutes a 'minor amendment', but the term should be defined in the Bill. The term is defined in the context of EA amendment under the EP Act. That definition (in section 223 of

	the EP Act) could be adapted for these purposes. APPEA queries why amendments to applications other than 'minor amendments' are not permitted. It is not uncommon for a proponent to modify a project proposal in a more substantial way because of new information obtained, cost pressures, or in response to public consultation (although it is noted that the applicant has no right to respond to public consultation under the Bill).
34 – Application of div 4	The criteria for making an application notifiable, and the circumstances in which an assessing agency may require an application to be notified, should be outlined in the Bill (particularly in light of the fact that it appears that local government can required an application to be notified under clause 34(4)). APPEA suggests that the requirement for notification under the Bill should be limited – only 'major' applications should be required to be notified under the Bill. If APPEA's suggestion in the general comments, above, is taken up and a second approval option is drafted into the Bill, then it is suggested that the more stringent application process could be subject to notification requirements, but the less stringent application process should not require notification (as is the case under the EP Act). The inclusion of an ability for the chief executive administering the Bill to exempt an application from notification requirements because sufficient notification under another Act or law has occurred is positive. As a general comment on this division, APPEA suggests that applicants should have a right to respond to public consultation under the Bill (as do applicants for approvals under other Acts, such as the EP Act and SPA). Giving an applicant a right to respond to public consultation provides an opportunity for an application to be improved to address valid issues raise by submitters. This benefits both the applicant and the community impacted by the application.
35 – Applicant must notify	The methods of notification and the required period for notification of an application should be outlined in the Bill and not left to be prescribed under regulation. Chapter 6, Part 4 of SPA contains provisions regarding public notification which could form the basis for drafting of provisions around this in the Bill.
36 – Consequences of failure	A definite timeframe in which notification must occur should

to notify	be provided. At present, clause 36(1)(b) (which provides that an assessor may decide a later day by which notification must have occurred) creates uncertainty for proponents. More considered and precise drafting is required around the process to be adopted in the circumstance of a failure to notify. For example: (o) Can the chief executive assess the application even if an assessing agency refuses to assess it? (p) In clause 36(2)(a), what are the 'relevant matters' for an application that the chief executive must consider in order to assess the sufficiency of information provided? (q) What are the consequences of the application lapsing? Note that in similar circumstances under SPA, the application fee may be partly refunded to the applicant. There is also provision under the SCL Act for fees to be refunded to the applicant. (r) Why is the applicant not informed or notified of the decision of the chief executive or assessing agency under this clause? This is important so that the applicant may stay abreast of the status of its application. (s) The Bill does not require that an applicant notify the assessor once an application has been notified. Accordingly, how will the chief executive know whether or not the applicant has complied with the notification requirement for the purposes of this clause 36? Suggest that the applicant be required to notify the assessor/s once notification has occurred (as under SPA). This need not be a complex requirement.
37 – Properly made submissions	APPEA suggests that the criteria for a 'properly made' submission should include a requirement that the submission 'states the grounds of the submission and the facts and circumstances relied on in support of the grounds' (as is required for a 'properly made submission' under SPA). APPEA also suggests that, to avoid duplication and for ease of process, all submissions made on an application should be required to be given to only one 'assessor', rather than any assessor as is provided under clause 37(e). The Bill should then provide for all submissions received by that assessor to be shared with other assessors.
38 – Submissions must be	This clause requires that 'the assessor' must publish submissions received on an application. However, as clause

published or available for inspection	27(2) contemplates, there may be more than one 'assessor' for an application. In this circumstance, is it intended that each assessor is subject to the requirement to publish submissions received? This ties in with the comment on clause 37, ie. that all submissions should be given to one assessor. Amendments to fix this issue in clause 37 should flow through into clause 38 also.
39 – Application of div 5	The general circumstances in which an application is referable should be outlined in the Bill and not left to be prescribed under regulation. As a general comment in relation to Part 3, Division 5 of the Bill, the processes for involving assessing agencies in the assessment process under the Bill are not sufficiently developed. For example: (t) Do assessing agencies need to be given notice of a permitted amendment to an application under clause 32? (u) What is the effect of an assessing agency not giving any response to an application? (v) What (if any) are the limits on an assessing agency's ability to recommend refusal of all or part of an application? Note that concurrence agencies are limited in their power to refuse applications under SPA. (w) Is an assessing agency able to change its response, or give a late response, for example in relation to further information that is received after an initial response is given? Assessing agency processes must be detailed precisely, given the existence of appeal processes, so that the validity or otherwise of their decisions can be determined by the courts.
40 – Assessing agency's functions	The functions of an assessing agency should be outlined in the Bill and not left to be prescribed under regulation. The issue of overuse of regulations is particularly problematic in this instance. There are few (if any) constraints on the assessing agencies' powers under the Bill, the chief executive has a limited ability to 'ignore' assessing agency advice and recommendations, and assessing agencies are also likely to be agencies with very broad powers (such as local governments). As a result of these factors, it is very important that assessing agencies' functions are clearly delineated in the Bill.

41 – Assessing agency's assessment of application	APPEA suggest that clause 41(1) should read: 'The chief executive must give each assessing agency for the application a copy of the application'. A timeframe in which the chief executive must give the assessing agency a copy of the application should also be prescribed. The criteria against which an assessing agency must consider an application should be fully outlined in the Bill and not left to be prescribed under regulation. APPEA also suggests that clause 41(2) should include the requirement that the assessing agency consider the relevant regional plan, and a specific reference to consideration of the report that the applicant must provide with its application (as technically under clause 30 this report may not form part of the application, but 'accompanies' the application). As per APPEA's comments regarding clause 37, the chief executive and the assessing agencies should share submissions received. This means that the assessing agency should take all submissions into account when making its decision under clause 41(2)(c) (and not only submissions received by the assessing agency). The applicant should be notified of referral of its application to assessing agencies. This is important so that the applicant may stay abreast of the status of its application.
42 – Assessing agency's response to application	The reference in clause 42(2)(a)(i) to 'regional interests approval' should be to 'regional interests authority'. Specific time frames for assessment by the assessing agency must be provided (the 20 business day time frame under clause 42(3)(a) can be extended by the chief executive, without reference to the applicant, under clause 42(3)(b)). Clause 42(6) requires that the applicant be given a copy of the assessing agency's response, which is positive. However, how will the applicant know if the assessing agency has decided not to provide a response to the referred application?
43 – Ministerial directions to assessing agency	This is a key clause under the Bill, however the drafting of the clause is uncertain. A number of questions arise: (x) Is this clause intended to give the Minister a power to direct an assessing agency to impose particular conditions? Will a Minister ever do this, particularly if the agency is a local government? (y) For the purposes of clause 43(1)(b), how will the

	Minister be satisfied as to whether an assessing agency has not assessed an application, if there is no requirement under clause 42 for the assessing agency to provide any response on a referred application to the chief executive? (z) What are the powers of the Minister and the chief executive if the assessing agency does not comply with the direction? (aa) Does the applicant have an opportunity to ask the Minister to exercise his or her discretion under this clause in this way? (bb) Can the Minister's decision be challenged under judicial review? APPEA suggests that clause 43(6) should include a reference to the assessing agency's response being 'issued' as well as reissued (as the assessing agency may not have issued a response at all).
44 – Requirement notice	Unless more information is provided about the scope of the application requirement under clause 30, the power under clause 44(1)(a) for an assessor to require changes to an application if it appears to the assessor that the application is 'incorrect, incomplete or defective' is expressed too broadly. For example, in what circumstances will a report accompanying an application under clause 30(b) be viewed as 'defective'? The power of an assessor to require additional information under clause 44(1)(b) must be limited. An assessing agency should not be entitled to require additional information for a matter that is outside of its functions/jurisdiction. Clause 44(1)(b) as worded does not restrict this. There should be timeframes in which a requirement notice can be given under this clause (for example, within 10 business days after the application is received by the relevant assessor). In the absence of a timeframe, the power under clause 44(1)(c) for an assessor to require notification of the application can be exercised at any time. This may conflict with the applicant's default obligation under clause 36(1)(a) to have notified its application within 20 business days after the day the application is made. The power under clause 44(1)(d) for an assessor to require an additional 'report' highlights the potential duplication and introduction of red tape in relation to this area. The applicant is already required to provide a report (the scope of which is unknown) under clause 30 of the Bill, in addition to reports

	under the EP Act and the resources Act relevant to the applicant's activity. The reference in clause 44(4) to 'stated period' is confusing and should clarify that it is referring to the 'stated reasonable period' in clause 44(1). It should also be made clear whether the applicant can request an extension to the stated period.
45 – Consequence of noncompliance with requirement notice	Clarification around the circumstances in which a requirement notice will be 'contravened' is required. Will a notice be contravened only if the requested action is not taken in the 'stated period', or can a notice be contravened because, for example, information provided in response to the notice is deemed insufficient. If the latter, how will sufficiency be decided? More considered and precise drafting is required around the process to be adopted in the circumstance of a non-compliance with a requirement notice. The same comments apply here as applied for clause 36, ie.: (cc) Can the chief executive decide the application even if an assessing agency refuses to assess it? (dd) In clause 45(2)(a), what are the 'relevant matters' for an application that the chief executive must consider in order to assess the sufficiency of information provided? (ee) What are the consequences of the application lapsing? Note that in similar circumstances under SPA, the application fee may be partly refunded to the applicant. There is also provision under the SCL Act for fees to be refunded to the applicant. (ff) Why is the applicant not informed or notified of the decision of the chief executive or assessing agency under this clause? This is important so that the applicant may stay abreast of the status of its application.
46 – Additional advice or comment about assessment application	More detail and timeframes are needed around the process outlined in this clause. The process has the potential to substantially increase assessment timeframes under the Bill. To take the example given in the clause – how long will it take to convene an expert panel and to obtain their advice? This clause in some ways duplicates the public notification process under the Bill. If an application is already notifiable, why can the chief executive require further public notification under this clause? Further, if an application is not notifiable, this clause provides the chief executive with a 'back door' to

	still require public consultation.
47 – Chief executive must decide application	A timeframe in which the chief executive's decision must be made is required. Without a timeframe imposed at this key step of the assessment process under the Bill, proponents and landholders are left with uncertainty as to the length of the assessment process and possible delay that the assessment process may cause. This uncertainty and worry will preclude investment decisions by proponents and landholders. Even if a timeframe is imposed, resourcing will be critical to ensure the timeframe is met. What are the government's proposals to ensure there is adequate resourcing to ensure decisions under the Bill are made efficiently?
48 – Decision generally	The ability for the chief executive to decide to refuse an application under the Bill (at clause 48(1)(b)) should be removed. APPEA also queries how conditions recommended by an assessing agency under clause 42 will be dealt with if they are inconsistent with conditions that the chief executive seeks to impose under this clause and clause 51. This is a particularly acute question in light of clause 50, which requires the chief executive to give effect to any recommendations – including presumably recommended conditions – given by a local government assessing agency.
49 – Criteria for decision	As for clause 41(2), the criteria against which the chief executive must consider an application should be fully outlined in the Bill and not left to be prescribed under regulation. APPEA suggests that this clause should also include the requirement that the chief executive consider the relevant regional plan, and a specific reference to consideration of the report that the applicant must provide with its application (as technically under clause 30 this report does not form part of the application, but 'accompanies' the application). As per APPEA's comments regarding clause 37, the chief executive and the assessing agencies should share submissions received. This means that the chief executive should take all submissions into account when making its decision under clause 49(1)(c) (and not only submissions received by the chief executive).
50 – Compliance with assessing agency's response	The terminology used in clause 50(2) is inexact – what does it mean for the chief executive to 'give effect' to local government recommendations? Does this mean that the chief

	executive must adopt the recommendation in its entirety, or substantially adopt the recommendation, or not adopt the recommendation at all but take some other action which nonetheless achieves the 'effect' of the local government's recommendation? This should be clarified. Pursuant to this clause, it would appear that a local government assessor can present conditions to the chief executive that cannot be changed, even if they are inconsistent with the conditions the chief executive wishes to place on the regional interests authority, or even if the conditions presented are irrelevant or unreasonable. The only available sanction is a Ministerial direction under clause 43. The lack of clarity about the function and 'jurisdiction' of assessing agencies (see APPEA's comments on clause 40), including local government, will also make it hard to challenge their conditions. APPEA supports the idea of giving local government and communities the ability to provide input into approval of resource activities in their area. Rural and regional communities (including local government) should benefit from resources development, and communities should 'have a say' on where and how that development should occur. Their views should be taken into account by decision-makers at the State level. However, APPEA does not support providing local government with a veto power in relation to resources development (as this clause effectively does). Local governments lack the resources to conduct detailed assessment of large projects, and the introduction of a veto power would create further uncertainty for proponents. Further, for larger projects (such as pipelines), the introduction of multiple local governments as assessing agencies for a single project has the potential to create inconsistency and inefficiency in project conditioning. It seems odd that State government would wish a State government decision – in this area of critical importance to State interests – to be overridden by a local government. The interests of local government do not always align with State interests. In the event of conflict between the two, APPEA suggests that local government should be required to submit to the broader State interest – not vice versa.
51 – Conditions generally	The discretion afforded to the chief executive under this clause is extremely broad, particularly in light of clause 51(1)(d), which allows the chief executive to impose a condition requiring 'the applicant to do, or refrain from doing, anything else the chief executive considers is necessary or desirable to achieve this Act's purpose.'

	The discretion of the chief executive under this clause should be appropriately limited. Compare the breadth of clause 51 with the ability of the chief executive to impose conditions under section 346 of SPA, or the ability of the administering authority to impose conditions under section 207 of the EP Act, for examples of more limited (but still effective) provisions relating to conditions that may be imposed. This clause should also state the criteria for a valid condition (for example: reasonable, relevant, final and certain, as required under planning legislation). Stating a test for validity of conditions in the Bill would be preferable to requiring the courts to deduce the test from the Bill on appeal. APPEA also queries how conditions imposed under the EPBC Act will be incorporated (if at all) into the regional interests authority conditioning process. There should be no power to impose certain types of conditions – such as biodiversity offset conditions – on a regional interests authority, as the State and Federal governments already have extensive powers to do this under separate regulation.
52 – Notice about decision	A definite timeframe should be provided in which the chief executive must give the applicant a decision notice about its decision, rather than the uncertain "as soon as practicable". Under section 181 of the EP Act, the administering authority is given 5 business days. APPEA suggests that this is a reasonable time. This would allow the notice of the decision (under this clause) and public notification of the decision (under clause 53) to occur simultaneously. Timeframes for provision of the decision notice to the owner of the land and assessing agencies should also be provided.
53 – Public notification of decision	APPEA suggests that public notification of a decision need only occur if the decision is to approve the application. The term 'affected land owner' as used in clause 53(2)(c) is not defined in the Dictionary for the purposes of this Part of the Bill.
54 – Issuing authority	APPEA suggests that clause 54 is incorporated into clause 52 of the Bill (as per the equivalent section 181 of the EP Act). If the decision of the chief executive is to approve the application and issue a regional interests authority, the authority should be provided to the applicant together with the notice about the decision.

55 – When authority takes effect	Clause 55(1), which provides for a stay on the regional interests authority taking effect until after the appeal period in respect of the authority ends (or some later day), contrasts with equivalent section 200 of the EP Act, which provides that an EA under that Act takes effect on the day it is issued (unless stated otherwise). Clause 55(2) is also inconsistent with clause 55(1). Clause 55(2) states that the decision notice for the decision to grant the authority must state that the decision takes effect when the appeal period for the decision ends. However, clause 55(1) provides that a regional interests authority in fact takes effect on the later of two dates, one of which is the day after the appeal period ends. This clause 55 ties in with clause 72. See APPEA's comments on clause 72 below.
56 – Regional interests conditions paramount	This clause is an example of the Bill's failure to properly deal with duplication of legislative requirements, approvals and conditions. A further issue with this clause is that it does not deal with the situation where resource activities are proceeding on an area of regional interest with the agreement of the land owner (ie. under the exemption provided at clause 24 of the Bill). In this situation, does the government intend that the terms and conditions of the agreement with the landowner are to prevail over the conditions of other approvals?
Part 4 - Mitigation	Mitigation is currently only payable by proponents under the SCL Act in respect of development having a 'permanent impact' (see section 144 of the SCL Act). It is a 'mitigation principle' that the mitigation requirement can only be relied on if the impacts of the development can not otherwise be 'reasonably avoided or minimised' (see section 11(5) of the SCL Act). There are no such restrictions under clause 51(c) of the Bill (which ties into Part 4). Clause 51(c) allows a mitigation requirement to be imposed in respect of any resources activity having an impact to be carried out in a strategic cropping area, whether or not that impact could have been otherwise avoided or minimised. This expansion of the existing mitigation requirement under the SCL regime appears unjustified. The recent Review of the Strategic Cropping Land Framework Report (**SCL Review Report**), released by the Department of Natural Resources and Mines, supported the continuation of the mitigation concept as it applies to permanent impacts on

	SCL. It did not canvas or suggest an expansion in the concept. APPEA suggests that mitigation requirements under the Bill should continue the SCL Act provisions and only be imposed in respect of 'permanent' or 'high impact' activity. If APPEA's suggestion under the general comments, above, as to creation of a second approval option is taken up, mitigation could be required for the higher level approval in respect of such activities. APPEA also notes that the SCL Review Report highlighted the importance of investigating options to integrate the administration of mitigation with the offsets regime administered under the EP Act, in order to streamline processes. If mitigation is to continue under the Bill, APPEA supports this proposition.
59 – What is *mitigation*	Whilst it is acceptable that 'mitigation value' is to be prescribed under a regulation (as it is under the SCL regime), APPEA requests some assurance from government that the rate of mitigation to be applied will not materially increase from that currently applied under the SCL regime .
61 – What is a *mitigation deed*	APPEA queries why the mitigation deed requirements are not specified in the Bill, as they are in section 141 and 145 of the SCL Act (which this clause proposes to replace). The requirements should be fully outlined in the Bill and not left to be prescribed under regulation.
Part 5 – Appeals	A large amount of machinery provisions are missing from Part 5 of the Bill. Examples of missing provisions include: (gg) provisions stating the nature of appeal that may be made, the court's powers on appeal and the type of decision the court may make; (hh) provisions regarding how to start an appeal, and whether notice of appeal must be given to other parties; (ii) provisions as to hearing procedures; and (jj) a provision as to costs of a proceeding. If some of the missing provisions above are to be incorporated by reference to SPA (which sets out the powers of the Planning and Environment Court) or the *Land Court Act 2000* (Qld) (which sets out the powers of the Land Court), then these Acts

	should be expressly referred to. APPEA queries whether there should be a process for 'internal review of decisions' by the chief executive (as there is under the EP Act), which an appellant may elect to utilise before proceeding to lodge a formal appeal with a court. It is unclear whether judicial review or merits review will apply to decisions made under the Bill. APPEA supports a concept of judicial review applying to decisions made under the Bill, provided that the criteria for decisions under the Bill are more fully outlined where relevant.
68 – Definitions for pt 5	See APPEA's general comments above regarding the fact that appeals go to the Planning and Environment Court under the Bill, and as to the standing of 'affected land owners' to bring appeals.
72 – Stay of operation of decision	See APPEA's general comments above regarding the open-endedness of the appeal process under the Bill. APPEA notes that this clause contrasts with section 267 of the SCL Act and also with section 535 of the EP Act, which both provide that an appeal against a decision does not affect the operation of the decision (unless the decision is expressly stayed by a court).
Part 6 – Miscellaneous	Some machinery provisions are missing from this Part 6, such as provision for registers to be kept by the chief executive under the Bill, and a provision permitting delegation by the Minister.
83 – Guidelines	APPEA queries when the guidelines proposed to be made under the Bill will be available. Given the extent of matters still to be determined by regulation/guidelines, this is of importance to industry. APPEA notes that the guideline-making power appears to be limited here – there are only two instances specified where guidelines may be made. In the public departmental briefing held by the Committee on 13 December 2013 for the purposes of its inquiry into the Bill, the concept of guidelines being made to outline what is a 'significant impact' under clause 22 of the Bill, and to assist local government with their assessment processes under Part 3 of the Bill, was canvassed. If more guidelines are proposed be made under the Bill, this clause should be amended.

Part 8 – Transitional provisions for Strategic Cropping Land Act 2011	The transitional provisions contained in the Bill should generally be improved and expanded. These SCL-specific transitional provisions only relate to activities carried out under a Protection Decision or an SCL Compliance Certificate. Even the largest petroleum operators hold only a handful of these approvals, as most of their projects and existing operations are covered by the existing transitional provisions contained in the SCL Act, which is to be repealed. These existing SCL transitional provisions should be reflected and included in the Bill.