

A large, stylized graphic of a leaf or flower shape, composed of several overlapping outlines. The outlines are in shades of grey and green. The shape is positioned on the left side of the page, partially overlapping the text.

# QRC submission

Working together for a shared future

Submission in response to Queensland Transport's  
*Review of Current Port Competition and Regulation in  
Queensland – Discussion Paper*

**Queensland Transport**  
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## INTRODUCTION

The Queensland Resources Council (QRC) is the peak representative organisation of the Queensland minerals and energy sector.

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

QRC welcomes the opportunity to provide this submission to Queensland Transport in response to the *Review of Current Port Competition and Regulation in Queensland: Discussion Paper*. This submission has been developed in consultation with QRC working groups combined with comments from interested individual member companies.

The Council of Australian Government's (COAG) commitment to a public review of significant ports, undertaken by Queensland Transport for the state of Queensland, is supported by QRC given the important contribution these ports to Queensland's mining and mineral processing sectors. In particular, these ports represent integral links in the export supply chain of Queensland's resources industry. Consequently, ensuring these critical export service providers are functioning efficiently is a particular concern from a customer's perspective.

The purpose of this review is to assess the regulation of port activity at significant Queensland ports in terms of its consistency with the Competition and Infrastructure Reform Agreement (CIRA). In this regard, QRC supports the principles of a simpler and consistent national approach to the economic regulation of nationally significant infrastructure. In particular, acknowledgment that the terms and conditions of access to such infrastructure should be determined through commercial negotiation, in the first instance, and that economic regulation should only be used where it is warranted.

Having said this, the QRC recognises a need for ports to develop consistent, fair and transparent terms of contracting, capacity allocation, and pricing for each port and commodity. These processes will be shaped by the particular circumstances of each port. Principles regarding common facilities and cross subsidies need to be clarified. QRC does not support the imposition of a unilateral single regulatory approach to these important export facilities, given the variety of ownership and operating structures currently employed in Queensland.

Notwithstanding this, QRC strongly supports commercial arrangements between port corporations and other participants which provide for efficient and effective outcomes for customers – in particular for exporting mining and mineral processing industries. Further, QRC encourages the Department to ensure any proposed reforms arising from this review seek to align with the interest of customers in order to promote efficient export supply chains.



**EXECUTIVE SUMMARY**

**→ Principles of appropriate regulation and competition in Queensland Ports**

<i>Issue</i>	<i>QRC Position</i>
<i>Ownership and operational arrangements should promote efficiency</i>	<ul style="list-style-type: none"><li>→ Supports ownership structures, both of port and terminal operations, which best promote efficient service delivery.</li><li>→ Preference for port and terminal operations to be controlled by entities which are aligned to the interests of customers (mining and mineral processing industries).</li></ul>
<i>Commercial negotiations should provide the initial framework</i>	<ul style="list-style-type: none"><li>→ Supports the current range of:<ul style="list-style-type: none"><li>- regulatory options (including economic regulation if required),</li><li>- ownership structures (private and public); and</li><li>- single- and multi-user facilities.</li></ul></li><li>→ Advocates for regulatory outcomes to align with the interests of industry.</li></ul>
<i>Competition and Regulatory outcomes need to be efficient</i>	<ul style="list-style-type: none"><li>→ Considers that a unilateral national regulatory approach is not the appropriate answer to the challenges currently facing Queensland's export industries.</li></ul>
<i>Regulatory decisions made in isolation impact on integrated supply chains</i>	<ul style="list-style-type: none"><li>→ Encourages regulators to consider the consequential impacts on actual commercial operations of integrated supply chains when making decisions and establishing regulatory frameworks.</li><li>→ Does not support extending regulation solely on this basis, but rather to promote greater co-ordination in complex supply chain systems.</li></ul>
<i>The role of Government</i>	<ul style="list-style-type: none"><li>→ Suggests that the role of Government is:<ul style="list-style-type: none"><li>- one where facilitating competition and managing regulation of Queensland's export ports should be focused on practical regulatory frameworks; and</li><li>- encouraging the deployment of capacity enhancements in timely and efficient manner.</li></ul></li><li>→ Supports regulatory agencies (both Departmental and statutory) performing their functions both decisively and efficiently, with a considered focus on customer needs and expectations.</li></ul>



→ Response to specific Discussion Paper questions

<i>Issue</i>	<i>QRC Position</i>
<i>Commercial Charters of government-owned ports and terminals</i>	→ Suggests that along with commercial rates of return, other items which should be included in Ports' Charters include: <ul style="list-style-type: none"><li>- Prices be based on efficient and transparent costs;</li><li>- Cross subsidisation should not be permitted for different commodities at the same port;</li><li>- Decision making process should be transparent and subject to appropriate accountability measures;</li><li>- Industry should be included in the decision-making processes as the major under-writer for these investments;</li><li>- Transparent negotiation; and</li><li>- Pricing based on a set of consistent, established and workable principles.</li></ul>
<i>CQPA as Harbour Master and port operator</i>	→ Considers that transparency and reliability are the fundamental requirements in relation to allocation rules.
<i>Strategic Port Land</i>	→ Supports the timely and efficient development of port infrastructure projects and maintains that the provision of strategic port land planning be expanded to embrace future development, rather than locking in any existing port ownership or lease arrangements.
<i>Competitive Neutrality</i>	→ Supports the principles of competitive neutrality – government ownership should not itself provide a net competitive advantage. → Notes that given sufficient transparency, competitive neutrality promotes efficient resource allocation and encourages fair and effective competition in contestable markets.



## PRINCIPLES OF APPROPRIATE REGULATION AND COMPETITION IN QUEENSLAND PORTS

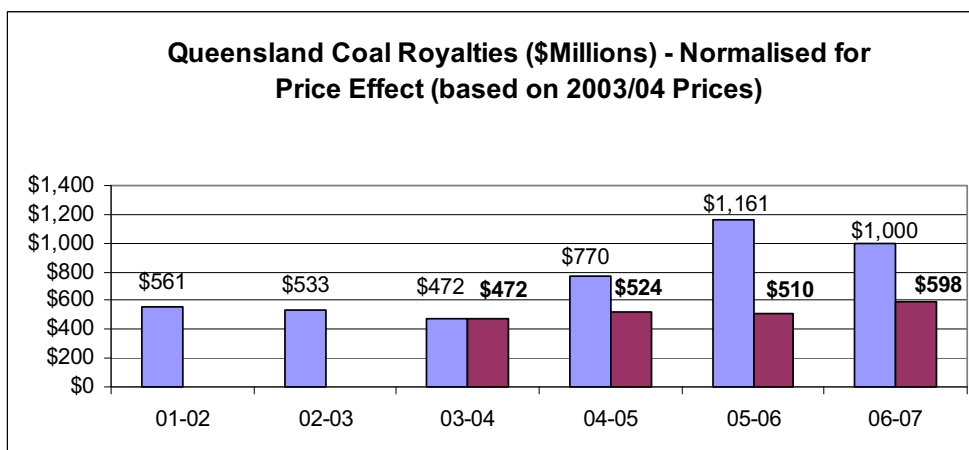
### → Ownership and operational arrangements should promote efficiency

QRC notes that Queensland's range of terminal ownership models (private, both single and multi-user, and State ownership) has evolved over time. While QRC does not advocate a single ownership model structure, QRC has been a longstanding supporter of improving operational terminal performance as a means of promoting the performance of the State's mining and mineral processing industry in international markets – both in reducing unnecessary costs and increasing the certainty of supply.

The efficiency of port is paramount, not only for exports, but in many cases also for imports of raw materials or key ingredients. There are a number of minerals processing, refining and smelting operations in Queensland which rely on ports not only for the export of a final product, but also to supply raw materials. These operations have a double exposure to any inefficiency in the operation of their ports. In this regard, industry's preference is for port and terminal operations to be controlled by entities which are aligned to the interests of customers.

In relation to ownership, QRC notes that both industry (mining and mineral processing) and the State share a common interest in the development of mining operations, specifically in relation to the impact of royalties. That is, when royalties are based on an *ad valorem* basis this should promote timely infrastructure investment in circumstances of combined high demand and a stepped increase in global commodities prices.

To illustrative this point, recent increases in royalty revenue from coal exports have been delivered largely by price rather than volume increases. The graph below identifies the extent of the price effect as the contributing factor increasing of royalty revenue to the Queensland Government.



While the direct interests of industry and Government are not always perfectly aligned, they are more closely aligned in regard to the maximisation of royalties and industry realising shareholder value from export growth.



QRC supports ownership structures, both of port and terminal operations, which best promotes efficient service delivery – the actual standard and timeliness of the provision of port and terminal services, including capacity expansion proposals and related investment expenditure, are QRC's primary concern. Competitive and commercially focused frameworks best promote efficient performance of logistics supply chains – more recently, co-ordination and communication in complex export related supply chains has been a particular interest to industry.

→ **Commercial negotiations should provide the initial framework**

QRC supports commercial negotiations, whether in an economic regulation framework or direct commercial setting, as the preferred basis to facilitate competition and any proposed regulatory framework to Queensland's ports.

QRC notes that where industry is the terminal operator there is a greater focus on achieving efficiency both in terms of terminal related activities, costs and timely investment decisions.

Where terminal operations are not managed by industry, QRC strongly supports that the operation and management of such terminals be based on the following principles:

- *Recognition of existing contractual arrangements* – including appropriate recognition of past capital contributions and capacity arrangements.
- *Fair and transparent in terms of contracting / capacity allocation* – such that all customers (current and potential) are able to execute commercial arrangements on appropriately consistent terms and conditions. However, when existing contracted capacity is due for renewal, the contract holder should have first right of refusal on contracting for that capacity (at the terms and conditions at the time).
- *Efficient costs* – ensuring monopoly profits are not extracted thereby adversely impacting on competitiveness of mining and mineral processing industries within international markets.
- *Performance focus* – such that commercial arrangements provide for certainty and predictability in both cost and service quality.
- *Transparency in terms of the basis of charges for use of common facilities* – including the ability to verify costs and prices in terms of efficiency (such as benchmarking or open-book cost-plus margin arrangements) and in such a way that precludes cross-subsidisation.
- *Fair and transparent in terms of decision making processes* – such that decisions, including expansions and funding arrangements for capacity expansion proposals, are made with consideration of industry, and individual customers, needs.
- *Equity and transparent in terms of contracting terms* – such that customers are provided with equivalent information and processes during commercial negotiations. This does not mean that all customers should have consistent terms and conditions, nor represent equity in a contractual inter-temporal sense.

→ **Regulatory outcomes are best achieved when aligned to the interests of customers**

QRC supports the current range of options: - regulatory options (including economic regulation if required), ownership structures (private and public) and single- and multi-user facilities. From a customers' perspective, QRC advocates for regulatory outcomes to align with the interests of industry.



In particular, QRC supports a greater alignment between the goals of customers (mining and mineral processing companies) and infrastructure suppliers (including port and terminal providers) in order to achieve efficient and effective performance. This includes greater efficiency and transparency of government-owned port and terminal operations.

In effect, the need for competition and regulation should reflect the particular needs of customers (industry) depending on the particular circumstances of the supply chain and of the overall economic efficiency of port and terminal operations.

→ **Competition and Regulatory outcomes need to be efficient**

QRC strongly encourages both State and Federal Governments to focus cooperatively on how to best assist industry to take full advantage of currently favourable demand and price conditions for Queensland's mining and mineral processing industries. In this regard, governments should be considering what they can do to fast-track major infrastructure proposals, including improving regulatory approval processes, from both a departmental and statutory perspective, to ensure that infrastructure capacity can meet likely demand.

QRC considers that economic efficiency:

- is more likely to be achieved when the interests of supply chain participants are aligned;
- would be reduced if a "one-size-fits-all" approach to the regulation of ports and terminals in Queensland was imposed; and
- has not been demonstrated by vertically integrated monopolies on the basis of an associated lack of transparency. However, if efficient outcomes can be achieved in terms of transparency, efficiency and promoting competition, this vertical integration should not be excluded.

QRC does not consider that a unilateral national regulatory response is the appropriate answer to the challenges currently facing Queensland's export industries, at this point in time.

→ **Regulatory decisions made in isolation impact on integrated supply chains**

There is a clear need for decisions regarding the economic regulation of certain parts of export supply chains (such as, regulated port and regulated below-rail infrastructure) not to be made in isolation. That is, the legitimate interests of infrastructure providers and related economic regulatory decisions should be aligned with the interests of, and consideration to, the resulting impacts to the entire supply chain. This is particularly important when a number of Queensland's major export chains will become more and more inter-connected in the medium term.

The recent O'Donnell review of the Goonyella supply chain highlighted the benefits and opportunities of addressing the commercial operations of integrated supply chains as well as the failure of unnecessarily complex regulation which does not take into account these relationships within integrated such supply chains.

QRC encourages regulators to consider the consequential impacts on actual commercial operations of integrated supply chains when making decisions and establishing regulatory frameworks. Ensuring practical regulatory decisions, which can be readily translated in terms of the particular characteristics of the export supply chain, would provide more efficient outcomes for industry. However, QRC does not support extending regulation solely on this basis nor limiting the scope of commercial negotiations.





→ **The role of Government**

QRC suggests that the role of Government in facilitating competition and managing regulation of Queensland's export ports should be focused on practical regulatory frameworks and encouraging the deployment of capacity enhancements in timely and efficient manner.

Governments have a critical role in ensuring timely and effective regulatory processes and, potentially, sharing at least some of the initial investment risk in key infrastructure projects. The Queensland resources sector supports the regulation of essential monopoly infrastructure services, which has occurred over the past decade as part of the National Competition Policy reform process.

QRC notes that competition policy generally, and third party access in particular, has reduced costs to industry in a variety of important service provider industries (particularly, transportation and handling, energy and water). This has assisted industry competitiveness which has resulted in increased investment, jobs, production, exports and consequently royalties to the State.

In designing regulatory regimes, QRC supports the resultant benefits of competition reforms being realised – however, when infrastructure providers are faced by sustained or anticipated demand growth, the regulatory frameworks should provide for:

- adequate investment in capacity such that investment is undertaken so as not to constrain supply;
- a focus on continual improving operational performance – including innovation in relation to employment and physical capital performance; and
- timely approval processes for new infrastructure investment approvals and project commencements.

QRC supports regulatory agencies (both Departmental and statutory) performing their functions both decisively and efficiently, with a considered focus on customer needs and expectations. QRC does not suggest that government should subsidise industry, but rather that there is a genuine role for Government to reduce delays to investment decisions in commercial projects by facilitating the rapid deployment initial planning, design and preliminary engineering activities.

In addition, QRC advocates for governments to play an explicit industry development role by sharing at least some of the initial investment risk in key commercial infrastructure projects. Government shouldering this investment risk should not imply a corresponding role in ownership or management of the asset. Rather, Governments have a role in facilitating investment on the basis of a 'pure user pays' approach, rather than a 'first user pays' approach. The distinction is that the first users should pay an efficient cost to access the infrastructure and not face a first mover disadvantage by trying to pay a price that capitalises the full cost of the infrastructure over its economic life. The State could recover its share of investment risk from future users, rather than the current situation whereby first users underwrite commercial infrastructure projects and subsequent users enjoy the benefits of decreasing costs to scale.

Addressing investment timing decision is of paramount importance in enabling a sustainable competitive advantage for Queensland in what is a truly global commodity market.



## QRC RESPONSE TO SPECIFIC DISCUSSION PAPER QUESTIONS

### → **Commercial Charters of government-owned ports and terminals**

A commercial rate of return, which is derived from actual competition in contestable markets, is the most appropriate means of discovering efficient costs and therefore commercial returns. If rates of return are lower due to competition, this reflects the appropriate rate of return – locking in high rates based on history (which usually reflects monopoly power) should be rejected.

Prescribing commercial rates of return should be based on a considered assessment of the risks and characteristics of the port business, but must be done through a transparent and consistent process.

In relation to appropriate content within government-owned Commercial Charters, QRC suggests that the following items should be included:

- Prices be based on efficient and transparent costs – services should be subject to competitive, either direct or indirect, forces (such as tendering, benchmarking);
- Cross subsidisation should not be permitted – QRC supports the position that users should only pay once for the use of infrastructure services and that cross subsidisation must be discouraged to ensure anti-competitive and monopolistic behaviour is not rewarded;
- Decision making process should be transparent and subject to appropriate accountability mechanisms – State owned companies should have high level of accountability, both in terms of the clear and predictable processes, and availability of appropriate accountability measures such as provision for review by an independent entity.
- Transparent negotiation with service providers – where cost and service performance disclosure is mandatory to auditing process, such as individual reviews by the Auditor General.
- Pricing Principles – should be based on a set of established and workable pricing principles. At this point in time, it is not clear to QRC the extent to which pricing of multi-user terminals is transparent.

### → **CQPA as Harbour Master and Port Operator**

QRC considers that transparency and reliability are the fundamental requirements to overcome bias, or an apprehension of bias, in relation to allocation rules when such potential conflicts arise.

### → **Strategic Port Land**

Ministerial approval for “strategic port land” which provides important planning advantages should be extended to projects which are directly related to port activities – irrespective of port ownership or lease arrangements. QRC notes that this is not currently the case and supports appropriate reform to this aspect of the regulatory regime.

Indeed, QRC suggests that the State should be examining other regulatory burdens which delay major infrastructure proposals. In particular how project approvals and departmental processes can be improved to ensure the timely deployment of infrastructure projects.

QRC supports the timely and efficient development of port infrastructure projects and maintains that the strategic port land planning provision be expanded to embrace project development rather than Port ownership or lease arrangements.



→ **Competitive Neutrality**

QRC supports the principles of competitive neutrality in the provision of third party access to services (government-owned terminals and ports). Specifically, government ownership should not itself provide a net competitive advantage over their private sector competitors (or potential competitors). Indeed, such arrangements distort resource allocation and discourage fair and effective competition in contestable markets.

Where State ownership of the port and terminal services is provided, there must be some form of competitive tension to ensure that competitive neutrality is achieved and, more importantly, seen to be achieved. Governments (whether directly or by means of economic regulation) should have the opportunity to oversee facilities that, in most cases, are state-owned and otherwise subject mainly to state regulation.

However, in order to ensure customer confidence in the regulatory regime it is essential that there exists competition, either direct or indirect, for government-owned contestable port related services (including periodic competitive tendering for services, open-book cost oversight by customers, or active price monitoring by regulators). QRC suggests that this is critical to ensure that appropriate services are provided in a cost effective way – which would in turn promote greater customer confidence through transparency and efficiency.