Government Submission – Queensland Department of Natural Resources, Mines and Energy

Productivity Commission Draft Review into Resource Sector Regulation

August 2020

Queensland Government

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Introduction

The Department of Natural Resources, Mines and Energy (DNRME) welcomes the opportunity to make a submission in response to the Productivity Commission (the Commission) Draft Report - *Resources Sector Regulation* (the Draft Report), released on 24 March 2020.

Queensland Resources Sector

DNRME plays a key role in fulfilling the Queensland Government's commitment to achieving a strong resources sector. The resources industry is a key driver of the Queensland economy, creating jobs and delivering a range of broader benefits for the State.

Queensland is often recognised as a highly prospective exploration and operational destination, endowed with diverse reserves of coal, minerals, and petroleum and coal seam gas. Queensland has a number of high-potential mineral and energy resources that are yet to be fully explored or reach production, such as rare earths and strategic metals.

The Queensland Government, through DNRME, continues to fund pre-competitive geoscience to enhance exploration opportunities and position Queensland as a preferred region for resources globally.

Over the past eight years Queensland has developed an unprecedented $70 billion onshore gas industry which is now our second largest commodity export. Mining activity made up 11.8% ($38.8 billion) of our economy in 2017-18 and our coal and bauxite reserves are among the largest in the world and are of high grade making them a sought-after product overseas. Overseas exports of coal, LNG and minerals accounted for around 83% of the nominal value of Queensland's overseas merchandise exports in 2018-19.

The world's steel industry continues to look to Queensland's Bowen Basin for the supply of high quality metallurgical coal. Queensland is the world's largest seaborne metallurgical coal exporter.

As well as traditional minerals like zinc, nickel, bauxite, lead and copper, there are also significant projects underway to develop cobalt and vanadium resources used in wind turbines and batteries—which are crucial to the renewable energy boom.

Queensland has modern rail, port and pipeline infrastructure to support mining, energy and petroleum industries and exports to international markets, with programs in place to expand infrastructure capacity to meet increasing demand.

The Government is committed to improving the sector's safety and health performance and has initiated a broad range of reviews and reforms to protect the safety and health of workers in the resources sector. This includes establishing an independent regulator with a CEO reporting directly to the Minister. Resources Safety and Health Queensland (RSHQ) is a risk-based regulator, promoting a vision of zero serious harm across Queensland's resource sector and focusing its effort on the safety and health of workers in Queensland's mining, quarrying, petroleum, gas and explosives industries.

Recent initiatives establish RSHQ as a leading practice regulator and provide the foundation to improve safety performance. They include direct engagement with workers, an independent board of inquiry into safety incidents, independent reviews of mining and quarrying safety performance and legislative frameworks, and legislative changes to deliver health reform and strengthen enforcement options.

Combined with an excellent resource base, modern transport infrastructure, a trained workforce, a strong focus on worker safety and health, and a supportive governance structure make Queensland the ideal place to invest.

General Comments

DNRME is generally supportive of the Draft Report and is committed to improving regulation for mining and gas projects that will benefit both industry and the wider community.

DNRME submits:

1. The Commission should take into account the recommendations made in a number of recently released reports including the *Interim Report of the Independent Review of the Environmental Protection and Biodiversity Conservation Act 1999* and the Australian National Audit Office (ANAO) report released on 25 June 2020, *Referrals, Assessments and Approvals of Controlled Actions under the Environment Protection and Biodiversity Conservation Act 1999.* DNRME notes that the Commission should finalise this study with consideration of other reports and reviews which have recently been completed or are underway.
2. DNRME looks forward to continued discussions with the Commission on the Draft Report before it is finalised.
3. DNRME has provided the Productivity Commission with a list of key Aboriginal and Torres Strait Islander stakeholder groups to consult, in a manner consistent with cultural and community protocols, prior to the finalisation of the Final Report.

Responses to Information Requests

Managing resources activities on private lands

Information request 5.1 The Commission is seeking further information on whether reforms to the following elements of the Aboriginal Land Rights (Northern Territory) Act 1976 (Cth) would help to enable resources sector investment while still achieving the aims of the Act:

- *conduct of resources companies and traditional owners during negotiations (including the way that moratorium rights are exercised)*
- *the conjunctive link between exploration and extraction approvals*
- *the potential costs and benefits of allowing other resources companies to apply to develop land rights land that is subject to a moratorium for another resources company.*

It is noted that the Aboriginal Land Rights (Northern Territory) Act 1976 (Cth) only applies to the territories, and as such will only provide a general comment in response to this information request. In Queensland, the Government has published the Coordinator-General's Social Impact Assessment (SIA) Guideline which outlines requirements for resource project proponents to consult with Traditional Owners and traditionally underrepresented stakeholders including Aboriginal and Torres Strait Islander peoples when developing the project's SIA. The SIA is required to address potential social impacts and benefits of the project on these stakeholders, which is additional to cultural heritage and native title matters. The Coordinator-General can state conditions on these matters.

The Queensland Government may be able to offer further comment following a review of the details of the reforms.

Further information on heritage approvals

Information Request 6.1 The topic of Indigenous heritage has not been raised by many participants to this study and it is not clear which jurisdictions, if any, could be described as leading practice. Could interactions between Indigenous heritage and the resources sector be improved? Which jurisdictions manage these interactions well already? How do they do it?

The Queensland Government is committed to enabling Aboriginal and Torres Strait Islander people to participate fully in Queensland's vibrant economic, social and cultural life.

DNRME notes that Indigenous heritage may not have been raised by many participants in this study. This is because there has been limited consultation by the Productivity Commission undertaken with

Traditional Owner groups, native title groups, or their representatives (as per Table A.2 of the Draft Report). It should also be noted that Table A.2 of the Draft Report does not record consultation having taken place with any Aboriginal or Torres Strait Islander stakeholders the Queensland Government identified. DNRME recommends that the Productivity Commission actively engages with relevant Aboriginal and Torres Strait Islander stakeholders, in a manner consistent with cultural and community protocols, on cultural heritage legislation if the legislation and regulatory context are to be discussed in their Final Report.

The *Queensland Aboriginal Cultural Heritage Act 2003* (Qld) and the *Torres Strait Islander Cultural Heritage Act 2003* (Qld) (the CH Acts) commenced in 2004. The Queensland Department of Aboriginal and Torres Strait Islander Partnerships (DATSIP) administers the CH Acts. The Queensland resource sector and Traditional Owner groups are key stakeholders in the administration of this legislation.

The Queensland Government, led by DATSIP, is undertaking a review of the CH Acts. The review is examining whether the legislation: is still operating as intended; is achieving outcomes for Aboriginal and Torres Strait Islander peoples and other stakeholders in Queensland; is in line with the Queensland Government's broader objective to reframe the relationship with Aboriginal and Torres Strait Islander peoples; and should be updated to reflect the current native title landscape. The review is also examining whether the legislation is consistent with contemporary drafting standards.

DATSIP is currently reviewing submissions from stakeholders. These submissions have been published on the DATSIP website, and are available here: https://www.datsip.qld.gov.au/programs-initiatives/review-cultural-heritage-acts.

On 14 July 2019, the Queensland Government launched Tracks to Treaty – Reframing the relationship with Aboriginal and Torres Strait Islander Queenslanders which is supported by the historic signing of the Statement of Commitment to reframe the relationship between Aboriginal and Torres Strait Islander peoples and the Queensland Government (Statement of Commitment), which is guided by the following principles:

- Recognition of Aboriginal and Torres Strait Islander peoples as the First Peoples of Queensland
- Self-determination
- Respect for Aboriginal and Torres Strait Islander cultures
- Locally led decision-making
- Shared commitment, shared responsibility and shared accountability
- Empowerment
- Free, prior and informed consent, and
- A strengths based approach to working with Aboriginal and Torres Strait Islander peoples to support thriving communities.

The Statement of Commitment looks to achieve the following THRIVING outcomes:

- Treaties and agreement making
- Healing and truth telling
- Relationships anchored by high expectations
- Investing in and embracing local leadership
- Vibrant cultures and communities
- Innovative policy programs
- Negotiated solutions to complex challenges
- Guaranteed service outcomes.

Two key elements of the Tracks to Treaty strategic reform are the historic Path to Treaty and Local Thriving Communities. The Path to Treaty is the beginning of a long term process toward negotiating treaties in Queensland with Aboriginal and Torres Strait Islander peoples. Local Thriving Communities is a long-term reform that will result in a visibly different way of government working with communities to deliver better outcomes for Queensland's 19 remote and discrete Aboriginal and Torres Strait Islander communities. Independent decision-making bodies will begin providing a representative voice for engaging with the Queensland Government. This includes making decisions about their own

future, building on their strengths as a community and investing in the things that will make communities stronger and that will make a difference to people's lives.

On 27 February 2019, the Queensland Parliament passed the *Human Rights Act 2019* (Qld). The principal aim of the Act is to ensure that respect for human rights is embedded in the culture of our public sector. The Act requires public entities to undertake public functions in a principled way that places individuals at the centre of decision-making and service delivery. The preamble to the Act explicitly recognises the special importance of human rights to the Aboriginal peoples and Torres Strait Islander peoples of Queensland as Australia's first people; and their distinctive and diverse spiritual, material and economic relationship with the lands, territories, waters and coastal seas, and other resources which they have a connection to under Aboriginal tradition and Ailan Kastom. The preamble also recognises that the right to self-determination of particular significance to Aboriginal peoples and Torres Strait Islander peoples.

In achieving its objectives, the *Environmental Protection Act 1994* provides for community and industry involvement in its administration. Section 6 includes that the *Environmental Protection Act 1994* is to be administered, as far as practicable, in consultation with, and having regard to the views of Aborigines and Torres Strait Islanders under Aboriginal tradition and Island custom. This ensures interaction between Indigenous heritage and the environmental management and regulation of resource activities. Additionally, the yet to be established Rehabilitation Commissioner, as a public entity for the purposes of the *Human Rights Act 2019*, must comply with the *Human Rights Act 2019* in regards to Aboriginal peoples and Torres Strait Islander peoples.

Recognising Traditional Owners' and native title group's rights in land and waters through legislation provides a foundation for empowerment and self-determination, upon which they can realise their social, cultural and economic aspirations. Providing for free, prior and informed consent is key to realising self-determination, and therefore is an important principle that guides Queensland Government's engagement with Traditional Owners, and Aboriginal and Torres Strait Islander Queenslanders more broadly. The Queensland Government sees the principles and outcomes outlined above as fundamental to all our work with Aboriginal and Torres Strait Islander Queenslanders, and they provide the foundation for the feedback provided on Aboriginal and Torres Strait Islander people's engagement in the resources sector and resources sector regulations.

Delivering sound environmental and safety outcomes

Information request 7.1 Is there evidence of any systematic deficiencies in the compliance monitoring and enforcement effort of regulators overseeing resources projects? In particular:

Are regulators adequately resourced to carry out effective monitoring and enforcement programs?

Do the monitoring and enforcement approaches of regulators represent good risk-based regulation?

Georesources

Queensland's world-class mineral and energy resources - such as coal, minerals and petroleum and gas - are owned and managed by the state for the benefit of all Queenslanders. As part of the management of these resources, DNRME administers a number of Acts and regulations, including:

- *Fossicking Act 1994*
- *Geothermal Energy Act 2010*
- *Greenhouse Gas Storage Act 2009*
- *Mineral and Energy Resources (Common Provisions) Act 2014*
- *Mineral Resources Act 1989*
- *Petroleum Act 1923*
- *Petroleum and Gas (Production and Safety) Act 2004*

Compliance

DNRME has a focus on compliance and enforcement as follows:

- Regulate fossicking, ensuring recreational fossickers follow the rules and observe the basic principles of safe fossicking
- Administer the tenure framework that facilitates exploration for and development of mineral, coal, petroleum and gas, geothermal energy and greenhouse gas resources in Queensland in a way that maximises benefits to the state
- Undertake monitoring and evaluation to ensure that industry's on-ground performance complies with the current regulatory framework
- Provide the resources sector with the support, guidance and information necessary to meet their statutory commitments
- Deliver proactive engagement with industry and landowners to provide information and educational resources for land access
- Provide consistent and transparent decision making in compliance decisions so that industry and the community have confidence in the department to enforce the regulation.

Safety and Health

RSHQ is a risk-based regulator that seeks continuous improvement to ensure effective monitoring and enforcement of safety and health obligations at work sites in Queensland's resources sector. Responsible for administering resources safety legislation, RSHQ employs a wide range of monitoring and enforcement activities to ensure compliance with safety and health obligations at work sites in Queensland's resources sector. These include:

- educating and engaging with industry
- monitoring data and identifying trends
- implementing risk-based compliance plans
- inspection and audit programs
- investigations
- civil penalties and penalty infringement notices
- prosecutions.

Risk-based regulation focusses on outcomes and is obligation based, placing responsibility on industry to implement systems and controls to minimise harm to workers. In contrast to prescriptive regulation, which requires strict compliance with specified rules, risk-based regulation allows regulated entities to implement measures that best manage risk according to specific circumstances that apply at their sites.

Environment

The Queensland Department of Environment and Science is the lead agency for monitoring and enforcing compliance for environmental matters under the *Environmental Protection Act 1994* (Qld). The object of the *Environmental Protection Act 1994* is to protect Queensland's environment while allowing for development that improves the total quality of life, both now and in the future, in a way that maintains the ecological processes on which life depends.

Compliance

The Department of Environment and Science (DES) compliance program for the petroleum, geothermal and greenhouse gas storage sector includes a range of activities to ensure operators comply with laws and policies affecting the industry. This is done by actively engaging with companies and individuals subject to environmental regulation through activities such as education and awareness-raising.

However, it is important that these activities are complemented by a strong compliance and enforcement framework, which includes conducting planned and unplanned inspections, to act as a deterrent to legislative non-compliance.

DES aims to:

- ensure industry operators understand their obligations under Queensland law

- encourage industry operators to voluntarily comply with these obligations
- work with government, business, industry and the community to improve performance
- take a consistent approach to non-compliance and to deter further non-compliance
- ensure public and stakeholder confidence in the transparency and effectiveness of the regulatory framework and
- respond to and investigate community concerns and intelligence received regarding industry operators and activities.

DES has undertaken significant work to revitalise and reshape its proactive compliance methodology and framework to provide improved utilisation of compliance resources to target the highest risks to the environment and monitor performance of clients. These important changes will provide a fundamental shift in how the department provides better environmental outcomes for Queensland.

DES is moving away from annual compliance planning and reporting towards a new dynamic framework which will allow a more rapid and timely response to emerging trends or changes in risk. The new framework will continue to provide accountability and transparency with the added benefit of allowing greater flexibility to respond to changing risks to the environment and identify areas where immediate action is needed to address poor performance or mitigate environmental harm.

Enforcement

The Queensland Government enforcement guidelines provide guidance on choosing an enforcement response, and informing those regulated about the standards that are expected when their activities affect Queensland's natural assets.

A wide range of enforcement measures are available. Each piece of legislation has its own suite of enforcement measures, but generally they consist of the following:

- encouraging voluntary compliance through education and self-regulation
- strategic compliance audits and site impact programs
- working with other agencies
- verbal warning and warning letters
- infringement notices
- administrative and court orders to stop an activity or to take action to remedy a breach or both
- cancellation, suspension or amendment of licence, lease or other permits
- prosecution.

Queensland's Coordinator-General

Under the *State Development and Public Works Organisation Act 1971* (Qld) (the SDPWO Act), the Coordinator-General can declare a project to be a "coordinated project", for which environmental and social impact assessments will be undertaken through the Coordinator-General's EIS process. The Coordinator-General may condition coordinated projects to ensure that their impacts are properly managed including future secondary approvals such as an environmental authority under the *Environmental Protection Act 1994*, or a relevant planning approval.

The Queensland Office of the Coordinator-General's compliance framework is available online at http://www.dsdmip.qld.gov.au/coordinator-general/assessments-and-approvals/compliance.html

Conditions imposed and/or stated under the SDPWO Act for coordinated projects are documented in the Coordinator-General's:

- evaluation report on the environmental impact statement
- evaluation report on the impact assessment report
- change report (if applicable).

Under the SDPWO Act, conditions required by the Coordinator-General are legally enforceable. They apply to anyone undertaking the project, including the project proponent and the proponent's agents, contractors, subcontractors or licensees.

Conditions stated by the Coordinator-General are typically applied to permits, approvals and licenses under the jurisdiction of other State agencies, who are in turn responsible for monitoring and enforcement.

Conditions imposed by the Coordinator-General are risk-based and developed where a legislative head of power is not available (i.e. no permits, approvals and licenses to regulate an expected impact). Monitoring and enforcement remain the responsibility of the Coordinator-General and resourced by the Office of the Coordinator-General.

The Office of the Coordinator-General implements a number of mechanisms to monitor, track and demonstrate regulatory compliance for resource projects.

Information request 7.2 To what extent are post-relinquishment obligations on resources companies a barrier to investment? What are leading-practice ways of managing the residual risk to the Government following the relinquishment of a mining tenement?

In Queensland, there is a process for surrender of environmental authorities in the *Environmental Protection Act 1994*. A surrender results in the complete 'surrender' i.e. release of the environmental authority and the related resource tenures. It is the existence of the environmental authority and the tenure/s that confer obligations and responsibilities on a holder, including environmental and safety matters, as well as enabling resource companies to access the land and the resource. The legislative surrender process that the company initiates results in them relinquishing their obligations and responsibilities under the authorities.

Queensland's surrender process includes a thorough consideration of the rehabilitation that was undertaken and whether that rehabilitation is satisfactory. The company must describe how they have met their rehabilitation conditions or, in the case of those companies with a Progressive Rehabilitation and Closure Plan, how they have met all of the final milestones in their plan.

Importantly and somewhat uniquely, in Queensland, there is a specific consideration of residual risks under legislation at surrender (Part 10 of the *Environmental Protection Act 1994*). These provisions allow the administering authority to consider whether there are any risks that may remain on the land post-surrender, and whether the government needs to take a payment to manage those risks. This deliberate and clear consideration of residual risks at surrender is fairly unique in Australia, and provides industry a process and ability to surrender where there are some risks remaining.

While the consideration of residual risk has been in the *Environmental Protection Act 1994* since 2005, recent reviews indicated the clarity around the residual risk requirements could be improved.

The Queensland Parliament passed the Environmental Protection and Other Legislation Amendment Bill 2020 on 11 August 2020. The amendments introduce reforms the residual risk framework to clarify requirements at surrender.

A key amendment to the requirement was designed to enable the government and landholders to understand and manage residual risks post-surrender. As a result of the amendments the government will require that a 'post surrender management report' be provided by the company, as part of the surrender application. This report will ensure that the final condition of the land is documented and will include information about the site, the rehabilitation undertaken, any relevant assumptions in regards to that rehabilitation, as well as outlining any monitoring and maintenance that may be required to continue to manage risks on that site. It will allow both the company and government to have a point-in-time document that describes the characteristics of the site and any remaining features at surrender. This will be an important document for all parties involved to clarify any ongoing management needs or risks at the point of surrender.

In order to assist industry to comprehensively and consistently assess potential residual risks on their site, DES is developing a world-first residual risk calculation tool. This quantitative risk assessment tool will enable resource companies to understand how residual risks will be considered, and determine what the residual risks may be on their sites. The tool will also identify appropriate risk treatment actions and their costs into perpetuity. Supported by clear guidance, tailored risk assessment processes will allow Queensland resource companies un-paralleled planning power to consider and minimise their site's residual risks.

Further information about the effectiveness of health and safety legislation

Information request 7.3 The Commission is seeking further information about the effectiveness of resources health and safety legislation across Australian jurisdictions, including:

- *whether there would be benefits in greater consistency across jurisdictions*
- *approaches that represent leading practice health and safety legislation for resources*
- *how health and safety approaches in each jurisdiction could be improved.*

RSHQ is responsible for administering safety and health legislation applying to Queensland's resources industries (the Resources Acts):

- *Coal Mining Safety and Health Act 1999*
- *Mining and Quarrying Safety and Health Act 1999*
- *Explosives Act 1999*
- *Petroleum and Gas (Production and Safety) Act 2004*

Industry specific legislation for coal mining, metalliferous mines and quarries, petroleum and gas and explosives for regulation that targets risks unique to those industries. A strong tri-partite cooperative system comprising industry, unions and government representation with appropriate technical expertise underpins mining safety and health laws in Queensland and has consciously developed and implemented industry specific legislation in contrast to adopting generic work health and safety model.

The independent Commissioner for Resources Safety and Health is appointed by the Governor in Council and advises the Minister for Natural Resources, Mines and Energy on matters relating to safety and health in the resources sector and chairs the tri-partite Coal Mining Safety and Health Advisory Committee and the Mining Safety and Health Advisory Committee.

Resources safety and health legislation needs to address the risks relating to high hazard operations. Mining industries differ from jurisdiction to jurisdiction and Queensland, being one of the largest mining states in Australia, is well supported by a standalone safety and health act, a dedicated Inspectorate and advisory committees.

Leading practice safety and health initiatives for the resources sector implemented in recent years by the Queensland Government include:

Direct engagement with workers

In 2019 more than 52,000 mine and quarry workers attended 1,197 Safety Reset sessions to refocus on what it means to be a safe industry, free of fatality and serious harm. A confidential online survey was conducted to capture feedback on the reset sessions and industry safety culture more broadly. Independent analysis of the survey data identified a priority for improvement in safety leadership, workforce practices and training and procedures.

Board of inquiry into serious accident

An independent Board of Inquiry was established in May 2020 to investigate the serious accident that occurred at Grosvenor mine on 6 May 2020 and various high potential incidents involving longwall-related exceedances of methane that occurred in the Queensland coal mining industry between 1 July 2019 and 5 May 2020. An interim report is due 31 August 2020 with a final report about its findings

and recommendations due to the Minister for Natural Resources, Mines and Energy by 30 November 2020.

The terms of reference enable the Board to determine the nature and cause of the accident as well as make findings of fact about any factors that contributed materially to the cause of the accident and to investigate the role of all relevant parties including the Inspectorate.

Independent reviews of mining and quarrying safety performance and legislative frameworks

Expert independent reviews into Queensland's performance and legislative framework were tabled in Queensland Parliament on 6 February 2020.

The "*Review of all fatal accidents in Queensland mines and quarries from 2000 to 2019*" (the Brady Review) included 4 recommendations for RSHQ. These reforms, to be implemented during 2020, include:

- Develop a role in collating, analysing and disseminating lessons learnt from incident and fatality data aimed at ensuring wider industry engagement and responses
- Develop simplified reporting for incidents to encourage open reporting
- Adopt serious accident frequency rate as a measure of safety
- Adopt a high potential incident frequency rate as a measure of reporting culture.

The Brady Review identified under-reporting of safety and health incidents and a need to maximise the probability of reporting and recommended consideration of High Reliability Organisation theory, which considers a safety culture to be a reporting culture.

Independent reviews by the University of Queensland of the coal and mineral mining and quarrying safety and health legislation have been tabled in the Queensland Parliament. The tripartite mining and safety health advisory committees are assessing these reviews and will make recommendations to the Queensland Government about potential amendments to improve resource health and safety legislation.

Legislative changes to deliver safety and health reform and strengthen enforcement options

A number of legislative amendments have been made to deliver safety and health reform for workers in Queensland's resources sector and to strengthen compliance and enforcement options for RSHQ. The amendments to resources safety legislation include:

- the introduction of industrial manslaughter offences
- increased maximum penalties for offences and civil penalties
- provisions to support statutory office holders raising safety issues and reporting dangerous conditions without fear of reprisal or impact on their employment
- improvements to the security, safety and transportation requirements relating to explosives.

Reforms to provide for improving mine workers' occupational health and provide measures for the detection and prevention of mine dust lung disease include:

- improvements to the coal mine workers' health scheme
- implementing respiratory health screening for mineral mine and quarry workers
- reduced occupational exposure limits for dust and silica.

Adjustment can be supported by a range of other activities

Information request 9.1 Is there scope for greater sharing of resources company infrastructure with communities? Are there any examples of where this has been done effectively?

The Queensland Government recognises the value of certain infrastructure to landowners and supports the retention of assets at surrender of an environmental authority where possible and appropriate. Assets that could be retained by landholders may include roads, lay-down areas and non-regulated dams, provided they meet all relevant requirements and support the post-resource activity land use.

The *Environmental Protection Act 1994* provides a framework for recognising infrastructure that forms part of a sustainable sequential land use can be retained as part of the rehabilitated landscape.

Many petroleum and gas companies currently effectively co-exist with the landholder during their operations. Examples of this range from sharing access tracks to the company restoring land to allow for farm activities to occur over the top of underground resource infrastructure. Arrangements outside the requirements of the *Environmental Protection Act 1994* are generally used to negotiate and document this type of shared land use during operations, for example a Conduct and Compensation Agreement.

Specific community engagement and benefit sharing arrangements apply for Aboriginal and Torres Strait Islander communities

Information Request 10.1 The Commission is seeking more information on government programs that fund Indigenous prescribed bodies corporate, native title representative bodies and native title service providers. In particular:

- *Have the current funding programs met their objectives? Can you provide examples where funding has made a tangible difference to the native title agreement-making process, or where it has reduced reliance on government funding?*
- *Are there alternative approaches that could improve the capacity of Indigenous organisations, such as training programs?*

The Queensland Government endorses the position that the capacity to engage meaningfully with resources companies is critical to Aboriginal and Torres Strait Islander people being able to give their free, prior and informed consent to resources development on their traditional lands, and to negotiating effective agreements. Such consent is key to realising self-determination, and therefore is an important principle that guides Queensland Government's engagement with Traditional Owners, and Aboriginal and Torres Strait Islander Queenslanders more broadly.

In the March 2020 submission to the 'Inquiry into the Opportunities and Challenges of the Engagement of Traditional Owners in the Economic Development of Northern Australia', the Queensland Government asked the Joint Standing Committee to consider recommendations to the Australian Government to support their role in leading the native title system, in particular:

- Funding Prescribed Bodies Corporate (PBCs) to bring forward authorised, detailed compensation claims;
- Investing in capacity building so that PBCs effectively represent native title holders in negotiated settlement;
- Providing financial assistance to the states and territories to acquit their native title compensation liabilities;
- Funding the advisory functions of the National Native Title Tribunal and leverage its facilitative powers to support agreement making;
- Funding the representative bodies and the National Native Title Council as the peak bodies of native title holders' voice in the system
- Strengthening the governance oversight of the Office of the Registrar of Indigenous Corporations to support PBCs to achieve the economic benefit of native title rights.

The Queensland Government recommended that the Committee consider how to build on the existing support more broadly for native title claimants, native title holders and Traditional Owners, for example, by working to:

- Reduce complexity for Traditional Owner groups; and
- Build capacity of Traditional Owner groups to improve economic development and engagement, including adequate funding for landholding bodies (PBCs, Aboriginal Corporations and Trusts) and access to legal and financial advice and post-Indigenous land use agreements support.

Information request 10.2 In principle, it appears appropriate for private agents to have obligations towards all those who hold or may hold native title (as native title representative bodies do). Should the Native Title Act 1993 (Cth) be amended to impose statutory obligations on private agents that are equivalent to those imposed on native title representative bodies? Why or why not?

The Queensland Government is concerned about the impacts on native title groups when private agents act against their interests. The Productivity Commission should explore this issue by actively engaging with relevant stakeholders, including native title groups, native title representative bodies and service providers, and peak bodies such as the Law Council of Australia and Queensland Law Society to make recommendations on this issue that will protect the interests of native title groups.

Information request 10.3

- *What are some potential reasons to allow native title funds to be removed from charitable trusts?*
- *What are some mechanisms through which funds may be removed from charitable trusts, and what might the tax implications be? How would these proposals affect non-Indigenous charitable trusts?*

The Queensland Government is committed to enabling Aboriginal and Torres Strait Islander people to participate fully in Queensland's vibrant economic, social and cultural life, including supporting economic development opportunities for Traditional Owners, and generating jobs in a strong economy. Subject to taxation advice regarding possible implications of any amendments and subject to engagement with Queensland's native title groups, their representatives, and other relevant Indigenous stakeholder groups, potential reasons to allow native title funds to be removed from charitable trusts include locally-driven strategies to promote economic participation and development opportunities.

Given this issue may have broader implications, consideration should be given as to whether the report wording should be specifically limited to the resources sector to avoid confusion or implications for native title groups managing funds that have come from sources other than the resources sector, and/or to avoid creating unintended precedents.

Irrespective of possible amendments, the Queensland Government has recommended that consideration be given to how to build on the existing support for native title claimants, native title holders and Traditional Owners, including to build their capacity to maximise opportunities though effective management of their Trusts and funds.

The Queensland Office of State Revenue may be able to offer further comment about possible State tax implications (including any transfer duty) following a review of the details of the reforms.

Information request 10.4 The Commission is seeking more information on whether there are barriers, unrelated to tax and charity law, to maximising benefits to communities from native title funds, including in relation to benefit management structures and the investment of native title funds. What are potential solutions to these issues?

A key barrier remains the adequacy of funding to support native title groups capacity and capability, so they are well positioned to maximise the benefits of native title funds, and other native title processes.

It is recommended that the Productivity Commission undertake consultation with native title groups and their representatives about these issues, as they relate to decisions that native title groups have made regarding their benefits management structures.

In addition, given this issue may have broader implications, consideration should be given as to whether the report wording should be specifically limited to the resources sector to avoid confusion or

implications for native title groups managing funds that have come from sources other than the resources sector, and/or to avoid creating unintended precedents.

Effective governance, conduct, capability and culture are crucial for leading practice regulation

Information request 11.1 The Commission is seeking views on the advantages and disadvantages of institutionally separating regulatory and policy functions in jurisdictions where separation does not already exist, and the effectiveness of other approaches to ensuring regulator accountability.

The Queensland Government has implemented a range of initiatives to improve inter-regulatory cooperation and contribution between state departments. For example, to ensure coordination and shared responsibility across the three departments charged with developing and implementing the Government's financial assurance reforms, a Financial Assurance Framework Reform Interdepartmental Committee was established. This committee comprised the Director-Generals of relevant departments and the Under Treasurer and over five years met regularly to oversee the development of the package of cross-government reforms, including most recently the residual risk reforms. . The Queensland Government also investigated opportunities to improve the efficiency and timeliness of resources assessment processes in 2018. The aim of this was to reduce duplicate processes and deliver efficient services. We will continue to further investigate opportunities to streamline regulation between departments in the future to ensure the effectiveness of our approach.

The Coordinator-General acts under the *State Development and Public Works Organisation Act 1971* with powers to assess large-scale projects. The Coordinator-General seeks advice from relevant policy makers to inform an independent evaluation of the project outlined in a regulatory report. While the Coordinator-General takes a coordinated approach across Queensland Government agency jurisdictions the Coordinator-General is however not bound by the advice provided by those agencies or the pieces of legislation they administer.

Information request 11.2 The Commission is seeking feedback on leading practices that it has overlooked. Information on how these practices have contributed to improved regulatory outcomes would also be appreciated.

The Queensland Parliament passed the Environmental Protection and Other Legislation Amendment Bill 2020 on 11 August 2020. The amendments introduce a number of reforms which contribute to Queensland's world-leading resource industry practices

This includes amendments which provide for the appointment of an independent Rehabilitation Commissioner for the resources industry. The Rehabilitation Commissioner will be supported by a dedicated office and work collaboratively with government, industry, environmental and scientific groups, and the community to provide advice on rehabilitation practices, outcomes and policy implementation, public interest evaluation processes, and rehabilitation performance and trends.

Specifically, the Rehabilitation Commissioner will be asked to provide advice, reports and guidance to the government and industry on best practice rehabilitation and management of non-use management areas (those areas of a mine site that cannot sustain a post mining land use on surrender). The Commissioner will also be expected to raise and improve awareness of rehabilitation matters throughout Queensland.

The Environmental Protection and Other Legislation Amendment Bill 2020 amendments also support the delivery of Queensland's residual risk reforms, which are part of the broader Financial Assurance Framework Reforms package. These reforms maintain the integrity of the existing surrender framework for resource activities, enhance the application of the residual risk framework and establish a residual risk fund to consistently manage the funds received. Because the funds taken to manage residual risks are based on projections of costs into perpetuity, a dedicated fund manager and governance processes such as actuarial reviews are necessary to ensure the funds taken at surrender cover the long term costs to the State.

Industry will be provided with greater certainty and confidence in the surrender process, while also providing for more appropriate management of residual risk money to protect the State's financial interests.

Furthermore, it is worthwhile to mention that the administrative arrangements established under the bilateral agreement between the Commonwealth Government and the State of Queensland identifies actions, responsibilities and timeframes to perform the actions by both parties in the assessment process leading up to the Commonwealth Minister's decision-making process. The bilateral agreement aims to streamline environmental assessments and approvals through effecting a joint assessment that reduces duplication of process. Projects assessed under the bilateral agreement benefit from reduced assessment timeframes.

The Queensland Government will continue to work closely with the Commonwealth to seek continuous improvement in the bilateral assessment to increase efficiencies in the assessment process.

Additional Comments and Key Points

Managing resources development in the interests of the community

Draft Finding 4.4 Bans and moratoria are a response to uncertainty about impacts of unconventional gas operations. However, the weight of evidence available, and the experience of jurisdictions where unconventional gas development takes place, suggests that risks can be managed effectively.

Draft Recommendation 4.1 Rather than imposing bans and moratoria on certain types of resources activity such as onshore gas, governments should weigh the scientific evidence on the costs of a particular project on the environment, other land users and communities against the benefits on a project-by-project (or regional) basis.

Creating jobs for regional Queenslanders and boosting the economy through the resources sector is a priority for the Queensland Government. As part of this strategy, our regulatory framework assess and effectively manages risks on a project by project basis, which has allowed our world class onshore gas industry to prosper and avoided the need for a moratorium or ban. However, there are exceptional cases where environmental risks posed by certain types of resources activity considerably outweigh any potential economic positives in all circumstances. A good example of this is underground coal gasification which is now subject to a legislated ban in Queensland following all three of the pilot projects experiencing environmental and technical problems, including large scale environmental contamination at the former Linc Energy site, for which liability for clean-up now rests with the state.

There are a number of relevant Queensland legislative frameworks that also need to be considered when determining whether certain types of resources activity should be permitted. One of these is the *Regional Planning Interests Act 2014* (Qld) (RPI Act). The RPI Act identifies and seeks to protect areas in Queensland that are of regional interest. Areas of regional interest include priority agricultural areas, priority living areas, strategic cropping areas and strategic environmental areas. The RPI Act manages the impact of resource activities and regulated activities on areas of regional interest, as well as seeking to promote and manage the coexistence of those resource activities with other activities such as agriculture.

In addition to the RPI Act, statutory regional plans recognise the diversity of the state and identify matters that are important and specific to a Queensland region. Regional plans also set out policies to guide the development of a region; aim to reduce land use conflicts and improve land use certainty for community and industry sectors; and seek to manage impacts on the natural environment. Regional plans are taken into account (where applicable) as part of the Regional Planning Interests assessments under the RPI Act. The assessments consider proposed activities on a project-by-project basis against the specific requirements for the relevant area(s) of regional interest. Queensland Treasury leads the assessment process, with technical input being provided by the Department of Agriculture and Fisheries; the Department of Natural Resources Mines and Energy;

and the Department of Environment and Science, depending on the area of regional interest on which an application is proposed. Queensland Treasury administers the RPI Act.

The *State Development and Public Works Organisation Act 1971* (Qld) enables complex or contentious projects of potential regional benefit to undergo a coordinated approach across local, state and federal governments to obtain their approvals. The *Strong and Sustainable Resource Communities Act* 2017 (Qld) ensures regional communities benefit from the resources projects carrying out activities in their local area. The Queensland Office of the Coordinator-General leads the coordinated project assessment process and administers these Acts.

An environmental authority under the *Environmental Protection Act 1994* (Qld) can place restrictions on how the authorised activities under a resource tenure can be carried out. For certain projects, an environmental impact statement is required and a site specific assessment is mandatory as part of the approval process.

Royalties Framework

Draft Finding 9.2 Resources are owned by the Crown on behalf of all Australians. Although negative externalities of resource projects on local communities should be efficiently addressed, these communities should not benefit over and above other regional communities from resources royalties as a matter of right.

The Queensland Government views royalties to be part of a broader fiscal regime and any review of royalties should be in the context of broader taxation issues. The rights and obligations for resources authority holders are found in the following legislation:

- *Mineral Resources Act 1989*
- Mineral Resources Regulation 2013
- *Petroleum and Gas (Production and Safety) Act 2004*
- Petroleum and Gas (Royalty) Regulation 2004.

In June 2020, the Queensland Government announced a new volume-based model will be implemented for the calculation of petroleum royalty, commencing from 1 October 2020. The new royalty model was developed as a result of an independent review of the design of Queensland's petroleum royalty regime to ensure greater certainty and equity for all parties and to identify opportunities to simplify the current royalty regime, while providing an appropriate return to all Queenslanders for their valuable non-renewable petroleum resources. Petroleum producers and industry groups were extensively consulted as part of the review.

The new royalty model will support affordable supply for domestic customers, appropriate returns for Queenslanders and fairness for gas producers. The model is transparent, equitable, administratively simpler and locked in for five years.

Suggested changes and corrections

- At Section 5.3, it states: 'Good guidance helps resources companies to navigate native title', the following sentence should be amended 'As each of these systems are established under legislation by those States, they should be responsible for preparing this guidance' to add '…, in collaboration with Aboriginal and Torres Strait Islander communities'.

- On page 133, it states: "*Consequently, most (but not all) land rights land is not subject to native title (since its owners can do everything that they would be permitted to do as native title holders, and more).*" In Queensland, native title is recognised over Indigenous freehold land and can be recognised as exclusive possession.

- On page 138, it states: "*Issues negotiating ILUAs cannot be referred to the NNTT, as they are an 'optional' agreement-making approach*." According to the NNTT website, the NNTT can assist before, during and after ILUA negotiations. Assistance is provided by a Member of the Tribunal and

experienced staff. See http://www.nntt.gov.au/ILUAs/Pages/What-we-can-assist-with.aspx. It would be worthwhile clarifying this in the Draft Report.

- On page 290, it states: "*Further, in determining a claim, the Court may find that native title does not exist. This creates the possibility that, in the future, a different claim group making a different native title claim may be determined to hold native title over that area*." A native title group cannot make a claim over an area covered by an approved determination of native title. It would need to be first revoked. See section 13, Cth Native Title Act 1993.

- On page, 141, it states that '*Early activity that does not materially affect the activities or rights of native title holders should be permitted once notice is given — negotiation should not be required'*. However, it cannot be established as to whether the early activity will or will not 'materially affect the activities or rights of native title holders' without the input of native title holders and claimants. This is because whether the activity will or will not 'materially affect the activities or rights of native title holders', is dependent on the particular context of the native title group's culture and customs under Traditional Laws and Customs (as they relate to land and waters) in that particular location (ie. it does not only depend on the nature of the activity). Therefore, if the activity is permitted once notice is given but before native title holders are given an opportunity to object, as suggested, then this has the potential to impinge on their native title rights and interests. This highlights the importance of the ability for native title holders and claimants to object to the expedited procedure.

  Similarly, in relation to the suggestion that '*State and Territory Governments should take a case by case approach to assessing whether the expedited procedure applies to a particular exploration licence*' (page 141), States and Territories are limited in assessing whether the expedited procedure applies to an activity without first seeking the input of native title holders and claimants. It is advised that all of the content in the Draft Report section 5.3, pages 140 – 141 needs to be revised accordingly.