QRC Submission

Productivity Commission Review
Resource Sector Regulation

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QUEENSLAND resources COUNCIL

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1 INTRODUCTION

The Queensland Resources Council (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.

QRC thanks the Productivity Commission for the opportunity to provide input into its Review of Resource Sector Regulation.

Many QRC members are also members of the Minerals Council of Australia (MCA). QRC supports the MCA's national submission. The aim of the QRC submission is to complement the national submission by focusing on resources sector regulation which is specific to Queensland and its interaction with the Commonwealth regulations.

The review scope has two clear areas of focus – 1) best practice regulation and 2) best practice community engagement. Both areas are deserving of their own separate reviews. However, QRC's submission has attempted to address both areas with real case studies and suggestions for improvement.

The *Resources Sector Regulation Productivity Commission Issues Paper* (Issues Paper) acknowledges the other reviews relevant to this review and QRC emphasises the importance of not creating new duplication, while recognising that some will be inevitable.

Of particular interest to QRC members is the review of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) which was announced on 29 October 2019. As a result, this submission does not go into significant detail on the improvements needed to the operation, and in some cases the actual content, of the EPBC Act but instead gives a high overview of the issues that will be discussed far more extensively in industry submissions on that review. Submissions will again be made by the MCA. However, this submission does contain some specific recommendations regarding the need for the streamlining of the interaction between the state and Commonwealth governments as it pertains to the EPBC Act.

2 BACKGROUND

Queensland has been blessed with a diverse resource endowment and a broad range of resource commodities are produced for domestic and export markets. Queensland is home to the first coal seam gas (CSG) to liquified natural gas export industry. Queensland is also Australia's leading coal jurisdiction by volume and value, with over 53 operating coal mines (both open cut and underground coal mines with 71% of that production being metallurgical coal). Queensland has some of the highest quality metallurgical coal in the world and supplies 50 per cent of globally traded metallurgical coal. The North West Minerals Province in Queensland's Mount Isa region is a world-class resource province, which is rich in precious and base metals, as well as the so called 'new economy' minerals that are essential ingredients in batteries, electric cars, defence and more.

The State of Queensland owns the resources on behalf of the Crown. For a company to be awarded a licence to make use of those resources through their extraction and sale (both domestically and internationally), and in return paying royalties for the people of Queensland, the company must first satisfy technical, financial, social and environmental criteria. All but the very smallest projects must complete an Environmental Impact Statement (EIS) and obtain a number of relevant licences and authorisations prior to gaining access to the land. This submission recommends a number of areas for improvement in these assessment processes. It should be noted that these assessment processes are separate to engaging with landholders,

Native Title and Cultural Heritage and negotiating access and compensation arrangements which is required, and is leading practice, under Queensland legislation.

Queensland can provide a number of examples of best practice regulation, stakeholder consultation and community engagement. One area in which Queensland leads the country is land access. Over the years community sentiment in resource regions, particularly in the gasfields, has evolved into a benefit sharing arrangement.

The Issues Paper asks *" What have been the consequences of identified instances of poor regulator conduct, including inconsistency, inadequate enforcement and unduly protracted processes, for investment in the sector?''*

The cost of delays is clear evidence of the impact of duplicative and inefficient processes. In 2013, in the Productivity Commission's Inquiry Report into Major Project Development Assessment Processes[1] estimated that for a generic major resource project, a one-year delay could result in societal costs in the order of $26 to 59 million dollars. In 2014, the BAEconomics report[2] found that reducing project delays by one year across the whole economy would add a cumulative total of $160 billion to national output for 2025 and create an additional 69,000 jobs.

In 2014, in the context of major gas projects, the Queensland Competition Authority (QCA) said:[3]

> *Using a broadly accepted methodology and data obtained from NRM, APPEA and the PC, the QCA estimates the average potential loss in industry revenue from an approval delay of one day is approximately $300,000. That is, potential industry savings of around $36 million per annum are implied from reduced delay costs*.

Delays in approvals process have a significant impact on industry (and Government) in terms of cost, in both administration and project delay. QRC believes there are many opportunities to streamline the approvals process through legislation, policy and operational change.

To be clear, QRC is not suggesting assessment processes should be less rigorous. Resource projects are a major undertaking, with the aim to allow access to resources that belong to the people of Queensland, and assessment should reflect this. However, the ever-evolving complexity and spiralling duplication of the current assessment frameworks is counter to good regulatory management and militates against a globally competitive resources industry for the benefit of all Queenslanders.

3 BEST PRACTICE REGULATION

QRC supports the COAG principles of best practice regulation, however suggests the principles themselves should also be reviewed. The COAG principles of best practice regulation were published in 2007, over a decade ago. QRC suggests the following:

- Amend the Principle for 'independent' regulator to an 'accountable' regulator.
- Include a principle on retrospectivity of new regulation.

Given the above, the Table on page 9 of the Issues Paper does not adequately capture all necessary criteria so that it can be useful tool in assessing regulation.

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[1] Productivity Commission (2013) 'Inquiry into Major Project Development Assessment Processes). Accessed at http://www.pc.gov.au/inquiries/completed/major-projects/report/major-projects.pdf [261].

[2] Sourced from the Minerals Council of Australia pre-budget submission 2017-18, accessed here: https://static.treasury.gov.au/uploads/sites/1/2017/06/C2016-052_Minerals-Council-of-Australia.pdf

[3] http://www.qca.org.au/getattachment/aaaeab4b-519f-4a95-8a65-911bc46cc1d3/CSG-investigation.aspx

In Queensland there are a set of criteria for new regulation which is set out in the *Legislative Standards Act 1992*. Section 4 of the Act outlines a number of key principles that are not listed in the table on page 9 of the Issues Paper:

- Rights and liberties should not be adversely affected retrospectively;
- Administrative powers should be subject to rights of review (which is a more direct and specific requirement than that they are 'accountable');
- Onus of proof should not be reversed in criminal proceedings;
- Compulsory acquisition of property only with fair compensation (although, in Queensland, this principle has not been interpreted by the government as extending to resumption of mining tenements).

Queensland's former *Fundamental Legislative Principles: OQPC Notebook* published by the Office of the Queensland Parliamentary Counsel January 2008 provided considerably more detailed guidance about the former Scrutiny Committee's interpretation of these and various additional operational requirements. The Queensland's Scrutiny Committee has now been disbanded, however QRC suggests this notebook still provides the best summary available in Australia of appropriate criteria for assessing best-practice regulation.

Recommendation

- Review the COAG principles of best practice regulation.

3.1 REGULATORY DESIGN

3.1.1 Regular review of regulation and consideration of the need for new regulation

Regular review of regulation is one area that requires improvement, both federally and in Queensland. In the Productivity Commission's 2013 review into Major Project Development Assessment Processes, the final report recommended regular review of regulatory objectives to ensure they are clear, consistent and coherent.[4] Given leading practice evolves, QRC supports the regular review of the objectives and performance of regulatory instruments should be undertaken to ensure they are relevant, efficient and delivering the intended outcome.

How a regulation is administered is just as important than the regulation itself.

This review is a welcome addition to build upon the previous Productivity Commission Review into Major Project Assessment processes in 2013. Since that time, reforms have been enacted and the key issues have changed. This review is important to understand the issues for the next pipeline of projects – For Queensland these will be new coal mines, particularly in the Galilee Basin, and new mineral mines in northern Queensland. Stakeholder expectations of this review is that reforms both at the State and federal level will follow.

Queensland approach

Queensland has processes in place for review of existing, and proposals for new, regulation, however, they are seldom followed. The Queensland Government is required to undertake Regulatory Impact Analysis (RIA) to determine the likely impacts of a regulatory proposal. A

[4] Productivity Commission (2013), 'Major Project Assessment Processes – Final Report'. 86-93.

Preliminary Impact Assessment (PIA) is used to assess the potential for the impact of the proposal to be adverse and significant. Where this threshold is triggered, a Regulatory Impact Statement (RIS) is recommended to explore such impacts, such as balancing costs with benefits, on affected stakeholders.

QRC recognises that the resources sector is perceived by some as a high-risk industry and there is a need to reduce that risk through a high level of regulation. Over the years, layer upon layer of regulation has created significant complexities, duplication and barriers. In line with best practice regulation principles, QRC advocates for a greater adherence to the RIA process. Where a RIS is not deemed necessary, the justification for this should be transparent and extraordinary in nature.

Fly in, Fly out legislation

The Queensland Government has indicated a review of the *Strong and Sustainable Resource Communities Act 2017* which legislated against 100 per cent fly in fly out workers for mining projects. At the time the legislation was introduced, there were no 100 per cent fly in fly out workforces at a Queensland mine.

QRC's view is this new regulation should have undertaken a RIA process given the legislation objectives could have been met through existing conditioning powers by the Coordinator-General.

Recommendation

- Regular review of the objectives and performance of regulatory instruments should be undertaken to ensure they are relevant, efficient and delivering the intended outcome.
- Greater adherence to the RIA process.

3.1.2 Genuine and sufficient consultation during regulation making

Consultation standards

QRC works with a number of different government departments, both State and Federal. Each department, or indeed areas within departments, have different standard timeframes for stakeholder consultation on policy and/or legislation changes. These consultation timeframes can range from a couple of days up to a number of months. It is not uncommon for consultation to be undertaken in short intermittent bursts followed by several months of apparent disengagement. Where policy and legislation development processes lack transparency, they can affect business as usual operations and investment decisions.

QRC's experience suggests there is a need for a government-wide standard for stakeholder consultation on new policy and legislation, regardless of whether a RIS (in Queensland) has been undertaken. A standard consultation timeframe would improve predictability of process and help ensure all stakeholders have adequate time to respond to emerging government policy.

Parliamentary Committee process – legislative review, not consultation

Queensland's Parliament does not have an upper house. Instead, Parliamentary Committees scrutinise new legislation. Their official role is to ensure a bill delivers against the policy objectives

as well as follows Fundamental Legislative Principles.[5] . Too often the Parliamentary Committee process is used as a shorthand version of stakeholder engagement and notification. The Committee processes should not be confused with a genuine consultation process with stakeholders. By the time a bill has been drafted, introduced and referred to a Committee, the regulatory framework is in the final stages of construction. This process seems counter to the COAG principles of best practice regulation, particularly principle 7 on consulting effectively with affected key stakeholders at all stages of the regulatory cycle.[6] Further where the government is a majority government, the recommendations and findings of these Committees are rendered effectively meaningless with all legislation passing.

QRC suggests there is a need for the Queensland Parliament to reconsider the role of Parliamentary Committees, particularly since the 2010 review and the 55 recommendations made during that review. The Committees could usefully play a role in ensuring that the RIA is being used, and where relevant a RIS prepared, as a precondition to any Bills being introduced. This focus on protecting stakeholder consultation would be a useful addition to the focus in Fundamental Legislative Principles.

Recommendation

- Review of Queensland's Parliamentary Committee process, particularly focusing on the changing role of Committee's.
- The Commission should prepare a minimum standard for stakeholder consultation on new regulatory processes and subsequent changes.

3.1.3 Complex regulation

Queensland has a robust regulatory framework for the assessment and approval of resources projects. However, the overall complexity of the framework is evidenced in (**Figure 2 to 4**)[7] with currently five core acts in Queensland, and an abundance of subordinate legislation to navigate through – a taxing and time-consuming task. For example, for a resources project, proponents may need to obtain the following approvals and licences:

- State Resource Authority (tenure/land access/native title requirements) under either the *Mineral Resources Act 1989* (MR Act) or the *Petroleum & Gas (Production & Safety) Act 2004*;
- Environmental Authority and Progressive Rehabilitation and Closure Plan *under the Environmental Protection Act 1994* (EP Act);

[5] Queensland Parliament Factsheet (2018) 'Fundamental Legislative Principles'. Available at https://www.parliament.qld.gov.au/documents/explore/education/factsheets/Factsheet_3.23_FundamentalLegislativePrinciples.pdf

[6] COAG Principles of Best Practice Regulation (2007) Á Guide for Ministerial Council and National Standard Setting Bodies'. Available at https://www.pmc.gov.au/sites/default/files/publications/COAG_best_practice_guide_2007.pdf page 6.

[7] Sourced from *Transparency International (2017)* 'Corruption Risks: Mining Approvals in Australia – Mining for Sustainable Development Programme. Available at https://transparency.org.au/tia/wp-content/uploads/2017/09/M4SD-Australia-Report_Final_Web.pdf

- Regional Interests Development Authority under the *Regional Planning Interests Act 2014* (RPI Act);
- State water approval/licence under the *Water Act 2000* (Water Act); and
- Development Approval for ancillary requirements, such as worker accommodation under the *Planning Act 2016*.

Once initial approvals for a project have been awarded, regulation extends to the operational and closure phase, including:

- The type and rate of operations;
- Environmental and rehabilitation outcomes with a focus on the post resource extraction land use, and water take and use (both volume and quality);
- Safety;
- Transport of goods;
- Community and indigenous engagement; and
- Workforce placement.

Within each of these areas are a complex set of conditioning, monitoring and reporting.

Very broadly, below is a snapshot of the types of regulations per level of government on a typical resources project.

Figure 1

Federal	Queensland	Local Government
Matters of National Environmental Significance	Tenure regulation	Workforce accommodation
Tax regulation	Environment regulation, including Matters of State Environmental Significance, water use, rehabilitation	Rates
Export controls for gas development	Post operations regulation, including residual risk	Road and other infrastructure use
Native Title	Workforce (e.g. Fly in Fly out) regulation	
	Health and safety regulation	
	Rail regulations	
	Cultural heritage	

There are two areas in Queensland where QRC sees an unnecessary level of complexity.

One key area where there is added complexity is the objections process for mining projects as they operate independently and are subject to Court proceedings, including the Land Court objections process. Fundamentally, the complexity of the process creates a lack of transparency and consistency as it relates to decision criteria and decision-making processes.

QRC's view is the objection process is suffering from a number of issues including:

- Complex and lengthy process

- Multiple opportunities to raise the same objection to a project at different stages of the assessment process
- Where a project seeks multiple approvals, their objections processes are not concurrent
- Lack of clarity on who can object to conditions imposed by the Coordinator-General – the effect of Coordinator-General conditions and their relationship with the EA process remains unclear
- The project proponent must defend government assessment and imposed conditions in the Land Court (with exception of some environmental matters)
- Inability for the Land Court to amend conditions even if all parties agree, rather the Court must make a recommendation to the Minister

QRC suggests broader consideration needs to be given to reviewing the effectiveness of the overall objection process, including the roles of both the courts and government. QRC is keen to work with the Queensland Government and broader stakeholders on a new process that provides certainty of process.

The second area of unnecessary complexity is the land access process in Queensland. This is where an exploration lease holder is seeking access to private land to undertake exploration activities. In a coal and mineral industry context, this is typically a low impact activity spanning between one and a couple of days. The land access framework in Queensland commenced in 2010 off the back of the CSG to LNG industry. The framework is a one size fits all model, however Queensland is a large State with numerous variations in the types of industry activity, location of the activity and what its used for (the land becomes more densely populated in the southern region). In the minerals space specifically, the land access framework one size fits all model is fast becoming unworkable.

Figure 2

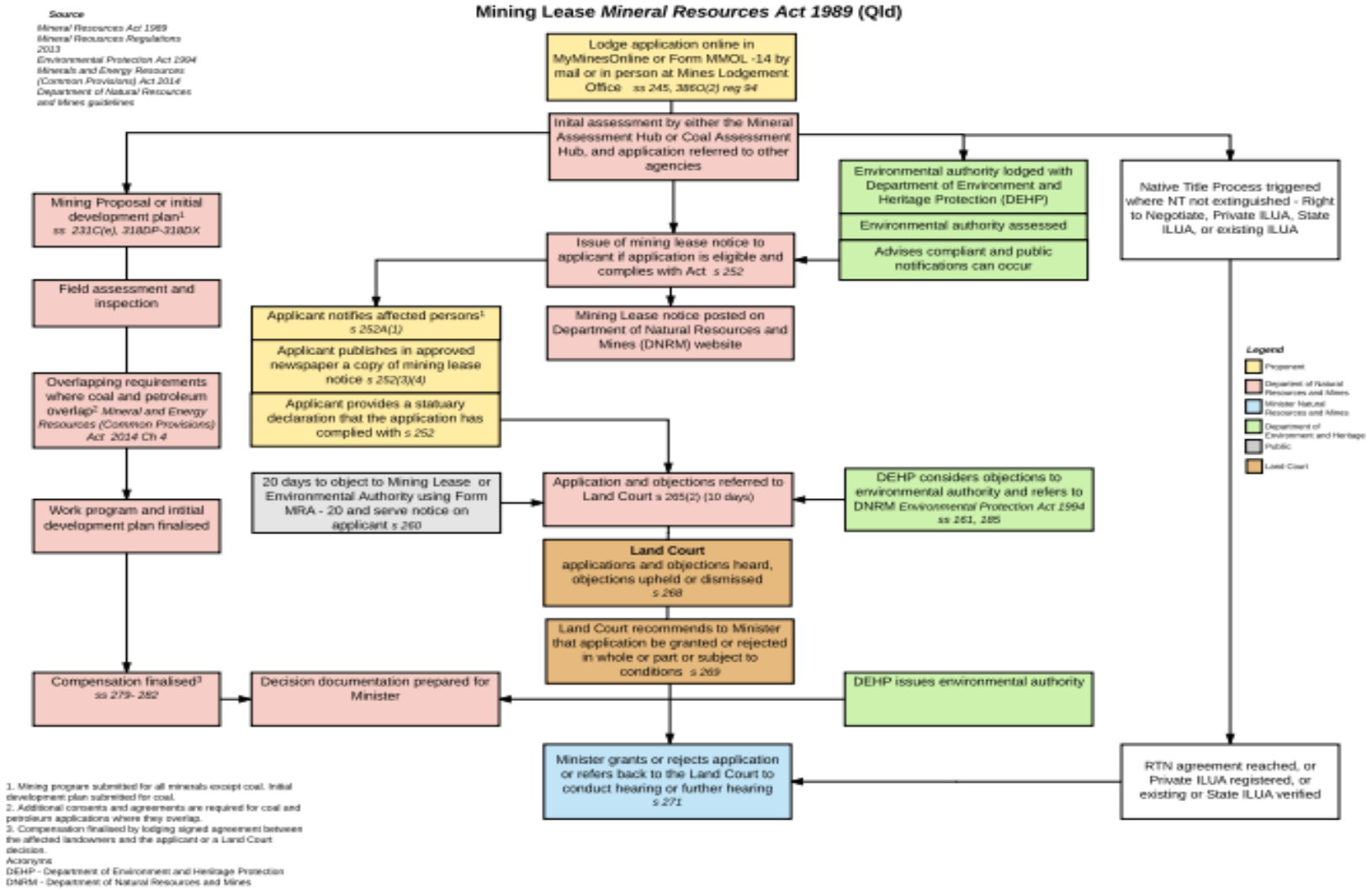

Source
Mineral Resources Act 1989
Mineral Resources Regulations 2013
Environmental Protection Act 1994
Minerals and Energy Resources (Common Provisions) Act 2014
Department of Natural Resources and Mines guidelines
Mining Lease Mineral Resources Act 1989 (Qld)
Lodge application online in MyMinesOnline or Form MMOL -14 by mail or in person at Mines Lodgement Office ss 245, 386O(2) reg 94
Inital assessment by either the Mineral Assessment Hub or Coal Assessment Hub, and application referred to other agencies
Environmental authority lodged with Department of Environment and Heritage Protection (DEHP)
Environmental authority assessed
Advises compliant and public notifications can occur
Native Title Process triggered where NT not extinguished - Right to Negotiate, Private ILUA, State ILUA, or existing ILUA
Mining Proposal or initial development plan1 ss 231C(e), 318DP-318DX
Issue of mining lease notice to applicant if application is eligible and complies with Act s 252
Field assessment and inspection
Applicant notifies affected persons1 s 252A(1)
Mining Lease notice posted on Department of Natural Resources and Mines (DNRM) website
Applicant publishes in approved newspaper a copy of mining lease notice s 252(3)(4)
Overlapping requirements where coal and petroleum overlap2 Mineral and Energy Resources (Common Provisions) Act 2014 Ch 4
Applicant provides a statuary declaration that the application has complied with s 252
Legend
Proponent
Department of Natural Resources and Mines
Minister Natural Resources and Mines
Department of Environment and Heritage
Public
Land Court
20 days to object to Mining Lease or Environmental Authority using Form MRA - 20 and serve notice on applicant s 260
Application and objections referred to Land Court s 265(2) (10 days)
DEHP considers objections to environmental authority and refers to DNRM Environmental Protection Act 1994 ss 261, 185
Work program and initial development plan finalised
Land Court
applications and objections heard, objections upheld or dismissed
s 268
Land Court recommends to Minister that application be granted or rejected in whole or part or subject to conditions s 269
Compensation finalised3 ss 279- 282
Decision documentation prepared for Minister
DEHP issues environmental authority
Minister grants or rejects application or refers back to the Land Court to conduct hearing or further hearing
s 271
RTN agreement reached, or Private ILUA registered, or existing or State ILUA verified
1. Mining program submitted for all minerals except coal. Initial development plan submitted for coal.
2. Additional consents and agreements are required for coal and petroleum applications where they overlap.
3. Compensation finalised by lodging signed agreement between the affected landowners and the applicant or a Land Court decision.
Acronyms
DEHP - Department of Environment and Heritage Protection
DNRM - Department of Natural Resources and Mines

Figure 3

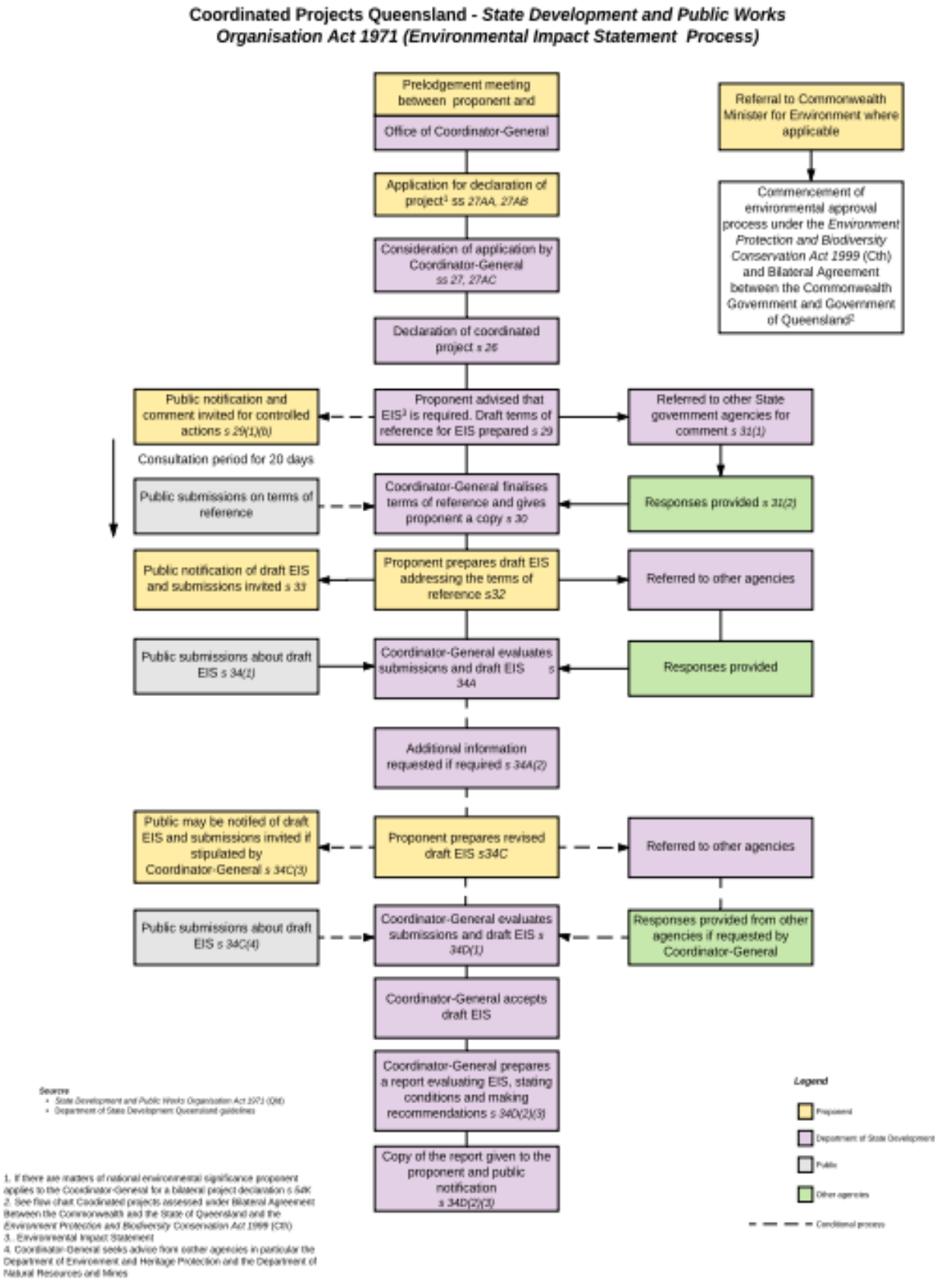
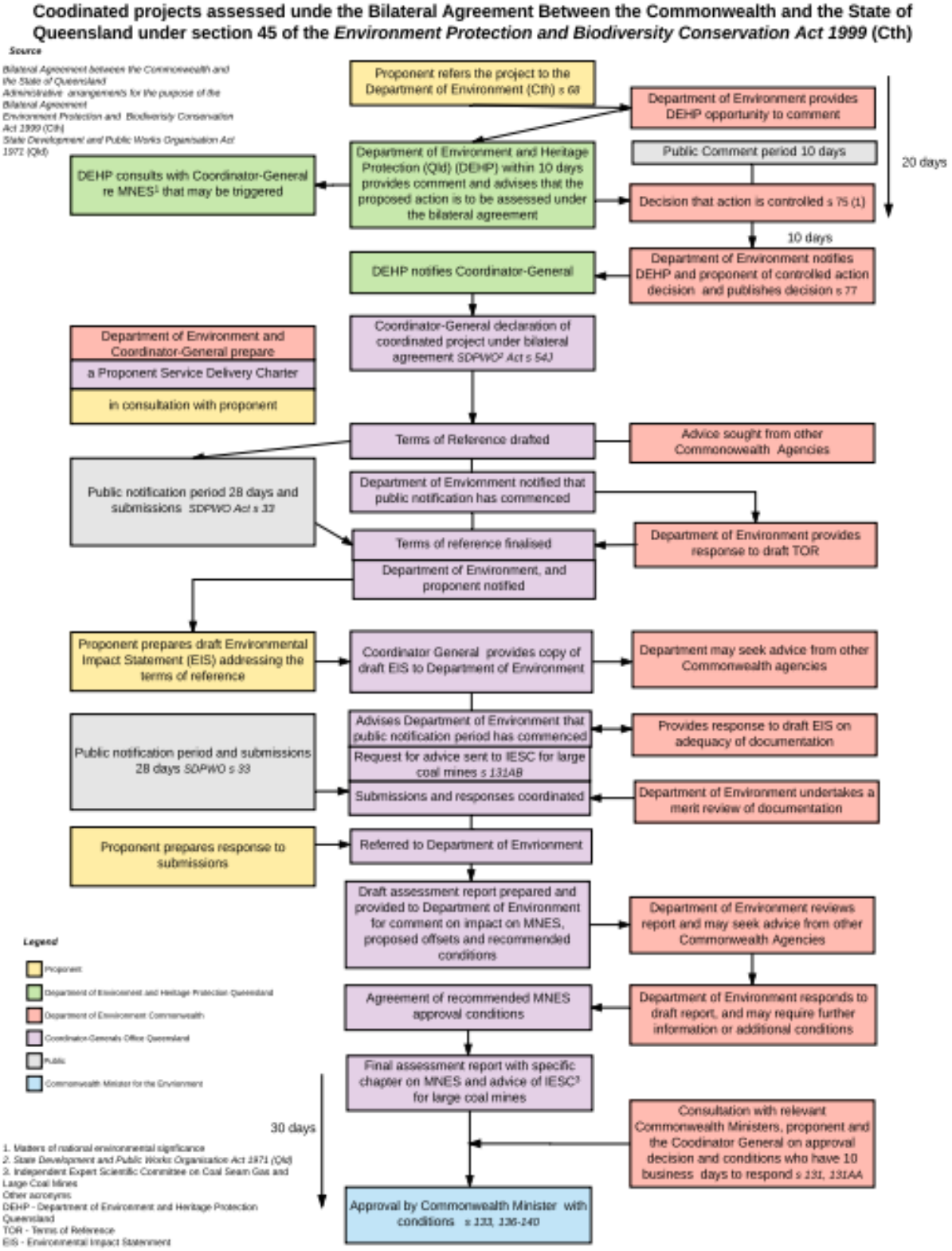

Coordinated Projects Queensland - State Development and Public Works Organisation Act 1971 (Environmental Impact Statement Process)
Prelodgement meeting between proponent and Office of Coordinator-General
Referral to Commonwealth Minister for Environment where applicable
Application for declaration of project[1] ss 27AA, 27AB
Commencement of environmental approval process under the Environment Protection and Biodiversity Conservation Act 1999 (Cth) and Bilateral Agreement between the Commonwealth Government and Government of Queensland[2]
Consideration of application by Coordinator-General ss 27, 27AC
Declaration of coordinated project s 26
Public notification and comment invited for controlled actions s 29(1)(b)
Proponent advised that EIS[3] is required. Draft terms of reference for EIS prepared s 29
Referred to other State government agencies for comment s 31(1)
Consultation period for 20 days
Public submissions on terms of reference
Coordinator-General finalises terms of reference and gives proponent a copy s 30
Responses provided s 31(2)
Public notification of draft EIS and submissions invited s 33
Proponent prepares draft EIS addressing the terms of reference s32
Referred to other agencies
Public submissions about draft EIS s 34(1)
Coordinator-General evaluates submissions and draft EIS s 34A
Responses provided
Additional information requested if required s 34A(2)
Public may be notified of draft EIS and submissions invited if stipulated by Coordinator-General s 34C(3)
Proponent prepares revised draft EIS s34C
Referred to other agencies
Public submissions about draft EIS s 34C(4)
Coordinator-General evaluates submissions and draft EIS s 34D(1)
Responses provided from other agencies if requested by Coordinator-General
Coordinator-General accepts draft EIS
Coordinator-General prepares a report evaluating EIS, stating conditions and making recommendations s 34D(2)(3)
Copy of the report given to the proponent and public notification s 34D(2)(3)
Source
State Development and Public Works Organisation Act 1971 (Qld)
Department of State Development Queensland guidelines
Legend
Proponent
Department of State Development
Public
Other agencies
Coordinated process
1. If there are matters of national environmental significance proponent applies to the Coordinator-General for a bilateral project declaration s 54K
2. See flow chart Coordinated projects assessed under Bilateral Agreement Between the Commonwealth and the State of Queensland and the Environment Protection and Biodiversity Conservation Act 1999 (Cth)
3. Environmental Impact Statement
4. Coordinator-General seeks advice from other agencies in particular the Department of Environment and Heritage Protection and the Department of Natural Resources and Mines

Figure 4



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Nested approvals

It has become increasingly common at across State and Federal Governments for approvals to be granted subject to conditions requiring later lodgement and acceptance of various types of plans or reports, which are required before operations (or construction) can commence. However, for many of these 'nested' approvals, there are two significant risks:

- The matter that has been deferred for future consideration may be fundamental both to the approval and to the proponent's investment decision, in which case, it is a matter that should have been decided upfront. These types of conditions may be invalid, or, in some instances, may unintentionally invalidate the entire approval; and
- There is no assessment framework for the plan or report, such as regulatory timeframes, criteria or appeal against refusal. There may be multiple information requests, with no way of closing out the process, preventing the operation (or construction) from starting.

Significant improvements could be made without the need for legislative amendments, for example:

- A guideline explaining the types of matters that should not be deferred for future consideration, but should be determined as part of the approval;
- For those technical matters of detail that can be addressed by post-approval plans or reports, a set of development assessment rules, setting out procedures, timeframes and internal review rights. If the subject-matter is standard, then benchmark criteria could be included.

Recommendation

For nested approvals -

- A guideline explaining the types of matters that should not be deferred for future consideration, but should be determined as part of the approval;
- For those technical matters of detail that can be addressed by post-approval plans or reports, a set of development assessment rules, setting out procedures, timeframes and internal review rights. If the subject-matter is standard, then benchmark criteria could be included.

3.1.4 Duplication and opportunities for harmonisation

There are a number of areas in the assessment and approvals process subject to both State and Federal Government jurisdictions. QRC strongly supports the accreditation of State and Territory frameworks and processes under Federal legislation (e.g. EPBC Act) for a single, streamlined and harmonised approval bilateral approach. This would provide the Federal Government with a strategic oversight while allowing States and Territories to administer relevant Federal responsibilities and in doing so reduce unnecessary duplication.

Water

The regulation of water resource with respect to resources projects has long been, and comprehensively, managed at a State and Territory level (e.g. EP Act). As part of EIS, State

and Territory Governments assess and can subsequently impose conditions on a project in relation to water.

Despite relevant, existing State and Territory regulation, in 2013, amendments were made to the EPBC Act to provide that water resources are a matter of national environmental significance in relation to coal seam gas and large coal mining development. As part of its responsibilities, the Federal Minister for the Environment needs to approve actions that may have a significant impact on a water resource, in relation to coal seam gas development and large coal mining development (the "water trigger"). In this respect, Federal Government can provide comment, request information and set conditions as part of the project approval.

The assessment and approvals process is further complicated by the interactions with, and the role of, the national Independent Expert Scientific Committee (IESC).[8]

While both State/Territory and Federal instruments aim to create the best environmental outcomes, proponents need to undertake significant rework to fulfil the prescribed administrative scopes under each Act, even though the environmental matter being assessed is the same or very similar. This result in a duplication of the assessment of water by State and Federal Government and inefficiencies, for example:

- management plans delivered to both State/Territory and Federal Government, which manage the same risks, have been subject to different actions/requirements due to inconsistent expectations between the jurisdictions;
- considerable overlaps in conditioning, specifically regarding EPBC Act conditions for surface water, hydraulic fracturing and groundwater against the Queensland framework within the Surat Cumulative Management Area. Groundwater impacts are assessed under the EP Act and Water Act and surface water impacts are assessed under the EP Act. The current duplication results in significantly lengthening assessment processes and duplication of, or inconsistent, conditions.

The Chapter 3 'make good' requirement under the Water Act and the EP Act and Associated Water Licence assessment for groundwater should be accredited under the Bilateral Agreement to remove the necessity for dual assessments at State and Federal level, duplication of conditions and delays in the approval process.

In the absence of an approval bilateral, QRC would suggest that the State Government cultivate a more collaborative and communicative relationship with the Federal Government. While QRC appreciates that this may raise complexities for the auditing of conditions, this is another area where duplication could be removed with auditing of Federal conditions being devolved to the State Government.

Offsets

Federal offset requirements should recognise State offset requirements to the extent they cover Federal matters. Appropriately, the *Environmental Offset Act 2014* (Qld) (EO Act) minimises duplication of matters dealt with at a Federal level, that is "*where the Commonwealth requires an offset the state will not require an offset for the same matter*". However, greater clarity is needed as to what is considered 'substantially the same matter'. For example, if matters (Matters of National Environmental Significance and Matters of State Environmental Significance) occupy the same geographical location, they should be considered the same matter for the purpose of impact assessment.

[8] *Environmental Protection and Biodiversity Conservation Act 1999* (Cth) s 131AB.

State and Commonwealth offset metrics, and where possible entire regulatory frameworks, should also be harmonised to ensure the most appropriate offset area and outcome is delivered with respect to the impact. In this regard, the resources sector would like to see the Queensland Offsets Framework endorsed and accredited under the EPBC Act to allow offsets to be managed under the EO Act provisions. This approach would also allow for a broader range of delivery options for offsets, including strategically maximising on-ground offsets and outcomes through the pooling of funds via financial based instruments. The Queensland framework provides this financial option along with securing land-based offsets or a combination of the two. It affords greater flexibility than the 90% land-based and 10% indirect offset requirement mandated under the EPBC Act.

Recommendation

- QRC urges the Federal and Queensland governments to work together on accrediting the Queensland systems for both water and offsets assessments and approvals.
- While noting that it is out of scope, given the importance of the issue QRC again recommends that an Approvals Bilateral should be employed to further streamline duplicative approvals between State and Federal regulators.

3.1.5 Developing assessment and approval frameworks for life of operation

QRC believes that an element of the development assessment and approvals framework that is often overlooked, as is the case in the Issues Paper, is the ability to surrender (following rehabilitation) tenements and other approvals and obligations with a certainty that Governments will not look for financial or other redress in the future. The ability to remove contingent liability upon surrender is a material issue for existing operations and future investment. It should be considered holistically by the Productivity Commission with respect to other stages of assessment and approval.

Under the EP Act, Queensland has long had the ability to implement a residual risk framework to ensure a means to an end, giving a proponent the opportunity to both undertake its best rehabilitation possible, but also to calculate any remaining risk payment to accommodate a material failure in any significant aspect of rehabilitation (credible risk event). However, the framework has not yet been fully utilised given the supporting system and tools are only now under development.

While works are underway to deliver a reliable residual risk system, the Queensland Government does not believe there is a need to make legislative changes to ensure that once a residual risk payment has been made, any future liability of the company is liberated. This is exacerbated in Queensland as a result of the Chain of Responsibility provisions (generally Part 5 Division 2) introduced in 2016 under the EP Act, which effectively gives the Government the right to seek redress from any entity (company or individual) who may have had any influence or significant financial benefit from a company at any stage in its existence or operation.

The point of a residual risk payment, is that such legislation should no longer apply (except in the case of false or misleading information). Reforms to Queensland's residual risk system, and more generally across jurisdictions, have the real capacity to act as a strong encouragement for companies to complete their rehabilitation to the highest possible standard in a timely way enabling return of that land to the community. However, greater regulatory certainty is needed

to give existing operators and future investors confidence that Government (and legislation) will not act inappropriately.

3.1.6 Regulatory timeframes

Approvals for resource projects are already, and increasingly becoming more, lengthy. In this regard, reasonable regulatory timeframes for key assessment and approval (decision) stages should be set in legislation to provide proponents certainty and to hold Government accountable with respect to their performance. There are some good examples of timeframes within Queensland legislation, such as the EP Act.

QRC is of the view that there are opportunities to include timeframes in other pieces of regulation, including, for example (but not limited to):

- Time to provide/respond to information request, which should be an earlier time than the total period allowed for assessing the application (e.g. section 89 of the EPBC Act);
- Time for preparation, assessment and decision of post-approval requirements (e.g. management plans) under the EPBC Act; and
- Time for decision-making for various applications relating to resource tenements under resources legislation (e.g. decisions by the Mines Minister following tenders relating to exploration permits for coal (section 136K MR Act) or to grant or reject mining lease applications (section 271A MR Act)).

3.1.7 Uptake of technology to increase efficiencies

QRC acknowledges there are a few initiatives in place to move assessment and management processes online, however holistically, each of these initiatives is done in isolation. This means efficiency gains are made but are not being leveraged in the optimal way.

One example is how resource tenure and environmental approvals are managed online.

In Queensland, resource projects have two major licences that must be obtained - 1) the Resource Authority managed under the Department of Natural Resources, Mines and Energy; and 2) the Environmental Authority managed under the Department of Environment and Science. Each of these processes are intertwined and in fact a Resource Authority cannot be approved without an approved Environmental Authority. The legislation demands the two processes are consistently speaking to each other, however in practice, each agencies the management system is completely separate. This duplication creates huge inefficiencies and compliance costs for proponents having to navigate two distinct management systems.

Other jurisdictions such as Western Australia, have provide a seamless one stop shop process that enables greater transparency of process but also predictability of process, particularly between the two separate regulatory departments' assessment of applications.

3.2 REGULATORY GOVERNANCE

3.2.1 Resourcing

QRC understands that resourcing is a critical constrain to the effective operation of regulation across agencies within the Queensland and Federal Governments. Poor staff retention and the ability to attract appropriately qualified persons to Government or train/upskill existing staff has affected the knowledge-base and administration (e.g. consistent and predictable interpretation and application of systems and tools) of what should be mature regulators.

Regulators should be adequately equipped with resources to best manage seemingly competing pressures for best practice regulation, deregulation, efficiency gains, while also

improving on the implementation of legislation, compliance and enforcement, stakeholder engagement and many other new priorities.

For the resources sector, a project approval is a long, technical process. It is important that the sector has confidence in Government's ability to deliver a consistent and centralised representation with sound understanding of, and skills to assess, its operations in a timely manner.

EPBC Act referrals and approvals

An example as to how existing resourcing could be improved under the EPBC Act is by means of appointing a referrals manager and approvals case managers to projects.

A referrals manager should provide advice to proponents on referral requirements. The referrals manager must be sufficiently qualified and senior to provide proponents with formal advice that the projects do or do not need to be referred under the Act. The centralisation of referrals would also assist in ensuring consistency in decision making within the Department.

A single approvals case manager should be assigned to individual approval processes for controlled actions. Such a case manager should be:

- A single point of contact for both State/Territory Government and proponents;
- Undertake a co-ordinating role for Federal assessment and approval processes;
- Responsible for process delivery within statutory timeframes; and
- Sufficiently qualified and senior to provide consistent and reliable advice to proponents.

3.2.2 Reluctance to make an outcomes-focused decision and variations in interpretation

Over the years, QRC has witnessed a shift from outcomes-focused regulatory strategies towards greater prescription in regulatory instruments – legislation, regulations and operational policies.. This approach can limit the flexibility by which a proponent is to deliver outcomes without regard to economic, operational or environmental considerations and does not enable discretion or judicial review of a government decision.

In addition, there has been increasing changes in the way individuals or units within Governments interpret and apply regulatory instruments and supporting tools. This tendency has, and continues to, cause delays and significant uncertainty for the resources sector and others in the relation to information required during the approvals process, operational delivery and broader investment.

QRC suggests that the issue could be addressed by having well-resourced and skilled (trained) regulators where key staff are confident in their understanding of industry issues and empowered to make outcomes-focused decisions (see **Section 3.2.1**). However, in the face of high turnover of Government staff, some level of prescription may be required. QRC welcomes recent, and ongoing, development of operational policies or guidance that provide a greater level of detail on legislative requirements, which will provide greater clarity of regulator expectations and interpretation.

EPBC Act offsets

Since late 2017, QRC and its members have observed the Federal Government adopt an unprecedented, undocumented and ever-changing interpretation of risk of loss, habitat descriptions, and habitat quality and condition when assessing offsets under the EPBC Act. Such shift has generally not been well justified to proponents or included in any draft practice note to limit further change. The inconsistencies in how each aspect is to be measured, the extent of ecological or other related data required, and the disregard of expert advice and field studies has led to significant delays in project timelines, and excessive offset quantums and associated costs.

QRC is working to understand the Federal Government's concerns, and need for the recent changes, in relation to the administration of EPBC Act offsets, particularly given that the resources sector and others viewed the system prior to late 2017 as being clear, functional, and based on sound, scientific grounds. QRC is of the view that the establishment of a working group is needed to address/resolve technical matters. This should be supported by suitable guidance material outlining agreed positions, methods or other considerations while still affording sufficient flexibility to accommodate site-specific matters.

QRC acknowledges there is a fine balance between providing greater certainty and creating unnecessary regulation. Different stakeholders will have different views of where this balance lies, which is why the objective review of an independent body like the Commission provides such an important opportunity for sparking reform.

3.3 REGULATORY CONDUCT

3.3.1 Administration predictability and transparency

As provided in **Section 3.2**, much of the existing administrative issues with respect to predictability and transparency of the regulator could be addressed through adequate and skilled Government resourcing and outcomes-focused guidance.

3.3.2 Changing goal posts

There are many examples in Queensland where a project has submitted its EIS for assessment, only to find years later when a decision is made that they have been assessed against requirements imposed after the lodgement date. It is difficult for investors to have confidence in a process whereby they are required to anticipate a future regulatory state in their assessment document. they are subject to all new legislative changes. This creates uncertainty for investors as the operating environment has changed to which a financial decision was made.

Two recent examples are the changes introduced through the Water Act 2000 for an Associated Water Licence and the introduction of the federal water trigger under the EPBC Act.

To reduce uncertainty, Government could instate a policy in which applications are assessed under the laws in place at the time an application is lodged (not when it is assessed). This is similar to the way in which Queensland's planning law operates.

Recommendation

- Develop a policy where applications are assessed on the law of the day (with exception where a proponent has not advanced an application in some time).

3.4 INDUSTRY-LED INTIATIVES

In some instances, there may be a need for industry-led regulation processes. One such example in Queensland was the overlapping coal and CSG tenure framework that was facilitated by QRC from 2010. Industry led the process to develop a default co-development arrangement, an arrangement which is highly commercial. The overall process took six years from initial discussions through to legislation, with 16 government representatives and almost 70 industry representatives involved over those years. With over 90 per cent of Queensland's coal and CSG tenure overlapped, this process provided an opportunity to move away from an adversarial approach to an outcome that industry could live with.

More information on this work is available through QRC's Overlapping Tenure Guideline. The Guideline is available here.

4 BEST PRACTICE COMMUNITY ENGAGEMENT

The resources sector is privileged to operate in Queensland's vibrant regions. This section highlights effective non-regulatory approaches community engagement and benefit-sharing practices, initiated by QRC and our members.

4.1 LEADING PRACTICE EXAMPLES

4.1.1 Listening to the Community Project

Today, more than ever, interactions between company and community that aim to increase understanding on all sides, build trust, and strengthen relationships are vital to the success of resource operations.

In 2013 QRC commissioned the Listening to the Community project, a unique community engagement initiative which asked resource communities for feedback on *what good engagement means to them*. The project sought the views of 200 community members across 19 regional Queensland communities on the effectiveness of community engagement practices used by resource companies, and specifically how they could be improved.

It Was successful in identifying improvements that could be made in this important area, while also demonstrating the good work that is being done. The project tested and confirmed a set of principles for effective community engagement. The application of these principles by companies have supported, and will continue to support, the development of stronger relationships with their communities, based on increased trust and mutual respect.

The report is available **here**.

4.1.2 Memorandum of Understanding to increase Indigenous participation in the resources sector

2020 will mark the twelfth anniversary of a unique and far-sighted partnership between the Queensland Government and the resources industry, the *Memorandum of Understanding to Increase Indigenous Participation in the Queensland Resources Sector* (the MoU). The inaugural agreement, signed on Yarrabah country east of Cairns, recognised the resources sector is uniquely placed to make a significant socio-economic contribution to Indigenous people and communities.

The overriding objectives of the MoU are achieved through joint government and industry efforts to enhance:

- education and training to support Indigenous people into jobs and business opportunities in the resources sector;

- employment of Indigenous people in the resources sector; and
- participation by Indigenous businesses in resources sector supply chains.

Case studies of initiatives delivered under the MoU are available **here.**

4.1.3 Community benefit sharing

Resource companies work in partnership with local residents, community groups, councils and other organisations to develop programs to support common goals. These programs are often based on formal social and economic impact assessments and enhancing local employment and business opportunities is often a key priority.

Shell QGC Health-e Regions

Health-e-Regions aims to improve health, wellbeing and educational outcomes for students and the wider Western Downs community by providing online access to specialist health care without the need to travel long distances. Students are linked to a specialist at the University of Queensland, via skype or video call. These specialists provide lessons targeted at the need of each student. Five schools across the towns of Tara, Chinchilla, Wandoan and Miles have access to Health-e-Regions. The type of service provided is matched to the need in an area. At some schools the focus is only on speech and language, while others include occupational therapy and audiology services.

The program also aims to build additional capacity with educators. Teacher aides and learning support officers sit in on the telehealth sessions and bring the learnings from the program into the classroom- *more information*

QCoal *Thida Bullaroo*

The Thida Bullaroo '*One Foot After the Other*' program was co-designed by QCoal Group and Jangga Operations to create and sustain employment opportunities for Traditional Owners across QCoal Group's operations. The program uses an intensive pre-employment screening process, support programs and targeted training funded through the Jangga Byerwen Bursary, to set candidates and their families up for success.

This unique, holistic approach led to an increase in Indigenous workforce representation from 2 per cent to 14 per cent within 24 months and is continuing to deliver strong retention rates – *more information*

4.2 AREAS FOR IMPROVEMENT

There are shortcomings in the regulatory framework regarding best-practice community engagement. Similar to industry's issues with short consultation timeframes, the community at times is also given short timeframes to respond to policy and legislation changes.

In addition, due to government's seeming inability to prioritise assessments, such as through EIS processes, to those matters which of the highest risk and therefore require the greatest studies and review, the community is often required to provide submissions on enormous documents which make identifying the main issues of interest almost impossible. This not only also means significant time and expense for companies for little environmental or social benefit, it has created a whole industry of professional reviewing middle men when the discussion should be with the directly affected stakeholders.

This makes it difficult for companies to be seen as working collaboratively with all stakeholders for a shared benefit, a position which QRC strongly supports and encourages of all our members.

One area of reform that could make a tangible impact on stakeholders' ability to respond to new resource projects is simplifying notifications. See below.

4.2.1 Simplify the process for the community to respond to resource projects

In Queensland, the notification process is a specific area of duplication that could be streamlined. This would improve the community's ability to respond and engage in the approval process for the resource project – streamlining of notifications. Resource projects are required to give numerous public notifications under a range of legislation (i.e. EPBC Act, Water Act 2000, EP Act, MRA and the RPI Act) that could be combined through one process.

Further duplication will be introduced with Queensland's new progressive rehabilitation and closure planning (PRCP) process which will also require public notification. Additionally, if an EPBC Act referral and approval is necessary, public notice of the referral and assessment documentation is also required.

The multiple public notice requirements require significant resources in terms of preparation of documentation for notification and advertising for submissions. The multiple public notices result in duplication of submissions and appeal processes, including in different courts (Land Court for EA, ML and AWL), Planning and Environment Court for RIDA and Federal Court for EPBC Act. This duplication results in significant delay and waste of resources, both for the assessing agencies, the Courts and the proponent. It also imposes significant burden on community stakeholders to adequately respond to projects.

Recommendation

- Streamline public notification processes for a single project, including the EPBC Act notifications.

5 POSSIBLE BARRIERS TO INVESTMENT

5.1 INFRASTRUCTURE AND PUBLIC GOODS

Timely access to competitively-priced infrastructure services such as rail, water, port, energy, pipelines, roads, mobile and internet services are imperative to support industry growth. The government's planning and coordination of infrastructure is essential.

QRC works with member companies and government to secure efficient and predictable systems, regulation and administration. Queensland, with its significant exports of energy and minerals is reliant on competitively priced economic infrastructure to deliver products to global and domestic markets.

5.2 ROYALTY AND TAXATION

Queensland is acknowledged as being a high-tax jurisdiction. The combination of payments to local governments, the state government and the Federal government are typically much larger in Queensland than our global competitors pay in their home jurisdictions.

Many of the taxes that the sector contributes are paid by all businesses – like payroll tax, income tax and stamp duty – but many are specific charges levied only on resources companies – like royalties. Royalties remains one of the largest sources of revenue collected by the Queensland government. Many local Governments will double dip on their rates collection with rates collected on resources tenure as well as on land ownership.

The total tax burden on resources projects has a very important influence on making investment decisions. Resources projects tend to be capital intensive with the capital invested up front and

then recovered over long operating lives. This means that the economics of resource projects are very sensitive to changes in taxes (or charges) over the life of the project.

QRC advocates for a stable and predictable regime of taxes (including local government rates and royalties paid to the State Government).

5.3 LOCAL GOVERNMENT RATES

One area that requires greater transparency and predictability in the process is on the rating of resource sector tenement leases. In Queensland, Local Governments have an unfettered power to apply rates to different rate payers. QRC understands the need for Local Governments to set their own rates as this income goes towards providing essential services to the community as a whole. QRC's advocacy in this area is rather focused on four key principles for reform:

Four principles for reform:

1. A rates determination and valuation process and outcome that is transparent, predictable and fair (including consultation and an avenue for appeal).
2. Rating categories not to be used as a lever to prevent, mitigate or discourage legitimate land uses (i.e. rating categories that single out individual developments).
3. Greater transparency of Local Government budgets and how rates are determined, including a requirement to adequately justify (i.e. based on economic valuation principles not on a capacity to pay) new rating categories and increases.
4. Equal treatment and consistency with other land uses.

Queensland producers compete in globally-traded, international commodity markets. Commodity prices are determined at the global level, while producer cost structures are determined at the local level. Rapid and unpredictable escalation in local government rates erodes the international competitiveness of Queensland's producers.

The resources industry is a cyclical, long-term industry with project investment timeframes typically in excess of 20-30 years. Resource project investment decisions are based on clearly defined assumptions including operating costs (of which local government rates are a component). Unpredictable increases in rates represent a risk to the viability of existing operations. Furthermore, heightened uncertainty can deter future investment in Queensland by raising the level of sovereign risk for investors.

The issues arising from the financial unsustainability of local government are not resources-specific. Queensland councils have systematically targeted sectors perceived as having the greatest ability to pay. To help ensure Queensland's resources industry can continue to support the wider economy and regional communities, QRC seeks a review of the Local Government rating system in Queensland based on the four principles for reform outlined above.

6 SUMMARY OF RECOMMENDATIONS

1. Review the COAG principles of best practice regulation.
2. Regular review of the objectives and performance of regulatory instruments should be undertaken to ensure they are relevant, efficient and delivering the intended outcome.
3. Greater adherence to the RIA process.
4. Review of Queensland's Parliamentary Committee process, particularly focusing on the changing role of Committee's.
5. The Commission should prepare a minimum standard for stakeholder consultation on new regulatory processes and subsequent changes.
6. For nested approvals -
    - A guideline explaining the types of matters that should not be deferred for future consideration, but should be determined as part of the approval;
    - For those technical matters of detail that can be addressed by post-approval plans or reports, a set of development assessment rules, setting out procedures, timeframes and internal review rights. If the subject-matter is standard, then benchmark criteria could be included.
7. QRC urges the Federal and Queensland governments to work together on accrediting the Queensland systems for both water and offsets assessments and approvals.
8. An Approvals Bilateral should be employed to further streamline duplicative approvals between State and Federal regulators.
9. Develop a policy where applications are assessed on the law of the day (with exception where a proponent has not advanced an application in some time).
10. Streamline public notification processes for a single project, including the EPBC Act notifications.