Queensland Law Society

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Office of the President

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Committee Secretary
State Development, Natural Resources and
Agricultural Industry Development Committee
Parliament House
George Street
Brisbane Qld 4000

Our ref: (VK/WD/KS-Gen)

By email: sdnraidc@parliament.qld.gov.au

Dear Committee Secretary

Natural Resources and Other Legislation Amendment Bill 2019

Thank you for the opportunity to provide comments on the Natural Resources and Other Legislation Amendment Bill 2019 (the **Bill**). Queensland Law Society appreciates being consulted on this important legislation.

The Queensland Law Society (**QLS**) is the peak professional body for the State's legal practitioners. We represent and promote over 13,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

This response has been prepared with the assistance of the QLS Alternative Dispute Resolution Committee, Mining & Resources Law Committee, the Reconciliation & First Nations Advancement Committee, the Property & Development Law Committee and the Revenue Law Committee.

Due to the size of the Bill, QLS has limited its comments to those aspects outlined below. There may be other unintended consequences which we have not been able to identify due to time constraints.

Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991

The proposed amendments appear appropriate to the extent that reducing the burden of administrative processes will assist traditional owners negotiating with the State for Aboriginal and Torres Strait Islander freehold grants under these Acts.

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The public register of ministerial declarations would be welcomed. It is important to ensure appropriate transparency when a subordinate legislation process is replaced with a ministerial declaration process.

Foreign Ownership of Land Register Act 1988

QLS supports the amendments to omit section 16 and the requirement for the registrar to create and table an annual report on foreign ownership under the *Foreign Ownership of Land Register Act 1988*, given that the Commonwealth Government now publishes an annual report on foreign ownership of agricultural land. This removal simplifies and streamlines the statute book.

In light of the federal reporting framework in relation to foreign land ownership, there is now an unnecessary duplication of reporting requirements under the State and Commonwealth frameworks. This duplication imposes significant compliance costs and red tape on businesses and their advisors. QLS considers that it is timely to review Queensland's *Foreign Ownership of Land Register Act 1988* and consider whether it could be repealed.

Land Title Act 1994

Clause 56 amends part of the definition of '*small*' in section 94(4) from '300m^2' to '450m^2.'

QLS understands that the intent of the change is to ensure that the current 300m^2 restriction does not adversely affect the application of the high density development easement provisions to corner blocks that are subject to boundary setback restrictions under local government planning schemes. This change will mean that the high density easement provisions could apply to "end lots" in a row of high density small lots (presently of 300 m^2) where the planning restrictions might otherwise exclude those lots from the operation of the section.

QLS is concerned that the amendment of 300m^2 to 450m^2 will have the unintended effect of including lots of 400m^2 or 405m^2 which are standard minimum lot sizes in many local council areas. The standard minimum lot size will vary across local governments throughout Queensland.

The consequence of this amendment is that standard lots could potentially be available for high density development facilitated by such easements.

If the intent of the Bill's amendment is to address the circumstances of "small" corner lots subject to planning restrictions, QLS queries whether these size amendments could be limited to apply only to the end lots in a row, or corner lots, in order to minimise the potential of this unintended effect.

Land Act 1994: Insertion of proposed Division 3A

QLS welcomes the insertion of proposed division 3A, namely the process for resolving disputes under particular subleases.

QLS was consulted during the development of the Bill in respect of the proposed division 3A. We note in particular, as outlined at page 23 of the Explanatory Notes, that *'amendments were made through the drafting of the Bill that addressed QLS concerns'*. We appreciate the opportunity for consultation at that early stage of the legislative process.

As outlined in the Explanatory Notes at page 23, QLS remains of the view that as far as possible, there should be consistency between the proposed provisions and the *Commercial*

Arbitration Act 2013 (Qld) (**the Commercial Arbitration Act**). This is to avoid confusion and to ensure appropriate compliance with recognised processes and procedures.

As such, with respect to proposed section 339N, it is our preferred view that the processes under the Commercial Arbitration Act should also apply to this framework.

We note the following inconsistencies:

- Under proposed section 339Q there is a timeframe under subsection (3) within which the award must be issued by the arbitrator. There is no timeframe for when an award must be issued in the Commercial Arbitration Act. There should be consistency with that Act to ensure clarity and that awards made are enforceable.

- QLS is also extremely concerned about the lack of reviewability of decisions under proposed section 339T and in particular, subsection (3). There should be consistency with section 34 of the Commercial Arbitration Act and in particular, parties to these disputes should have the ability to seek review of the arbitral award by the court in appropriate circumstances. The circumstances in section 34 of the Commercial Arbitration Act are quite limited and extend to those in which there is a clear imbalance of power or other fundamental flaw in the arbitral award. These include circumstances such as where a party to the arbitration agreement was under some incapacity, a party was not given proper notice of the arbitral proceedings or the subject matter of the dispute was not capable of settlement by arbitration under the law of Queensland. QLS has significant concerns about a proposal to exclude these options for review for a decision under this proposed division.

- Regarding costs under proposed section 339U, we again submit that there should be consistency with the Commercial Arbitration Act, and in particular section 33B to ensure clarity and fairness. For example, we observe that proposed section 339U(2) may not provide a fair outcome where sublessee size or resources vary. Consideration should also be given to including a discretion for the arbitrator with respect to proposed section 339U(2) to determine whether related sublessees should be treated as a single party, having regard to the fairness to the parties in all the circumstances of the case. This would reflect the discretions in section 33B(4) of the Commercial Arbitration Act.

Land Act 1994 – insertion of new Part 3C Access to State land

QLS acknowledges that it was consulted in relation to the preliminary proposal of this part and appreciates the opportunity to provide comments at that early stage. QLS particularly acknowledges the drafting in the Bill to provide for written notice, notice periods, the obligation to make a "reasonable attempt" to contact the occupier of the land to obtain consent and ultimately, a compensation process if damage is suffered.

QLS strongly supports the intention, indicated at page 19 of the Explanatory Notes, that the "*administering agency will develop the appropriate policies, procedures and training to ensure that all powers are exercised lawfully and appropriately.*" This is critical when legislation is being introduced that otherwise adversely affects the rights and liberties of individuals and particularly the rights associated with their ownership and control of land.

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QLS considers that the policies and guidelines to be developed should specifically address:

- an explanation of what constitutes "a reasonable attempt" to obtain consent for the purposes of the legislation. This should cover concepts such as procedural fairness when negotiating with an occupier;
- what is an appropriate time period for giving notice of entry, acknowledging that the legislation proposes a notice period of 10 business days.

  We appreciate that appropriate notice may depend on the circumstances and the potential urgency of access required. However, some guidance could be given about generally expected timeframes, to ensure occupiers are afforded natural justice during this process.

  Some land management obligations and activities may be regular and planned and in these circumstances, it is suggested that more than the statutory timeframe could be allowed, to increase the likelihood of negotiated consent. Other activities will involve a level of urgency, such as where the purpose of access is to undertake fuel reduction burning or dealing with trespassers. Examples may also be useful.

  It is also suggested that occupiers should be contacted in person or by telephone as soon as reasonably practicable after the need for access is identified. If possible, occupiers should also be kept up to date about the progress of planning the proposed works, including the dates and times of proposed access;
- In many cases, weed and seed certificates may reasonably be required from a landholder and would certainly be reasonable where the intended purpose of accessing the State land is to manage weeds. This could be problematic for officers as a mobile wash down station may need to be transported onto the State land so that a wash down of vehicles can happen before traversing back along the private land. We recommend that this issue be addressed in the guidance material.

Mineral Resources Act 1989 and the Petroleum and Gas (Production and Safety) Act 2004

QLS has concerns in relation to clause 260, which proposes the insertion of section 141A in the *Mineral Resources Act 1989* (the **MRA**) and clause 279, which proposes to insert a new section 42A in the *Petroleum and Gas (Production & Safety) Act 2004* (the **PAG Act**).

Proposed section 141A of the MRA provides that a Minister be given the power to unilaterally impose, vary or remove a condition in an exploration permit without application by the holder, where the Minister considers the conditions must be amended because of an 'exceptional event' affecting the permit.

What is of particular concern with this proposal is that the holder is not given the right to be heard in respect of the exceptional event or the proposed change. Further, the proposal does not afford the holder a formal right of appeal in respect of the Minister's decision. QLS is concerned that this does not adhere to principles of natural justice, in that the holder has no capacity to challenge the decision within the bounds of the legislation and is instead forced to commence the statutory review process in the *Judicial Review Act 1991*, requiring an

application to the Supreme Court with associated costs and delay affecting both the applicant and the Minister as respondent.

These concerns are repeated in relation to proposed section 42A of the PAG Act, which seeks to allow a Minister to amend the conditions of an authority to prospect if considered necessary as a result of an exceptional event.

Similarly, no statutory avenue of review is provided in relation to the proposed amendment of section 139(4) of the MRA under clause 258, which gives the Minister the power to require relinquishment of more or less than the prescribed 50% because of an exceptional event affecting the permit, or circumstances arising from the permit forming part of an exploration project.

These concerns are aggravated upon review of the proposed definition of *'exceptional event'*, which is to be inserted into the MRA and PAG Act as set out in clauses 171 and 313 of the Bill, respectively.

QLS considers the proposed definition to be relatively broad, and we suggest that the insertion of examples giving a description of what circumstances might constitute an exceptional event will assist to clarify the intended parameters of an exercise of this power.

Thank you again for the opportunity to comment. If you have any queries regarding the contents of this letter, please do not hesitate to contact the QLS Legal Policy Team, by phone on ([redacted] or by email to [redacted].

Yours faithfully

Bill Potts
President