

15 July 2013

Mineral and Energy Resource Exploration Inquiry
Productivity Commission
GPO Box 1428
Canberra City ACT 2601

Dear Commissioners,

Thank you for the opportunity to make a submission in response to the draft report of the *inquiry on the non-financial barriers to mineral and energy resource exploration in Australia*. The Queensland Resources Council ('QRC') and the Queensland Exploration Council ('QEC') were also pleased to present at the public hearing in Brisbane on 3 July 2013.

This submission is being made as a joint submission between the QRC and the QEC.

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, and associated service companies. The QRC works on behalf of members to ensure Queensland's resources are developed profitably and competitively, in a socially and environmentally sustainable way.

QEC aims to have Queensland acknowledged as the minerals and energy exploration leader by 2020 and with Brisbane confirmed as its heart. With membership comprising a who's who of the resources sector, together with members drawn from finance, events and marketing, research and government, the QEC endeavors to influence perceptions about the importance of exploration, and promote Queensland's prospectivity to investors and businesses that support the exploration sector.

Complementing the QRC's focus on exploration policy in Queensland, the QEC promotes the natural advantages of Queensland and Brisbane as a home to minerals and energy companies and the wide range of essential service companies. The QEC sees the removal of non-financial barriers to exploration as critical in raising the public perception of resource exploration as an attractive and viable investment. Companies who raise the risk capital for exploring a resource prospect need to be able to access their preferred target land in a timely way and at a reasonable cost. Public perceptions of impediments to testing exploration targets will create further uncertainty at a time when it is already very difficult to access investment funds.

As mentioned at the public hearing on 3 July 2013, QRC is supportive of the majority of the Productivity Commission's recommendations in the draft report. QRC and QEC have taken on your challenge to focus our efforts on advice that would enhance exploration in an operational capacity. QRC and QEC offer a number of comments on the draft recommendations and a number of Queensland specific issues, which are not explicitly outlined in the report, but are however highly important to exploration in Queensland.

Draft Recommendation 3.2

Where possible, governments should not allocate exploration licences for tenements that would be too small or too irregular a shape for an efficient mine or production wells to be established. The release of exploration tenements should be deferred until tenements of appropriate size and shape can be issued.

QRC and QEC do not support this draft recommendation on the grounds that it risks being too prescriptive and restrictive. While irregular or small tenures may not be ideal, it seems presumptuous for the Crown to make assumptions about likely future production, when the tenure is only at the exploration stage, and how that future operation might best be efficiently arranged.

The two Councils suggest that the Commission should work on the assumption that not all exploration will proceed to production tenure (and those that do will often be on production tenures which are dramatically reconfigured from the initial exploration tenure by relinquishment and other operational requirements) and also that the applicant for exploration tenure is the best placed to make an informed decision on the future prospects of an irregular or oddly shaped tenure. The applicant can also deal on adjoining tenure to build an appropriate landholding. In issuing the tenure, the Government should feel free to express their misgivings about its size or tenure, but if a credible work program is proposed for the tenure or if an adjacent tenure holder expresses an interest in exploring on the tenure, then the Government should have the capacity to consider an application on its merits.

Strictly interpreted, the Commission's recommendation could be construed as implying that rather than risk speculative land banking by individuals, that the Crown will withhold the tenure, (perhaps as a form of pre-emptive public land banking). The Councils recommend that the recommendation is made advisory rather than prescriptive.

On a related matter, QRC's members have reported the pressure of meeting stringent relinquishment requirements that do not allow for discretion in times such as the Global Financial Crisis, the 2010-11 Queensland floods and the recent change in investment environment for explorers. When there is a substantial change in the business environment for exploration that affects a large number of tenure holders in the same way, the Crown needs to consider whether they can offer some flexibility on relinquishment requirements to accommodate the change in circumstances.

Draft Recommendation 3.5

Governments should ensure that their regulators publish target timeframes for approval processes, including exploration licensing and related approvals (for example environmental and heritage approvals). The lead agency for exploration should publish whole-of-government performance reports against these timeframes on their website.

QRC and QEC are highly supportive of this recommendation.

Back in 2010, QRC released its report titled *Supporting Resource Sector Growth*, which outlined the importance of approval timeframes. Not only do approval timeframes provide certainty to industry, but certainty to departmental staff and the wider investment community.

On the back of a process coming out of the QRC report was the Government-Industry Implementation Group (see http://mines.industry.qld.gov.au/assets/mines-pdf/GIIG_report_Final_Oct11_web.pdf). The Group published in 2011 a set of goal timeframes to meet in 2014 for both exploration and production. These timeframes are a key indicator of a number of initiatives that have been implemented in Queensland recently, including the removal of the paper-based application process to a new seamless online management system.

Application process	April 2010 timeframes industry estimate (average time)	Target timeframes by 2014 (80% of government processes faster...)	Time saving (at least)
Exploration permit for mineral or coal renewal	9 months	...3 months	up to 65%
Mining claim with no native title	9 months	...6 months	up to 35%
Mining lease for a small-scale mining operation with state Indigenous Land Use Agreement (ILUA)	between 12 and 15 months	...6 months	up to 60%
Exploration permit application, with code-compliant environmental authority and exclusive of native title	12 months	...9 months	up to 25%
Tenure with state ILUA	between 15 and 18 months	...9 months	up to 50%
Tenure with right to negotiate (RTN)	between 24 and 36 months	...14 months	up to 60%
Environmental impact statement assessment	between 26 and 32 months	...17 months	up to 40%

Entrenching approval timeframes in legislation or regulations is required. QRC would go further to recommend that many post-grant approvals, if not decided within a specific time, should be 'deemed as approved'. Many of these approvals need to be reported to the Australian Stock Exchange and without a clear understanding of when these changes occur, it can create a distorted perception of risk and therefore confidence in exploration activities.

Draft Recommendation 4.1

Drawing on the guiding principles of the Multiple Land Use Framework endorsed by the Standing Council on Energy and Resources, Governments should, when deciding to declare a new national park or conservation reserve in recognition of its environmental and heritage value, use evidence-based analyses of the economic and social costs and benefits of alternative or shared land use, including exploration.

Governments should, where they allow for consideration of exploration activity, assess applications by explorers to access a national park or conservation reserve according to the risk and the potential impact of the specific proposed activity on the environmental and heritage values and on other users of that park or reserve.

As outlined at the public hearing, QEC and QRC support the release of the Darling Downs and Central Queensland regional plans, understanding they can provide a genuine opportunity for coexistence between Queensland's two peak industries – agriculture and resources. However, the draft plans that have been released are largely conceptual – they identify areas for higher levels of assessment on the ground of affording a priority to both agriculture and settlement areas – but do not provide much detail as to how this assessment will work.

To date, this regional planning exercise has not been informed by a detailed analysis of the type described by the Commission of the economic and social costs of applying preferential land use zones. Further QRC, which is a member of both regional planning committees, is concerned that there appears to be a differential treatment of exploration activities under the two new types of zones proposed in the regional plans.

Under the proposed priority agricultural areas (PAAs), resource activities which are concluded in under 12 months are not subject to the application of coexistence criteria through the new zoning. However, in the proposed priority living areas (PLAs), which extend 2 km from the boundaries of settlements of more than 200 people, all resource activities are made subject to the local Government's discretion and their planning scheme. This raises the very real prospects of exploration activities being treated inconsistently between PLAs and as compared with PAAs.

As discussed at the public hearing in Brisbane, QRC supports a system of regional planning as a means of describing and measuring the land use values within a region, and also to establish how chains of value-adding activity may rely on geographic proximity. The regional plan should not be seeking to be a new regulatory instrument, but rather to provide better input into the existing regulatory process. Rather than looking to town planning as a model, and establish what could in effect become exclusive zones as seems to be the direction of regional planning in Queensland, QRC proposes an approach of objectively mapping the multiple land values in the region. This would allow this information to be fed into existing regulatory processes of assessment and conditioning rather than designing an additional regulatory process which risks duplication and redundancy.

QRC and QEC suggest that the Commission's recommendations should also be extended from environmental reserves to all planning systems that seek to extend restrictive or exclusionary zoning.

QRC and QEC also note that the recent introduction of a new matters of national environment statement (MNES) trigger for water resources, under the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*, fail to appropriately distinguish between operational

and exploration activities and appear to be contrary to the fundamental tenet of the Commission's recommendation that exploration activities should be regulated based on the risk and potential impact of the activity.

Draft Recommendation 4.2

State and territory governments should ensure that land holders are informed that reasonable legal costs incurred by them in negotiating a land access agreement are compensable by explorers.

QRC and QEC support this draft recommendation, however would like to reiterate a concern raised at the public hearing regarding the notification of *all* landholders with tenure over the land. Although QRC supports the intention of the idea, understanding the importance of transparency and certainty to *relevant* landholders there are some clear practical issues. QRC fully supports early engagement by explorers with all landholders who may be affected by their operations.

While theoretically appealing, the upfront notification (similar to notice of entry) to *all* landholders covered by an exploration permit carries with it implications that need to be further considered. The actual benefit to landholders would be minimal in the absence of information concerning the likelihood of exploration activities impacting on their land. QRC is aware of some exploration permits having 100 different landholders. Obviously not all of these landholders will be impacted by actual exploration activities, and hence upfront notification of the existence of an exploration permit over that land could be viewed as excessive and may even cause unwarranted community concern.

The second issue with notifying all landholders is how will they all be correctly identified, and the possible legal ramifications if one landholder cannot be notified/located. In Queensland there has been some recent public debate over the meaning of landholder with the term extended to those who have been granted some right of occupancy or use by the owner of the land.

The administrative burden on the tenure holder being required to exhaustively notify all landholders (defined most broadly) may be excessively high in both time and cost when weighed against the community benefit derived. Since early 2013, the definition of 'occupier' in all Queensland resources legislation has been amended to be consistent, but unfortunately consistent in its ambiguity. The definition of occupier is a person who has a:

- "right to occupy under an Act or lease registered under the *Land Title Act 1994*", or
- "a person who has had a right to occupy given to them by such a person".

This broad definition of occupier creates an unnecessary complication whereby the resource company has no means to exhaustively discover all parties who may have some standing, creating uncertainty of process.

As an alternative to upfront landholder notification, the two Councils suggest it would be reasonable and more cost-effective for government and for explorers to inform landholders and other stakeholders where, when and how information about the grant and existence of tenures can be ascertained through the already existing mapping technology (Interactive Resource Tenure Mapping or similar) maintained by the Department of Natural Resources and Mines. The two Councils are supportive of the Department of Natural Resources and Mines' recent initiative to develop Local Area Mining Permit (LAMP) reports.

Further Recommendations

The Councils suggest that the Commission could make recommendations on other principles of land access to improve the accommodation between agriculture and resource development.

- Governments should ensure that there is a readily and economically accessible forum for resolving conflicts between explorers and landowners over conduct and compensation for exploration activities. Reference to Courts and Tribunals is unpalatable for both landholders and explorers to resolve what are usually relatively minor differences. The New South Wales system of a panel of arbitrators who can mediate (then decide if necessary) when negotiations between the landowner and explorer have reached an impasse is a potential model.
- Governments should clarify the guidelines on what conduct is acceptable on the exploration property and publish the grounds for the explorer to pay compensation to the landholder.
- The system of land access for exploration should recognize the varying impacts of different types of exploration and not attempt to impose a “one size fits all” approach in designing standard access agreements. There is a significant difference between exploration activities and their level of disturbance (i.e. a surface geophysical survey compared to a coal or gas drill hole).

Draft Recommendation 6.2

The Commonwealth should improve the efficiency of environmental assessment and approval processes under the Environment Protection and Biodiversity Conservation Act by strengthening bilateral arrangements with the states and territories for assessments and establishing bilateral agreements for the accreditation of approval processes where the state and territory processes meet appropriate standards. The necessary steps to implement this reform should be properly scoped, identified and reviewed by jurisdictions and a timetable for implementation should be agreed.

QEC and QRC are highly supportive of this recommendation. Strengthening bilateral arrangements between the Federal Government and the Queensland Government will ensure less duplication of assessments, reduce costs for both governments and industry while also delivering leading environmental outcomes. QRC also finds that triggers such as the ‘nuclear action’ trigger under the EPBC Act needs to be reviewed in line with previous draft recommendations for a risk-based approach.

Draft Recommendation 6.4

Governments should ensure that their environment-related regulatory requirements relating to exploration:

- *are the minimum necessary to meet their policy objectives*
- *are proportionate to the impacts and risks associated with the nature, scale and location of the proposed exploration activity.*

Both Councils are wholly supportive of this draft recommendation.

Environmental regulation must be risk-based and proportionate to risk and its impact. Queensland has instigated a substantial reform process over the last two years, which aims to provide a level of codified environmental regulation for a suite of standard low-risk exploration activities. The changes have been most marked in the area of gemfield and alluvial mining,

where exploration within a bounded area can occur by certifying compliance with a standard set of environmental conditions.

QRC is working closely with the Queensland Government as part of the *Greentape* (led by the Department of Environment and Heritage Protection) and *Streamlining* (led by the Department of Natural Resources and Mines) reforms. QRC is encouraging both agencies to look at how the model of identifying a standard set of low-risk exploration activities can be managed through compliance with a standard code rather requiring bespoke assessment and conditioning for each project. As this work proceeds, QRC hopes that the approach will help to increase the attractiveness of investing in Queensland exploration projects.

Draft Recommendation 6.6

Governments should ensure that when there is scientific uncertainty surrounding the environmental impacts of exploration activities, regulatory settings should evolve with the best-available science (adaptive management) and decisions on environmental approvals should be evidence-based.

QEC and QRC are highly supportive of this draft recommendation.

Queensland has been blessed with an abundant endowment of mineral and energy resources, many of which are still to be discovered and have their potential understood. As a result of this diversity, Queensland has a track record of innovation with regard to new extraction techniques and evolving industries. Coal seam gas to liquid natural gas, oil shale and underground coal gasification are three good examples of different stages of progress towards commercially viable projects, but with a common theme of a willingness to invest in Queensland trials and pilots.

Draft Recommendation 7.1

Governments should monitor the outcomes of the cost recovery funding approach to the provision of pre-competitive geoscience information being adopted by the New South Wales Government, with a view to its possible broader application in those jurisdictions.

QEC and QRC are pleased by the recent funding announcement for the Geological Survey of Queensland (GSQ). The recent Queensland budget saw the allocation of some \$30 million in funding over 3 years to GSQ, a very welcome first step to making good the neglected funding of this important public good.

As outlined in the Council's initial joint submission and the public hearing, QRC and QEC recommend that public funding of GSQ should remain, as it underpins Queensland's pre-competitive exploration capability. Funding for the acquisition of pre-competitive geoscientific data would ideally be included in the base budget of the Geological Surveys. Neither Council would support a cost recovery model, which could dilute access to the data.

In summary

Rec. number	Synopsis of draft recommendation	QEC and QRC comment
3.1	Clear exploration objectives Feedback on successful allocations	Strongly support explicitly implementing both suggestions in Queensland.
3.2	Eschew issuing irregular size and shaped tenures.	Prefer tenures to be available, so industry can make a decision on viability and potential. Suggest rewording the prescription in the recommendation.
3.4	Coordinate exploration approvals and provide guidance on the approvals required.	Strongly support implementing both suggestions in Queensland.
3.5	Publish targets for approvals and report performance against these targets.	Strongly support explicitly implementing both suggestions in Queensland.
4.1	Evidence based analyses of economic and social costs and benefits of alternative land use. Assess exploration according to risk and potential impact.	Strongly support implementing both suggestions in Queensland.
4.2	Ensure landholders are informed that reasonable legal costs for land access.	Very clear part of Queensland's system, although many in industry would argue that the focus on <i>reasonableness</i> of the costs tends to be lost.
4.3	Ensure coal seam gas exploration regulation is evidence-based and appropriate to the level of risk.	Strongly support implementing both suggestions in Queensland.
5.1	Accredit State regimes to ATSIHP Act standards	Support implementing recommendation in Queensland.
5.2	Lodge, register and protect heritage surveys.	Support implementing recommendation in Queensland.
5.3	Manage indigenous heritage on a risk assessment basis	Support implementing recommendation in Queensland.
6.1	Accredit NOPSEMA under EPBC	Not relevant in Queensland.
6.2	Strengthen EPBC bilateral	Strongly support for implementation in Queensland.
6.3	Consider referring petroleum regulation in State waters to NOPSEMA	Industry's view would be contingent on the response to recommendation 6.1

Rec. number	Synopsis of draft recommendation	QEC and QRC comment
6.4	Environmental regulation of exploration should be the necessary minimum and proportionate to risk.	Strongly support for implementation in Queensland.
6.5	Performance-based environmental regulation of exploration	Strongly support for implementation in Queensland.
6.6	Adaptive management in the face of uncertainty and evidence-based approvals.	Strongly support for implementation in Queensland.
6.7	Guidance on the range of environmental approvals required.	Would seem to be a subset of recommendation 3.4.
6.8	Archive industry data	Strongly support for implementation in Queensland.
7.1	Consider cost recovery of competitive geosciences.	Not supported in Queensland.

Thank you again for the opportunity to make supplementary comments. The QRC contact on the matters raised in the submission is Andrew Barger, Director - Resource Policy.

Yours sincerely

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