QUEENSLAND resources COUNCIL

Resourcing Queensland's future

19 March 2019

Committee Secretary
State Development, Natural Resources and Agricultural Industry Development Committee
Email: sdnraidc@parliament.qld.gov.au

Dear Committee Secretary

Thank you for the opportunity to provide a submission on the *Natural Resources and Other Legislation Amendment Bill 2019*, (the Bill), introduced by Minister Lynham on 26 February 2019.

The QRC is the peak representative organisation of the Queensland minerals and energy sector. QRC's membership encompasses minerals and energy exploration, production and processing companies. QRC works on behalf of members to ensure Queensland's resources are developed profitability and competitively, in a socially and environmentally sustainable way.

Even for an omnibus Bill, this legislation is extraordinarily broad in scope, amending according to the references in the Minister's Explanatory speech, a staggering 29 different Acts. The breadth and complexity of this Bill makes it very difficult for any stakeholder to be confident they have understood all the ramifications of these amendments in the 15 business days between the Bill being tabled and submissions falling due for the Committee. Most relevant to the concerns of the QRC are the following policy objectives of the Bill, as stated in the explanatory notes:

- Amends the *Mineral Resources Act* 1989 (**MRA**) and the *Petroleum and Gas (Production and Safety) Act 2004* (**P&G Act**) to implement measures to continue to improve performance of resources tenure management system and correct minor errors;
- Amends the resources Acts to correct errors, clarify the application of provisions and improve the administration of the Acts;
- Amends water legislation to improve operational efficiency, and strengthen compliance and enforcement provisions; and
- Amends *the Right to Information Act 2009* and the *Electricity Act 1994* to support the establishment of a new clean energy generation government owned corporation to increase competition in wholesale electricity markets to push down electricity prices.

QRC has a number of concerns with some aspects of the Bill, which we feel require further attention from the Department. These mainly relate to transitioning existing tenures over to the new tenure management system. Some of the amendments introduced represent extremely significant changes for industry in how tenure is managed. Key issues for industry include:

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- Transitional relinquishment requirements, and insuring that proponents will not be subject to more strenuous relinquishment requirements when transitioning existing tenures to the new system, especially given the introduction of capped terms;
- Consideration for relinquishment deferment where applications have been made for higher forms of tenure;
- The broad conditioning power given to the Minister by s 277(3) of the **P&G Act**; and
- The impact of capped terms in relation to overlapping tenure lock-out provisions.

Clause 2 notes that Chapters 3 and 5 will commence on a day to be fixed by proclamation. QRC understands that the tenure management amendments will not commence until 12 months after the passing of the Bill. This time is necessary in order for proponents to be able to plan changes to their exploration programs.

Term, Extension and Renewal

The Bill implements a new framework for the time limits to exploration permits for coal and mineral proponents. Currently, there is no limit on the amount of times an exploration permit can be renewed. This Bill caps the overall life of an exploration permit to 15 years, with an additional 3 years in exceptional events. This is a large change for industry and will necessitate changes to project plans for many companies.

As the explanatory notes state, the life of existing tenures will also be capped. The Bill stipulates that all exploration permits will be able to renew up to a maximum of 10 years after commencement. This timeframe is necessary in order to companies to make plans for their projects, given the significant nature of the change to term limits.

The capped terms also apply to conditional surrenders. Sections 136N and 161 amend the current framework to ensure that the capped terms policy cannot be circumvented via conditional surrender. Currently, a conditional surrender re-starts the clock for the age of the permit upon grant.

Overlapping tenure lock-out

There is an outstanding issue relating to the capped terms and overlapping tenure lock-out provisions. Where there is overlapping tenure, one party can be effectively locked-out of the tenure (unable to conduct activities which would progress their exploration program) potentially for many years (10+). With the introduction of capped terms, this scenario would result in the tenure expiring before the proponent had access to the land. We understand that the Department is looking into this scenario. QRC would request that this issue be prioritised to mitigate the risk that parties are unintentionally disadvantaged. QRC would be happy to contribute to developing a solution.

Relinquishment

The Bill allows exploration permit areas converted to mineral developments licences (**MDLs**) or mining leases (**MLs**) to count towards relinquishment requirements. This is appreciated by industry. It is understood that the Department intended for this outcome to be replicated in the P&G Act, however due to a miscommunication such provisions have not been provided as part of this Bill. QRC will be having separate conversations with the Department about including those provisions in an upcoming omnibus Bill.

Transitional concerns

The current relinquishment requirements for coal and mineral tenures are effectively 70% in 5 years (40% of area at year 3 + 50% of remaining area at year 5). The new, streamlined requirements are 50% in 5 years. This will reduce administrative burden and give proponents more flexibility. However, this flexibility is somewhat undermined by the limitation on applications to vary the conditions of a tenure. It is worth noting that changes to data confidentiality periods are currently being contemplated by the Department, which increase proponent's sensitivities in relation to relinquishment of tenure.

The transition to capped terms is a big step for industry, and as such significant concern is given to the relinquishment provisions. QRC has some concerns about the equity of the transitional relinquishment provisions. QRC previously understood that the aim of the transitional relinquishment provisions is to ensure that no proponent would be worse-off because of the new system. Mostly, this is the case with the new provisions, for example:

- **S 857:** If a proponent has not yet relinquished at year 3 (i.e. tenure is 2.5 years old), they will be bound by the new section, meaning they don't have to relinquish anything until year 5;
- **S 858:** If a proponent has relinquished at year 3 (40%; i.e. tenure is 3.5 years old), they do not have to relinquish anything at year 5; and
- **S 859:** If a proponent has relinquished at year 3 and year 5 (70%; i.e. tenure is 5.5 years old), they do not have a relinquish anything at the end of the current term after commencement but will be transitioned to the new system on the following term.

However, there is not the same discretion afforded under **s 860**. QRC understands section 860 to stipulate that proponents who have not undertaken "standard relinquishment" (i.e. 70% reduction) will need to reduce their area by 50 per cent at the end of the current term and must also relinquish 50 per cent of the remaining area 5 years after the permit is renewed after commencement. The 70% relinquishment requirement in the first term does not take into account a number of factors:

- Tenure is judged by the first five years, rather than the immediately previous 5 years. What if the tenure is well beyond its first term (i.e. 13 years old)? Why is the tenure being judged by relinquishment requirements during their first term, when the legislated relinquishment requirements have not remained the same over the past two decades? A proponent could have met previous relinquishment requirements (i.e. 40% at year 5) and not satisfy the 70% requirement;
- What if there has been an approved variation which reduces the relinquishment requirement? In this case, the proponent will not have relinquished the 70% requirement, and in fact was approved by the Department not to do so. Should they be burdened with unequal relinquishment requirements because of this;
- Depending on the timing, relinquishment requirements could exceed 50% in 5 years. If a tenure is close to renewal at the time of commencement, the proponent will have to relinquish 50% at renewal (say, in the coming few months), then another 50% at the next renewal;
    - As an example, if a proponent had varied their relinquishment requirements to be equivalent to 60% during their first term, they would then have to relinquish another 50% (half of the remaining 40% - effectively 20% of the total tenure) on renewal after commencement. This means their overall relinquishment requirements are 80% in what could be less than 10 years (depending on the tenure term length). Under the new system, their relinquishment requirements would be 75%.

- In some scenarios, the mineral tenure hasn't been able to gain access to the land to undertake work due overlapping tenure lock-out provisions. In this scenario, proponents will need to apply to have their relinquishment requirements waived as an exceptional event, as the circumstances are outside of their control.

Please note, the explanatory notes for section 860 are unclear and could be read inconsistently with the legislation.

Variation / Special Amendment

The Bill proposes to limit the circumstances in which a proponent can apply to amend the conditions of their tenure. There is currently no limit on the circumstances in which a proponent may seek to vary/amend their conditions. The Bill's amendment to s 141C of the **MRA** and s 107A(2) of the **P&G Act** outline that at proponent may seek to amend their conditions in only two scenarios – in exceptional events or as part of a project.

Exploration project vs project status

The definition of an exploration project in NROLA is "2 or more EP's with a unifying exploration purpose". However, advice from DNRME indicates that satisfaction of this definition will **not** be sufficient for a proponent to apply for a variation. Advice from DNRME is that the proponent will also need to be approved for project status, and not just meet the definition of 'exploration project'. This is confusing, and not obvious upon reading the relevant sections of the legislation.

It worth noting, because of the limitation on variations, project status requirements will need to be clear, effective and work efficiently. If project status is being actively encouraged by Government, it will need to be easy to get and easy to use.

Progressing to higher tenure

The explanatory notes for sub section 139(3A) relate to the Ministers power to alter a proponent's relinquishment requirements. The Minister can direct the holder to reduce the area of the exploration permit by more or less than the 50% prescribed in new sub section 139(1). The explanatory notes state that the purpose of this discretion it to allow variation to relinquishment requirements where a permit has been subjected to an exceptional event or to allow for relinquishment requirements to be managed across exploration permits that are within an exploration project, therefore allowing redistribution of relinquishment requirements.

What is not contemplated in this section, is the need to defer relinquishment requirements due to an application being processed to progress the exploration permit to a high form of tenure. As the provisions currently read, a proponent may be forced to drop ground on an exploration permit which is subject to a current application for a higher form of tenure. Security of tenure is needed for proponents to make investment decisions. It is appropriate for some discretion to be granted in this scenario, as the proponent is acting in a way which is consistent with the Department's goals for this Legislation – they are progressing the tenure and utilising the resource.

Conditions

Ministers powers

Proposed section 141A of the **MRA** and section 42A of the **P&G Act** allow the minister to impose, remove or vary the conditions of an exploration permit or authority to prospect if an exceptional event has occurred. This power has been heavily caveated based on industry feedback on the risks to business planning and investment security which are posed by a broad Ministerial power to impose conditions without limitations. It is positive that the department and Minister considered early industry feedback regarding sovereign risk.

New (complimentary) section 863 of the *Mineral and Resources* provides that the new powers to impose, vary or remove a condition of an exploration permit apply in relation to exploration permits granted before commencement as well as those granted after commencement. The explanatory notes state that this will allow the Minister to amend the work programs of existing exploration permits to benefit from the Resource Authority amendments, for example by converting the existing work program to an outcomes-based work program. This reasoning is inconsistent with the legislation itself (i.e. that the power is for exceptional events), nor is the reference to the section correct (141(7) should be 141A).

Exceptional events

The explanatory notes outline that the department's operational policy provides further information on exceptional events. QRC notes that the policy is currently titled 'exceptional circumstances' and not exceptional events. Given that this broad power and the ability to vary work programs hinges on the definition of exceptional events, QRC would appreciated being consulted on any changes to the operational policy.

Ministers power to condition ATPs

Another issue for petroleum proponents is the conditioning power for the Minister to impose any "appropriate" conditions on an ATP at grant, as inserted by clause 277 (insertion of subsection (3) into section 41 of the **P&G Act**). This is a broad power (seemingly unlimited) which is different from other conditioning powers of the Minister (such as s123(3)). This is a significant concern which warrants further justification from the Department prior to implementation. It is industry's position that any special conditions by the Minister should be known at the tender stage.

Conditions of tenure vs legislation

Current tenures will be conditioned with the existing relinquishment requirements. These relinquishment requirements will be changed in legislation by NROLA, but not as a condition of each and every current tenure. I.e. proponents have a legal requirement to comply with the conditions on the tenure, which will no longer reflect the current relinquishment requirements in legislation. QRC would like to confirm that this will be managed operationally, and that the existing conditions will be effectively over-ridden by the new legislation.

Area of PCAs and PLs

Clauses 303 and 307 insert provisions for the amalgamation of potential commercial areas (**PCAs**) and petroleum leases (**PLs**). Clauses 301 and 306 removes the previous area limit for **PCAs** and **PLs**. There should be discretion to the Minister to allow a **PCA** area not to

be a single parcel of land (same as a **PL** in s 168(2) of the **P&G Act**). The tendency is for a **PCA** area to move to being a **PL** so the area provisions should be the same.

Consideration should also be given to providing the ability to amalgamate petroleum leases on replacement from the 1923 Act to the 2004 Act. It is understood that the Department did not want to make any changes to the *Petroleum Act 1923*, however the ability to amalgamate on replacement would be a purely 2004 Act amendment. A Native Title process is already required to replace tenures into the 2004 Act, so there shouldn't be any additional Native Title requirements. This change would easily be done by amending a few words in section 908(2) of the P&G Act - essentially changing the wording to lease or leases.

The amalgamation on replacement would be consistent with the proposed provisions allowing amalgamation of 2004 Act **PLs** and would stop the need to apply for replacement tenures, then once granted apply to amalgamate, which may require going through Native Title twice.

Work Programs

The Bill introduced outcomes-based work programs, which allow proponents flexibility when carrying out their exploration programs. Currently all exploration authorities must comply with a prescribed activities-based work program and have any variations to the program approved by the department. An outcomes-based work program includes the proposed outcomes, the strategy or strategies to pursue the outcomes, and the proposed data and information to be collected during the term. This allows the explorer to change the on-ground activities to accommodate the results as they become apparent.
Exploration authorities awarded through competitive processes, such as a tenure process, will be conditioned with an activities-based work program for the initial term, to preserve the integrity of the competitive process. A call for tenders will specify whether the tender is required to be accompanies by an activities-based work program or an outcomes-based work program. Over the counter applications may be accompanied by either type of program, at the applicant's discretion. Similarly, authority holders applying for renewal may lodge either type of proposed work program at their discretion. As indicated in the explanatory notes, QRC members raised some concerns about initial drafts of the Bill which required applicants to submit both a statement of outcomes and activities, and then the Minister would decide which program would be used. This defeated the purpose of providing flexibility. The Bill was amended to account for these concerns.

Water Compliance

QRC notes that the Independent audit of Queensland non-urban water measurement in 2018, and the Murray-Darling Basin Authority Water Compliance Review both identified opportunities to improve Queensland's rural water management. QRC is supportive of these recommendations, and how they are proposed to be given effect in the Bill. While these recommendations were focussed on agricultural water use, the amendments proposed in the Bill will also apply to the resource sector's use of water, for example applying a much more directive framework around water meters. The Department has committed to working through a staged transition process for the industry, so that the performance of existing water meters can be assessed and where appropriate certified as meeting the new standards.

QRC is satisfied that the Bill removes ambiguity from the *Water Act 2000* in relation to offences and strengthens compliance actions. In particular, QRC supports amendments to:

- clarify that all persons who take water through a common meter are responsible and liable for ensuring that water taken through that meter meets their water entitlement
- improve the effectiveness of a compliance notice
- clarify the offence provisions if water is taken in excess of entitlements; and
- allow the regulation to specify processes for ensuring faults with meters are identified and repaired.

QRC supports the goal of these amendments to deliver more transparent, sustainable and equitable rural water management in the Queensland Murray-Darling Basin region and across the state.

Establishing an even footing for CleanCo

QRC notes that CleanCo Queensland Limited (CleanCo) was established as a government-owned corporation (GOC) on 17 December 2018. The explanatory memorandum describes the establishment of CleanCo as a structural solution to support increased competition in the wholesale electricity market and put downward pressure on wholesale electricity prices. QRC supports these two related outcomes.

QRC understands that CleanCo has been established in such a way that it will be able to operate in a manner consistent with Stanwell and CS Energy. QRC welcomes the decision to maintain transparency of community service obligations by ensuring that this aspect of CleanCo's performance can be accessed under the *Right to Information Act 2009*. QRC's position on energy and climate change is attached for the Committee's reference.

Clarification Amendments to Resource Acts

Amendments to the *Mineral and Energy Resources (Financial Provisioning) Act 2018*

Part 5, Chapter 4 of the Bill seeks to amend the *Mineral and Energy Resources (Financial Provisioning) Act 2018* (**MERFP Act**) to replace the term 'rehabilitation' with 'remediation'. QRC recognises that the amendments relate to provisions pertaining to abandoned mines and that the term 'remediation' aligns with changes proposed to the **MRA** by the Bill. QRC supports the amendment and is of the view that it appropriately distinguishes and reflects activities related to abandoned mines as opposed to rehabilitation of operational sites, which remain in the control, and the responsibility, of the proponent.

Amendments to the *Mineral and Energy Resources (Common Provisions) Act 2014*

Clause 209 of the Bill facilitates the application of a Land Court order for right of access to public or private land for rehabilitation and environmental management activities under *the Environmental Protection Act 1994*. QRC has no issue with the amendment but seeks to highlight that there remains an outstanding issue regarding land access for rehabilitation and monitoring.

In May 2018, QRC raised concern with the Department regarding:

- Insufficient time to complete rehabilitation and monitoring requirements of an Environmental Authority (**EA**) for petroleum and gas advanced activities prior to expiry of:
    - (and relinquishment) part of an Authority to Prospect (**ATP**);
    - Conduct and Compensation Agreement (**CCA**); and

  - Private land access; whilst
- Maximising time for exploration to understand the commercial viability of the resource.

QRC understands that Clause 209 is not intended to address this scenario. QRC will continue to engage with the Department and the petroleum and gas sector to reach a resolution, which may result in additional legislative amendments.

IN SUMMARY

For the reasons outlined, we support the proposed Bill, but request that the issues raised are taken into consideration by the Committee and given further attention by the Department. Obviously, in these submissions QRC needs to outline the key issue with the Bill. However, it is worth noting that the majority to the tenure amendment are consistent with the tenure reform work conducted by DNRME and industry over a number of years and are welcome.

QRC would welcome the opportunity to elaborate on any of the points made in this submission or for the opportunity to appear before the Committee to give evidence. QRC can confirm that the submission is not confidential, so the Committee is welcome to publish it on the Parliamentary website. The contact at the QRC is Kirby Anderson, Policy Director, Strategic and External Relations on (07) [redacted] or [redacted]

Yours sincerely

I. Macfarlane

Ian Macfarlane
Chief Executive

Attachment one:

QRC ENERGY AND CLIMATE CHANGE

Our industry makes a major socio-economic contribution to Queensland and we have an important contribution to addressing energy and climate change issues while continuing to deliver value for our shareholders and stakeholders alike.

1. Queensland's resource industry supports global action on climate change.

Climate change is a critical global challenge, which must be addressed by all parts of society. The resources industry is committed to being part of the global solution.

In their own operations, **QRC members are already working** to lower emissions and reduce energy costs by improving energy efficiency, adopting renewable energy, investing in co-generation and implementing demand management.

The **growth of renewable energy** is an important new source of growth for mined metals and minerals.

2. The global need to reduce emissions has clear implications for Queensland's energy policy.

The challenge is to reduce emissions **at the least cost to society**, (economic and social costs).

The competitiveness of Queensland's economy has been built on **reliable access to low-cost energy**. Emission reductions need to be achieved without threatening Queensland's competitiveness.

Queensland needs a **stable energy policy**, ideally an integrated national policy, to provide investment certainty and remain globally competitive

3. Achieving an orderly transition to a low emission economy needs policy stability to minimise costs.

An orderly transition to a low emission economy will require an integrated set of national policies, which are **technology neutral**. These policies must encompass:

- **Australia's participation in global agreements,** which include greenhouse gas emission reduction commitments from major emitting nations.
- **An integrated national suite** of stable market-based policies that: o prioritises **least cost** abatement of greenhouse gas emissions;
    - maintain industry's international **competitiveness**;
    - deliver a clear, predictable and long-term **price signal** to enable investment;
    - minimise adverse social and economic **impacts**; and
    - are anchored in open and transparent **consultation** with all stakeholders.
- **Technology neutrality**, which requires a sustained investment program to research and deploy the full range of **low and zero emission** technologies.

4. Climate adaptation requires a concerted focus to ensure Queensland communities remain resilient.

Queensland communities need to **lead the process of adapting** to local extremes of climate and weather. This local work on climate adaptation should proceed on a 'no regrets' basis and be independent of efforts on emission reductions.

The industry will continue to **work with local communities** to ensure the health and safety of our people and their families.

Climate change is an **amplifier of existing climate variation** and will differently affect Queensland's diverse communities, regions and industries.

~ Without prejudice ~