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17 August 2012

VIA EMAIL (arec@parliament.qld.gov.au)
Agriculture, Resources and Environment Committee
Queensland Parliament
Parliament House
Brisbane QLD 4000

Dear Sir/Madam,

Re: Reducing Regulatory Burdens for Queensland's Agriculture and Resource Industries – Joint Submission of the Queensland Environmental Defenders Offices

The Environmental Defenders Office of Queensland ("EDO Qld") and the Environmental Defenders Office of Northern Queensland ("EDO-NQ"), (collectively, the "Queensland EDOs"), are not-for-profit, non-government, community legal centres specialising in public interest environmental law. Like other EDOs located in each of Australia's states and territories, each of the Queensland EDOs provides specialised legal representation, advice and information to individuals and communities regarding environmental law matters of public interest. The offices also take an active role in environmental law reform and policy formulation, and offer community legal education programs designed to facilitate public participation in environmental decision making.

Each of the Queensland EDOs are entirely separate organisations. EDO-NQ is based in Cairns and provides service to the public from Sarina north to the Torres Strait and west to the state border. EDO Qld is based in Brisbane and serves the entirety of the State south of Sarina. Parliament's 7 June 2012 referral to the Agriculture, Resources and Environment Committee ("Committee") directed the Committee to "investigate and report on **methods to:**

i. reduce regulatory requirements impacting on agriculture and resource industries in Queensland; and

ii. further promote economic development while balancing environmental protections.[1]

The topics raised in the Paper have clear and significant impacts on individuals and communities in the Queensland EDOs' respective service areas. The Queensland EDOs have provided assistance to hundreds of individuals and community groups regarding issues related to both the agriculture and resource (both mineral and petroleum/gas) industries and development proposals related to those two industry sectors.

[1] *Reducing regulatory burdens for Queensland's agriculture and resource industries: Paper No. 1*, Agriculture, Resources and Environment Committee, p 2 (July 2012) (the "Paper").

The EDOs welcomes the opportunity to lodge submissions with the Committee regarding the Paper and looks forward to consulting with the Committee further in preparing its report to Parliament on 30 November 2012.

SUBMISSION

Contents

1. An inappropriately expansive definition of agriculture is being used

By defining "agriculture" to include "forestry" and "the farming of marine animals and plants",[2] the Committee has brought into its consideration industries and activities that are not regulated as "agriculture" under Queensland legislation. We suggest those activities, which have extensive impacts, are dealt with in a separate Committee referral process. See **Appendix B** for more details of this point.

> *1.Recommendation:* That the Committee limit the scope of its investigation and report to those activities that are within the scope of "agriculture" defined in current legislation.

2. The purported costs of regulation are overstated, so should not drive reforms

The Discussion Paper states:

> There is a lack of conclusive Australian data on the burden of regulation imposed by Government, and no direct measurement of the cost of regulation in Queensland. Proxy measures such as growth in the numbers of pages of legislation provide some indications of the cost.

[2] Committee Paper, p 2.

We also note that the economic case put forward in the Business Council of Australia's paper on the costs of environmental regulation has been largely debunked[3] by reputable economists. See **Appendix C** for more details of this point.

Further, in a recent survey undertaken of mineral resource industry executives, the purportedly high cost of Government regulation was noticeably absent from the executives assessment of major challenges facing the industry.[4] While government policy was noted by mining executives, their concerns focused on, in addition to variable commodity prices and skilled worker shortages, workplace regulations and the costs imposed by the Federal Government's carbon tax.[5] The financial and administrative burdens imposed by government environmental regulation generally were nowhere identified in the survey of mineral executives. See **Appendix C** for more details of this point.

> *2. Recommendation:* That the Committee note that the purported costs of regulation are overstated, or not reliably established, so should not drive reforms.

3. The goal should be well designed efficient and effective regulation to achieve social and environmental outcomes

Eliminating redundant regulation can, if done properly: can make government processes more transparent; can enable legal rights, obligations and remedies to be more readily determined; and can make transgressors more accountable.

It is, however, critical that the effort to reduce unnecessary government regulation is undertaken properly – and that means action to remove redundant regulation is approached with caution. An objectively sound cost-benefit analysis must be the fundament of any action by Parliament to reduce or eliminate particular regulation. Moreover, the goal of identifying and then reducing or eliminating unnecessary regulation cannot come at the price of sacrificing human health or the environment. See **Appendix C** for more details of this point.

We agree with the Productivity Commission that "well designed efficient and effective regulation" is what is needed to achieve a range of social environmental and economic objectives.

> *3. Recommendation*: Adoption of a precautionary principle in Parliaments approach toward reducing regulatory burdens, pursuant to which regulation must not be eliminated unless there is an objectively sound cost benefit analysis showing that key social or environmental objectives will be achieved and that health/environment will not suffer.

> *4. Recommendation*: It is essential to look in detail at the social and environmental objectives of regulation and the methods of how best to achieve them, not just on cutting number of pages of legislation. Saying that less pages of regulation is good for the Queensland economy is a dangerous over simplification.

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[3] [3] *Discussion Paper for the COAG Business Advisory Forum*, Business Council of Australia (April 2012), accessed 17 August 2012 at http://www.bca.com.au/Content/99520.aspx.

[4] *See Mining Business Outlook Report - Canvassing the views of Australia's mining leaders 2012–2013: A report on Australian mining leaders' views on the economy, industry challenges and opportunities, and government policy*, Newport Consulting (July 2012), accessed 17 August 2012 at http://www.newportconsulting.com.au/publications/mining-business-outlook-report.html.

[5] *Ibid*.

4. Tighter Regulation of the resources sectors is needed

If we agree our objectives are vibrant small and large communities, a strong, resilient and diverse economy and protection of ecological values, then tighter regulation of the resources sectors is needed. The stand alone economic value of the resources sector is overestimated, for example it is untrue that for every job in the mining industry 4 are created in other industries- the real ratio is 1 to 1.4[6], and the leech like impacts of mining sector on other industries is often not acknowledged or taken into account[7]. This overestimation of the economic value of the resources sector has led to government and industry under regulating the social, ecological and economic impacts of mining and its longer term consequences.

> *5. Recommendation*: That tighter regulation of the resources sector is needed to benefit the environment, communities, tourism and agriculture.

> *6. Recommendation:* That when the impacts of a resource proposal are assessed, for example when an environmental impact statement is prepared, that any statements by the proponent about the project are fully referenced with mathematical working out so that they may be independently scrutinised. Such a requirement for full referencing of statements and mathematical working out could become a requirement as part of the Terms of Reference for all Environmental Impact Assessment Statements and also a requirement for any supporting information for applications for environmental authorities under the *Environmental Protection Act* 1994 and development applications.

5. Human Health, Dust

Science tells us that fine particulate dust, such from diesel or from coal even km from mines and stockpiles is a serious health problem. Fine particulates PM2.5 microns are soluble and absorbed by your lungs and go into your blood stream whereas larger particles that you can see are still a problem but are more likely to be coughed up. Doctors for the Environment consider that there needs to be a 10km distance between communities and coal mines- see earlier EDO submission.

Current laws on human health and dust are too weak, with limits often averaged out over time, when short bursts of dust cause severe problems. Plus communities that are affected are

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[6] *In a report to the Land Court by John Stanford for Xstrata relied on an employment multiplier of 1:4 even though the majority of studies in the summarised in the University of Queensland publication "Knights, Peter and Michael Hood (2009), Coal and the Commonwealth" found multipliers less than 1:1.4 (see also Aislabie, C. and Gordon, M (1990) 'Input-Output in Practice: Sector Disaggregation in Regional Input-Output Tables', Economic Systems Research, vol. 2, no. 4, pp. 407-420)*
The Australian Bureau of Statistics previously published employment multipliers before the technique was abandoned in about 2007 due to its misleading nature (see Australian Bureau of Statistics (2010) "5209.0.55.001 - Australian National Accounts: Input-Output Tables - Electronic Publication, Final release 2006-07 tables")

[7] *An analysis of the China First Project by the Australia Institute found that despite the proponents EIS showing it would create a loss of manufacturing output of over $1B/yr and a loss of 2,215 manufacturing jobs in Queensland alone it still managed to underplay the economic impacts on the Consumer Price Index, Interest Rates and the Current Account Deficit.*
The recent EIS for the Surat Gas Project showed that the net growth in Queensland's industry output would be dependent on drawing $606.5 million and 746 FTE jobs out of manufacturing, agriculture, forestry and fishing industries each year (during the 2019 to 2028 period – Tables 5.1 and 5.2). These figures were only resolved at a State, not national, level and would likely to be much worse if the national impact of upward pressure on the Australian dollar was taken into account.

not guaranteed monitoring data. There are no rights of public submission or objection for mining exploration e.g. Alpha test pit when its bigger than most final approved mines.

7. Recommendations human health and dust issues:

- That each of the pieces of resources legislation mentioned in the *Mines Legislation (Streamlining) Amendment Bill* 2012 are amended to include provisions for Urban Restricted Areas. The provisions are to protect small communities over 200 people and urban areas of over 1000 people and to not allow for application for or grant of tenures within that area AND not allow for the grant of higher tenures if there is an existing tenure. The distance ought to be not 2km but a wider area. Doctors for the Environment recommend 10km zone around those communities.
- tighter standards under the Environmental Protection Policy under the *Environmental Protection Act* 1994 on fine particulate dust;
- tighter standards reflected in the conditions of approval attached to mines, coal transport and stockpiles
- monitoring data needs to be online and immediately accessible
- Rights of public submission and objection are needed for exploration not just when a mining lease is applied for.

Examples

Jondaryan and surrounds are badly dust affected from the New Hope Acland mine and stockpiles. Landholder such as Tanya Plant, see **Appendix D** are affected by dust but monitoring is inadequate and not made public.

6.Ongoing regulation of the agricultural sector and of chemicals is needed

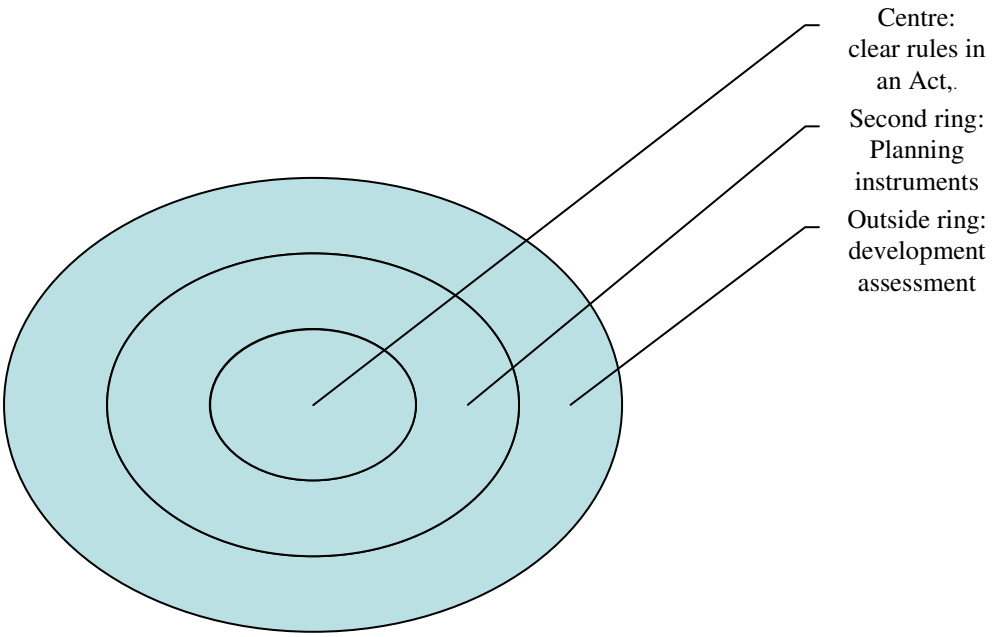
The agricultural sector, producing food for the Queensland community and export, is a strategic part of our economy and needs to be protected and assisted but also needs to be regulated. For example in protecting the Great Barrier Reef, a natural asset of critical ecological and economic importance non regulatory methods did not lead to necessary improvements in terrestrial land management and thus water quality affecting the Reef. That is why the Australian Government's Reef Rescue Program and the Queensland Government's Reef Protection Package were adopted.
(see: http://www.reefwisefarming.qld.gov.au/pdf/guide-gbrpl.pdf).

There are major ongoing problems with use of toxic chemicals for a variety of uses on farms, in maintenance of bushland and reserves by council contractors and by private users on private land. To look after our waterways and people's health greater regulation and restriction on use of such chemicals, for example Diuron, is needed at a National level but with support at a Queensland levels, for example in requiring councils to keep a register of those people with chemical sensitivity so that contractors may warn people before spraying.

8. Recommendation: That the agricultural sector needs ongoing regulation, not self-regulation, due to the impacts of terrestrial land management on water, soil and the natural environment.

9. Recommendation: Queensland needs to further regulate chemical use, for example in requiring councils to keep a register of those people with chemical sensitivity so that contractors may warn people before spraying.

7 All three rings of the protective circle of regulation need to be used to achieve social and environmental outcomes



Centre Clear cut rules in legislation are an effective, efficient and comparatively quick way (compared to land use planning) to protect certain values. This is an excellent way to provide certainty. Such rules can apply across Queensland as soon as the legislation is passed and commences operation.

Second ring Statutory land use planning involves balancing different types of land uses and their impacts to come up with maps of land use, written descriptions and codes or criteria. Detailed studies are needed to inform land use planning, including for example what water is or is not available for water intensive land uses. Land use planning under the *Sustainable Planning Act* 2009 may be at the State, Regional or local level. Higher level plans influence the lower level plans.

Outside ring Development applications involve individual projects being assessed both against land use plans but also examined in detail against criteria in various legislation.

*10.Recommendation***:** All three rings of the protective circle need to be used for effective regulation of the agricultural and resources sector as they provide protection for communities and the environment effective at different times and at different levels of detail.

11.Recommendation: All rings of the protective circle of regulation need to be developed with adequate public sector and expert resources and meaningful and well-resourced community participation including community groups, natural resource management groups, environmental groups and local landholders as well as industry and local government. All rings of the circle need transparency, public accountability and legally secure mechanisms for ongoing monitoring and enforcement of the rules.

8. Method of regulation: clear restrictions in legislation

The centre of the protective circle of regulation is to include clear cut restrictions in legislation. This is a very direct and efficient way to provide certainty on a few key but very important matters for all of Queensland, without lengthy processes that use up resources of small communities. We could use this technique to increase the minimum distance from mining and individual dwellings. This is a good idea given the huge size of mining pits.

Land use planning is still valuable as the second ring of the protective circle of regulation- but it takes time and resources to participate and those stakeholders with the most resources usually win out over more poorly resourced stakeholders, e.g. small towns or environmental groups in influencing key parts of such plans.

Among the areas that are suitable for clear cut restrictions to protect them include communities and natural features like private nature refuges such as Bimblebox.

As explained in an earlier submission by EDO Qld to the Committee, the 16 August 2011 gazette notice under the *Mineral Resources Act* 1989 to provide Urban Restricted Areas is not sufficient because: it

- does not protect localities of over 200 people – only towns of over 1000 people
- does not restrict application or grant of higher tenures within the 2km zone if for example an exploration licence had been granted prior to that gazette notice;
- the 2km distance is not enough- Doctors for the Environment suggested 10km distance from mines to any communities due to the serious impacts of fine particulate dust. Citizens of Oakey feel tremors from blasting at the Acland mine 15 km away. A petition by the citizens of Aldershot seeks 5km distance from mining http://www.parliament.qld.gov.au/work-of-assembly/petitions/tabled-paper-petition?PetNum=1880

The same protection needs to be afforded private nature refuges with valuable biodiversity, such as Bimblebox, which is at risk from the China First mine.

> *12.Recommendation:* That each of the pieces of resources legislation mentioned in the *Mines Legislation (Streamlining) Amendment Bill* 2012 are amended to include provisions for Urban Restricted Areas. The provisions are to protect small communities over 200 people and urban areas of over 1000 people and to not allow for application for or grant of tenures within that area AND not allow for the grant of higher tenures if there is an existing tenure. The distance ought to be not 2km but a wider area. Doctors for the Environment recommend 10km zone around those communities.
>
> *13.Recommendation:* That the *Nature Conservation Act* 1992 is amended to prohibit mining or resource extraction or associated infrastructure in nature refuges or within a defined number of km of those reserves.

9 Method of Regulation: land use planning, including regional plans and natural resources planning and environmental protection policies under the Environmental Protection Act

Generally speaking good quality land use planning and planning for natural resources is an essential part of the circle of protective regulation. We mentioned earlier the importance of community participation in planning, so that industry lobbyists don't have undue influence.

This can add to the minimum safety net in the legislation itself described above.

And planning needs to respect the bottom line of protecting the natural environment on which life depends and protecting existing communities.

The plans themselves also need to be clear on matters of importance. For example, the SEQ Regional Plan 2009-2031 has precise numbers of forecast additional dwellings for subregions in Part C however there are no clear binding words to protect the areas of ecological significance identified in Map 3- it is left vague. The consequences is that areas of environmental value, such as wildlife corridors are developed as the words are not binding.

The decline in koala numbers in SE Queensland is because of weak planning and conservation laws passed by State government allowed to habitat clearing, which is turn led to more killed on roads, disease, and other causes of koala fatalities. Koala loss is symptomatic of greater biodiversity loss in SEQ Qld due to development under the SEQ Regional Plan. The solution is to get serious about strictly regulating development in key habitat with maps at a property level, and restoration of key habitat.

14.Recommendation: That legislative must provide that any plans, eg new regional plans, respect the bottom line of protecting and safeguarding the natural environment on which life depends, and protecting existing communities from environmental degradation.

15. Recommendation: That legislation provide that plans may prohibit as well generally regulate land uses; that plans must clearly identify on maps where the natural environment outside reserves or what areas are no go zones to protect communities.

10. Method of regulation: assessment of applications

Essentially the writer ran out of time to address this point.

But we wish to mention the importance of the precautionary principle in assessing applications under the *Environmental Protection Act* 1994 and to use coal seam gas as an example.

The current "adaptive management" approach concerning the *Environmental Protection Act* 1994 and coal seam gas is bad regulation as it does not deal with irreversible impacts. Waiting until things go wrong and then trying to fix groundwater problems, an irreversible impact, simply does not work. The precautionary principle needs to be applied,

> The precautionary principle provides that, if a proposal involves a threat of serious or irreversible environmental harm, then lack of scientific certainty about the potential impacts of that proposal should not be used as a reason for postponing preventative measures. In other words, the decision maker should err on the side of caution.

16.Recommendations:

- To identify and protect no go areas for development
- Baseline studies done before development
- Application of the precautionary principle
- To reject the approach of adaptive management

An example is the case of the Myrtle well mentioned on 4 Corners show on coal seam gas where gas aquifer mistakenly was connected to clean ground water for one year.

11. Method of regulation fair processes, public accountability and access to information and transparency for mining and gas

Public notification and Public submission rights

Recommendation: Amendments needed to Environmental Protection Act 1994 ("EP Act") to:

17. Introduce public submission and appeal rights for all applications for all environmental authorities relating to coal seam gas. Currently those rights only apply for some types of environmental authorities relating to coal seam gas applications.
18. Introduce rights of public submission and objection to the Land Court for any type of exploration under the Mineral Resources Act 1989 that involves extraction of coal. Some exploration e.g. for the Alpha mine has involved extraction of hundreds of thousands of tonnes of coal, more than many production mines.
19. Improve public notification of public submission opportunities concerning applications for mining and coal seam gas environmental authorities. Its now online at a central government website, but we need the application and supporting information online too for all applications so potential submitters can see the materials easily. Brisbane City Council does it for local developments. Why is the State government lagging behind o major projects?
20. Ensure notification of environmental authorities for CSG is made at the minimum by letter to landholders in the subject area or within a 5km radius of that area. Similar amendments are needed with respect to opportunities to make a submission/objection on environmental authorities for mining.
21. Ensure that for any approved projects, the final environmental authorities, monitoring data and other material required to be complied or produced under that environmental authority is included in the definition of the public register under s540 of the EP Act AND is available online.

Coordinator General, and Land Court powers

Recommendation: Amendments needed to EP Act & *State Development and Public Works Organisation Act* 1971 to:

22. Remove decision-making powers of the Coordinator General on conditions of environmental authorities for mines and coal seam gas that are "significant projects", so that instead the Department of Environment and Heritage Protection makes the decision. Currently the Coordinator General has a conflict of interest under legislation -both promoting development and assessing environmental impacts.
23. Ensure the Land Court on appeal can consider and address all relevant issues and is not constrained by any decision-making of the Coordinator General on conditions.
24. Introduce powers for the Land Court to make a decision, rather than a recommendation to government on proposed environmental authorities for mining leases. Courts, not governments have the final say on coal seam gas environmental authorities and planning applications- why should environmental authorities relating to mining be politicised?

Costs and Resources

Recommendation Amendments needed to the *Land Court Act* 2000 and State funding required to:

25. Change the costs rules in the Land Court to each party pays own costs, subject to exceptions. Currently people are cautious of costs orders and this discourages participation.

26. Keep each pay their own costs rules, subject to limited exceptions, in the Planning and Environment Court.
27. Keep and strengthen third party enforcement rights under the *Sustainable Planning Act* 2009, *Nature Conservation Act* 1992 and *Environmental Protection Act* 1994 so the community may be a watchdo
28. Provide State legal aid for public interest environmental cases, concerning coal mines and gas. Currently Queensland provides no legal aid for any environmental cases. How can ordinary community groups get a fair go if they don't have funds for experts/barristers and are up against multinational coal mines?

12. Method of regulation extra public resources to run the system.

The resources industry constantly uses its superior resources to dispute public servants legitimate concerns about development proposals and to try to gain approvals of its projects. As mining companies stand to make a huge profit for their shareholders, they can spend up big to try to secure an approval and so will usually win out over poorer competitors who will be impacted by mining proposals. So the agricultural industry and the tourism industry and the natural environment usually lose out against big mining proposals, even if they offer more to the Queensland economy in the medium to long term.

Journalist Paul Cleary gives an example, "A series of emails relating to the state government's May 2012 approval of the GVK Alpha coal mine in the Galilee Basin suggests that industry is still able to wield undue influence and use an army of experts to get a decisions rushed through." He refers to a leaked email that mentioned that Hancock came in with 22 experts to discuss the proposal[8]. Its

So when faced with this type of pressure, we need adequate number of public servants, with appropriate expertise, to assist in formulating the regulatory system, to assess applications and to monitor and enforce conditions. Given the number of new major coal mines and coal seam gas project proposed, the Queensland government ought to be recruiting additional skilled public servants for that purpose, not reducing their numbers by 10-30%.

The cost of cleaning up environmental disasters can be tens of millions of dollars, see **Appendix C**

29 Recommendation: That the number of public servants to scrutinise resource developments is increased.

29. Enforcement and the level playing field

Once you have decided on the standards and set conditions of approval shouldn't you enforce those conditions? Why should the business that respects the law be at a price disadvantage compared to a business that breaks the law?

Why should the public purse be up for clean up costs? For example Mt Oxide copper mine is still leaking pollution into the waterways when there is heavy rain. The company surrendered its lease so the government is paying millions.

The community needs to be able to appeal and enforce, to act as a watch dog if government is too slow.

[8] P78 and 79 Cleary, P *Mine Field The dark side of Australia's resource rush* 2012 Black Inc.

30 Recommendation; Clear and comprehensive public access to information, such as copies of environmental licenses and monitoring data and reports referred to in environmental licences, not just publicly available but online in real time. (DEHP is looking at this)

31 Recommendation: Extend third party submission and appeal rights (eg on mining exploration not just mining leases) and ensure third party enforcement rights written into legislation.

32 Recommendation: Costs rules in public interest courts that each side pays his or her own costs, like the Planning and Environment Court so people are confident to give the case a go. Frivolous and vexatious cases are an exception.

Appendix A
Summary of Recommendations

1. *Recommendation:* That the Committee limit the scope of its investigation and report to those activities that are within the scope of "agriculture" defined in current legislation.

2. *Recommendation:* That the Committee note that the purported costs of regulation are overstated, or not reliably established, so should not drive reforms.

3. *Recommendation*: Adoption of a precautionary principle in Parliaments approach toward reducing regulatory burdens, pursuant to which regulation must not be eliminated unless there is an objectively sound cost benefit analysis showing that key social or environmental objectives will be achieved and that health/environment will not suffer

4. *Recommendation*: It is essential to look in detail at the social and environmental objectives of regulation and the methods of how best to achieve them, not just on cutting number of pages of legislation. Saying that less pages of regulation is good for the Queensland economy is a dangerous over simplification.

5. *Recommendation*: That tighter regulation of the resources sector is needed to benefit the environment, communities, tourism and agriculture.

6. *Recommendation:* That when the impacts of a resource proposal are assessed, for example when an environmental impact statement is prepared, that any statements by the proponent about the project are fully referenced with mathematical working out so that they may be independently scrutinised. Such a requirement for full referencing of statements and mathematical working out could become a requirement as part of the Terms of Reference for all Environmental Impact Assessment Statements and also a requirement for any supporting information for applications for environmental authorities under the *Environmental Protection Act* 1992 and development applications.

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    - That each of the pieces of resources legislation mentioned in the *Mines Legislation (Streamlining) Amendment Bill* 2012 is amended to include provisions for Urban Restricted Areas. The provisions are to protect small communities over 200 people and urban areas of over 1000 people and to not allow for application for or grant of tenures within that area AND not allow for the grant of higher tenures if there is an existing tenure. The distance ought to be not 2km but a wider area. Doctors for the Environment recommend 10km zone around those communities.
    - tighter standards under the Environmental Protection Policy under the *Environmental Protection Act* 1994 on fine particulate dust;
    - tighter standards reflected in the conditions of approval attached to mines, coal transport and stockpiles
    - monitoring data needs to be online and immediately accessible
    - Rights of public submission and objection are needed for exploration not just when a mining lease is applied for.

8. *Recommendation:* That the agricultural sector needs ongoing regulation, not self-regulation, due to the impacts of terrestrial land management on water, soil and the natural environment.

9. *Recommendation:* Queensland needs to further regulate chemical use, at for example in requiring councils to keep a register of those people with chemical sensitivity so that contractors may warn people before spraying.

10. *Recommendation***:** All three rings of the protective circle need to be used for effective regulation of the agricultural and resources sector as they provide protection for communities and the environment effective at different times and at different levels of detail.

11. *Recommendation:* All rings of the protective circle of regulation need to be developed with adequate public sector and expert resources and meaningful and well-resourced community participation including community groups, natural resource management groups, environmental groups and local landholders as well as industry and local government. All rings of the circle need transparency, public accountability and legally secure mechanisms for ongoing monitoring and enforcement of the rules.

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15. *Recommendation:* That legislation provide that plans may prohibit as well generally regulate land uses; that plans must clearly identify on maps where the natural environment outside reserves or what areas are no go zones to protect communities.

16. *Recommendation concerning development assessment*

- To identify and protect no go areas for development
- Baseline studies done before development
- Application of the precautionary principle
- To reject the approach of "adaptive management"

Notification and Public submission rights

Amendments needed to Environmental Protection Act 1994 ("EP Act") to:

17. Introduce public submission and appeal rights for all applications for all environmental authorities relating to coal seam gas. Currently those rights only apply for some types of environmental authorities relating to coal seam gas applications.
18. Introduce rights of public submission and objection to the Land Court for any type of exploration under the Mineral Resources Act 1989 that involves extraction of coal. Some exploration e.g. for the Alpha mine has involved extraction of hundreds of thousands of tonnes of coal, more than many production mines.
19. Improve public notification of public submission opportunities concerning applications for mining and coal seam gas environmental authorities. It's now online at a central government website, but we need the application and supporting information online too for all applications so potential submitters can see the materials easily. Brisbane City Council does it for local developments. Why is the State government lagging behind o major projects?
20. Ensure notification of environmental authorities for CSG is made at the minimum by letter to landholders in the subject area or within a 5km radius of that area. Similar amendments are needed with respect to opportunities to make a submission/objection on environmental authorities for mining.
21. Ensure that for any approved projects, the final environmental authorities, monitoring data and other material required to be complied or produced under that environmental authority is included in the definition of the public register under s542 of the EP Act AND is available online.

Coordinator General and Land Court powers

Amendments needed to EP Act & *State Development and Public Works Organisation Act* 1971 to:

22. Remove decision-making powers of the Coordinator General on conditions of environmental authorities for mines and coal seam gas that are "significant projects", so that instead the Department of Environment and Heritage Protection makes the decision. Currently the Coordinator General has a conflict of interest under legislation -both promoting development and assessing environmental impacts.
23. Ensure the Land Court on appeal can consider and address all relevant issues and is not constrained by any decision-making of the Coordinator General on conditions.
24. Introduce powers for the Land Court to make a decision, rather than a recommendation to government on proposed environmental authorities for mining leases. Courts, not governments have the final say on coal seam gas environmental authorities and planning applications- why should environmental authorities relating to mining be politicised?

Costs and Resources

Amendments needed to the *Land Court Act* 2000 and State funding required to:

25. Change the costs rules in the Land Court to each party pays own costs, subject to exceptions. Currently people are cautious of costs orders and this discourages participation.
26. Keep each pay their own costs rules, subject to limited exceptions, in the Planning and Environment Court.
27. Keep and strengthen third party enforcement rights under the *Sustainable Planning Act* 2009, *Nature Conservation Act* 1992 and *Environmental Protection Act* 1994 so the community may be a watchdog
28. Provide State legal aid for public interest environmental cases, concerning coal mines and gas. Currently Queensland provides no legal aid for any environmental cases. How can ordinary community groups get a fair go if they don't have funds for experts/barristers and are up against multinational coal mines?

29. *Recommendation:* That the number of public servants to scrutinise resource developments is increased.

30. *Recommendation;* Clear and comprehensive public access to information, such as copies of environmental licenses and monitoring data and reports referred to in

environmental licences, not just publicly available but online in real time. (DEHP is looking at this)

31. *Recommendation:* Extend third party submission and appeal rights (e.g. on mining exploration not just mining leases) and ensure third party enforcement rights written into legislation.
32. *Recommendation:* Costs rules in public interest courts that each side pays his or her own costs, like the Planning and Environment Court so people are confident to give the case a go. Frivolous and vexatious cases are an exception.

Appendix B.

1. An inappropriately expansive definition of agriculture is being used- more information

The Queensland EDOs respectfully submit that the Committee limit the scope of its investigation and report to those activities that are properly included within the scope of "agriculture" defined in current legislation.

A. Forestry is not within the scope of agriculture

The dictionary set forth in Schedule 3 of the *Sustainable Planning Act 2009* (Qld) ("SPA") defines "agricultural activities" by reference to the *Wild Rivers Act 2005* (Qld). The *Wild Rivers Act*, in turn, defines the term as follows:

> 1 ***Agricultural activities means***—
>
> (a) cultivating soil; or
> (b) planting, irrigating, gathering or harvesting a crop, including a food or fibre crop; or
> (c) disturbing the soil to establish non-indigenous grasses, legumes or forage cultivars; or
> (d) using the land for horticulture or viticulture.
>
> 2 ***The term does not include***—
>
> (a) producing agricultural products for the domestic needs of the occupants of the land if the maximum area of the land on which the products are produced is the following—
>
> (i) for fewer than 10 occupants of the land—0.25ha;
> (ii) for 10 or more but fewer than 50 occupants of the land—2ha;
> (iii) for 50 or more but fewer than 100 occupants of the land—4ha;
> (iv) for 100 or more occupants of the land—6ha; or
>
> (ab) producing agricultural products in a market garden, if the maximum area of land on which the products are produced is not more than 4ha; or
> (b) baling or cutting pasture; or
> (c) broadcasting seed to establish an improved pasture; or
> (d) planting, gathering or harvesting a crop of pasture or grain species in a preservation area if the pasture or grain species is—
>
> (i) only for animal feed; and
> (ii) neither a high risk species nor a moderate risk species for the wild river area of which the preservation area is a part; or
>
> (e) improving pasture using low impact soil disturbance if the pasture species is neither a high risk species nor a moderate risk species for the wild river area; or
> ***(f) forestry activities***; or
> (g) activities carried out for land rehabilitation or remediation; or
>
> *Examples*—
> deep ripping, shallow ponding

> (h) blade ploughing in an area that, under the Vegetation Management Act 1999, is a category X area or category C area on a PMAV.[9]

Similarly, the Queensland EDOs note that the Planning Guidelines for implementing State Planning Policy 1/92 defines "good quality agricultural land" as follows:

> Good quality agricultural land is land which is capable of sustainable use for agriculture, with a reasonable level of inputs, and without causing degradation of land or other natural resources. In this context, agricultural land is defined as land used for crop or animal production, but excluding intensive animal uses such as feedlots, piggeries, poultry farms and plant nurseries based on either hydroponics or imported growth media.[10]

Forestry and associated activities are not identified as agricultural activities in this context either.

Accordingly, the Committee should restrict its investigation and report to activities that are properly within the scope of "agriculture" as defined and delimited by Queensland legislation and revise its definition to exclude from consideration "forestry".

B. Farming of marine plants and animals is "aquaculture" and is not regulated as "agriculture" in Queensland legislation

Likewise, the Committee should exclude from its consideration the "farming of marine animals or plants" in response to Parliament's referral. As noted in the foregoing discussion of forestry, "the farming of marine animals or plants" is not subsumed within any definition of "agriculture" or "agricultural activities" contained in Queensland legislation. More importantly, SPA contains a specific definition of "aquaculture" in the dictionary set forth in Schedule 3 of that legislation, which in turn refers to the *Fisheries Act* schedule for the term's meaning. The *Fisheries Act 1994* (Qld), in turn, defines "aquaculture" as:

> [T]he cultivation of live fisheries resources for sale other than in circumstances prescribed under a regulation.[11]

Not only is "aquaculture" entirely distinct from agriculture and therefore outside the scope of Parliament's referral, but the Committee's proposal to include such activities within the scope of its investigation and report raises serious concerns about conflict with the ongoing Strategic Assessment of the Great Barrier Reef World Heritage Area ("GBR WHA") in response to the World Heritage Committee's decisions at its 34th and 35th sessions. As the Committee is no doubt aware, many of the aquaculture developments proposed or currently active in Queensland are located on the coastline adjoining the GBR WHA and have the potential to adversely impact the Reef's water quality and adjacent ecosystems. Given the World Heritage Committee's grave concerns over the current state of the GBR WHA's conservation status, and the inclusion of legislation and regulations governing aquaculture within the scope of the Strategic Assessment, it is inappropriate to consider reducing regulation of such activities at this time.

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[9] *Wild Rivers Act 2005* (Qld), Dictionary, p 25 (Reprint 2E, effective 2 March 2012) (emphasis added).

[10] *Planning Guidelines: The Identification of Good Quality Agricultural Land*, Dept. of Primary Industries & Department of Housing, Local Government and Planning, p 1 (January 1993).

[11] *Fisheries Act 1994* (Qld), Schedule, p 162 (Reprint 7, effective 5 May 2011).

Appendix C
2. The Purported Costs of Regulation Are Often Overstated- more details

The Queensland EDOs applaud the Committee's candor when it observes that "[t]here is a lack of conclusive Australian data on the burden of regulation imposed by Government, and no direct measurement of the cost of regulation in Queensland".[12] In the absence of such data, the purported costs of regulation are often overstated by the regulated community. By way of example, the Queensland EDOs refer the Committee to the Business Council of Australia's April 2012 Discussion Paper submitted to the Council of Australian Governments' ("COAG") Business Advisory Forum ("BCA Paper").[13] This paper – and more particularly the costs purportedly borne by industry in undertaking environmental assessments – was cited by COAG in support of its April 2012 decision to establish a framework for fast-tracking a bilateral agreement process whereby States will not only assess but also approve "controlled actions" under the *Environmental Protection and Biodiversity Conservation Act 1999* (Cth).[14] By any stretch, COAG's decision represents a significant change in federal government's approach to actions that have the potential for significant adverse effects on matters of national environmental significance.

However, the economic case put forward in the Business Council of Australia's paper has been largely debunked. In a report released this week, Economists At Large, notes that the BCA Paper: "appears to pick costs selectively and in some instances miscalculates costs"; "fails to address the potential benefits of the current legislation or the potential costs if the proposed streamlining occurs"; and, by focusing solely on costs to business, "ignores the wider discussion about improving the effectiveness of the EPBC Act".[15] Among other things, Economists At Large note that BCA's claim that environmental assessments under the EPBC Act cost business as much as "$820 million over the life of the EPBC Act" picked the high end of a range calculated at between $270-$820 million.[16] Moreover, the BCA paper ignored the fact that such costs – even at the high end – are miniscule (0.3 to 0.9%) when compared to the massive level of committed and prospective investment in large scale projects in Australia (estimated by BCA at "around $900 billion").[17] Likewise, the Economists At Large paper notes that BCA inflated the costs of individual referrals under the EPBC Act significantly by ignoring the wide variance in costs among proponents of controlled actions.[18] Finally, Economists At Large noted that the $170 million annual cost of delays stemming from the assessment, review and approval process under the EPBC Act was vastly overstated, and was more likely around $6.8 million.[19]

Likewise, the Queensland EDOs note that, in a recent survey undertaken of mineral resource industry executives, the purportedly high cost of Government regulation was noticeably

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[12] Committee Paper, p 4.
[13] *Discussion Paper for the COAG Business Advisory Forum*, Business Council of Australia (April 2012), accessed 17 August 2012 at http://www.bca.com.au/Content/99520.aspx.
[14] *See COAG Communique*, p 2 (13 April 2012) (BCA Paper "particularly welcomed") , accessed 17 August 2012 at http://www.coag.gov.au/sites/default/files/2012-13-04.pdf.
[15] *A Response to the Business Council of Australia's Discussion Paper for the COAG BAF on Environmental Assessments and Approvals*, Economists at Large, p 2 (August 2012), accessed 17 August 2012 at http://www.ecolarge.com/tag/business-council-of-australia/.
[16] *Ibid*, p 4.
[17] *Ibid*, quoting BCA Paper, p 5. BCA characterised large scale projects as those worth $20 million or more. BCA Paper, n 3.
[18] Economists At Large Paper, p 5. Economists At Large also noted that BCA's paper upon which COAG relied failed to account for the relative size of the referral cost to the size of the project being referred.
[19] *Ibid*.

absent from the executives assessment of major challenges facing the industry.[20] According to the survey report:

> When asked to state their reasons for curbing spend on CAPEX, the leaders surveyed listed factors including volatile prices (24 per cent), tough market conditions (21 per cent) and increasing business costs, including for energy (21 per cent).[21]

While government policy was noted by mining executives, their concerns focused on, in addition to variable commodity prices and skilled worker shortages, workplace regulations and the costs imposed by the Federal Government's carbon tax.[22] The financial and administrative burdens imposed by government regulation generally were nowhere identified in the survey of mineral executives.

The foregoing illustrates the fact that Government must be sceptical of the claims put forward by the regulated community about the burdens imposed by regulation. Closer analysis may often reveal that those costs are overstated and skew the cost-benefit analysis that must be undertaken in determining reducing that burden is justified.

[20] *See Mining Business Outlook Report - Canvassing the views of Australia's mining leaders 2012–2013: A report on Australian mining leaders' views on the economy, industry challenges and opportunities, and government policy*, Newport Consulting (July 2012), accessed 17 August 2012 at http://www.newportconsulting.com.au/publications/mining-business-outlook-report.html.
[21] *Ibid*, p 5.
[22] *Ibid*.

Appendix D

Features

Living in the dusty shadow of coal mining

- by: *Paul Cleary*
- From: *The Australian*
- January 28, 2012 12:00AM

- Increase Text Size
- Decrease Text Size
- Print
- Email
- Share
  - Add to Digg
  - Add to del.icio.us
  - Add to Facebook
  - Add to Kwoff
  - Add to Myspace
  - Add to Newsvine
  - What are these?

Farmer Tanya Plant and her daughters, one of whom suffers coughing fits that her doctor says may have "environmental" causes. Picture: Jack Tran *Source:* The Australian

AUSTRALIA'S resources boom is already generating a lot of dust, noise and fumes, and the amount stirred up is only going to increase, given plans by miners to double coal and iron ore extraction this decade.

Yet state and federal governments are doing surprisingly little to monitor and regulate these impacts on the people living in the shadow of mining and energy projects. While state governments require companies to submit voluminous environmental impact statements, designed to protect flora and fauna, less is being done to protect people.

From the time minerals are dug from the ground and shipped to port in open wagons to the time they leave our shores as exports, governments generally leave it to the companies concerned to monitor the harmful effects of toxic substances on people, and the reporting seems patchy.

Tanya Plant, a Queensland farmer and mother of two, worries about the effect the emissions from New Hope Corporation's coal mine, located about 2km from her home, may be having on her family. Her two-year-old daughter has been having coughing fits and after successive trips to the doctor she has been told the causes may be "environmental".

"It has been worrying to have one of our children coughing a lot for months. We are concerned about those really small particles, as well as things like heavy metals," says Plant, who grew up on her Acland farm, west of Toowoomba, and obtained a PhD from Oxford University as a Rhodes scholar.

In fact, Plant, her husband, children and parents seem adversely affected by constant exposure to dust, noise and plumes of gases released by regular blasting.

"I'm uncomfortable telling too many people the details of all our health issues, but there are some worrying symptoms which seem to have been going on for quite a while and none of us seem as healthy as we should.

"I'm only 36 and had hoped and expected to continue to live an active life for some time yet, and to be able to raise our kids in a good environment to give them the best start and chance in life. This farm has been in my family for many generations and is very much a part of us. I can't really picture a happy future without it, but I'm not sure whether we should live here any more."

The permanent dust monitor recently installed on her property is a crude device: a plastic funnel that sits on top of a glass jar. In response to Plant's requests, NHC measured fine particles known as PM10 on one occasion last year, but it is yet to forward the findings. In

response to Plant's complaints about noise levels, the company has taken readings but has refused to divulge some results.

When the company did the PM10 study last year, it appeared the officer from the Safety in Mines Testing and Research Station, a government agency, was contacted by an executive from New Hope while conducting the test and agreed to meet him immediately afterwards, Plant says.

But it is the smaller particles, known as PM2.5 and PM1, that health studies indicate are even more dangerous to human health, and these are not being measured at Acland, or in most other mining regions in Australia. A human hair is seven times the width of a PM10 particle, and 30 times that of a PM2.5. These ultra-fine particles are dangerous because they can become embedded in lungs or enter the bloodstream.

In response to questions from Inquirer, a New Hope spokesman declined to comment on why the company would not provide the results of dust and noise tests to Plant's family. The company would not comment on the frequency of its testing for dust levels near the mine and its expansive coal dump near the town of Jondaryan, nor would it cite its evidence for using the crude jar and funnel for measuring dust.

But New Hope says it operates "above compliance" and provided the results of monthly noise tests carried out "at random times". But these tests are different from those done when complaints are made, which the company won't release.

The company says its dust monitoring is "above and beyond compliance". It says the testing done by Simtars has " consistently met government air quality requirements". But the company tests only for PM10 particles, and the spokesman would not say how frequently they are carried out.

New Hope says it is investing "thousands of dollars" installing quieter reverse beepers on its vehicles, and it is trialling a muffler suppression system on its trucks, even though it is meeting all compliance levels.

The Queensland government has installed only two dust monitors near mining towns. One of its 29 permanent monitors is at Mt Isa, but the others are all based near major urban centres. Coal mining regions in the Bowen Basin and on the Darling Downs do not yet have permanent monitors in place, and the closest monitor to the Acland mine is at Toowoomba, more than 50km away.

The government has installed a monitor in the centre of the Bowen Basin coal mines at Moranbah, even though there are several other towns closer to the coal mines. The results from this temporary monitor are not published on the government's air quality website. Instead they are reported "through a reference group".

This contrasts with the NSW government, which has responded to community pressure and installed a network of 13 dust monitors in the Hunter Valley, although only three of them measure PM2.5 particles.

Queensland Environment Minister Vicky Darling says that in addition to the government's monitoring, companies are required to report any hazardous impacts swiftly, as well as in an annual report. Executives who provide false and misleading information face penalties of up to $832,500 or two years' imprisonment.

Darling defends the use of the funnel and glass jar as a device to measure "dust nuisance impacts", essentially a crude measure of the sheer volume of material in the air.

The Plants live near the New Acland coal mine, which opened in 2002 as a small mine and has grown into a four million tonne a year operation. While still a modest mine by Australian standards, NHC has a plan before the state government to more than double production to 10 million tonnes a year, while also developing a pilot plant for coal-to-liquids technology.

The listed company's ownership is tied to chemist chain Soul Pattinson. Washington H. Soul Pattinson owns 60 per cent of New Hope, and in turn owns 24 per cent of Australian Pharmaceutical Industries, which includes Soul Pattinson and Priceline.

While the existing mine is scheduled to be exhausted in 2018, the plan for a third-stage expansion would extend its life by a further 35 years and also mean double the amount of dust for nearby communities. It would come within 5km of the town of Oakey, population 3600.

Plant says the state government has made assurances about the proposed expansion being assessed through a rigorous EIS process, but the current stage of operations went through the same EIS processes. She says these don't require monitoring of dust, noise or the rainwater consumed by people living just a few hundred metres from the mine's main operations. Plant points out that people living in the settlement of Muldu, just 700m from the key mine operators, were not included in the EIS among the "sensitive receptors", meaning people affected by the mine.

"It doesn't give me confidence that the health of people near the mine is treated all that seriously," Plant says. "There doesn't seem to be much data available but even so, it doesn't seem like noise and dust has always complied with the state standards. I have seen how black some of the rainwater collected from people's roofs has been."

A group of concerned doctors has written to federal and state ministers about the risks for the population near this mine. Doctors for the Environment, which includes Gustav Nossal on its scientific committee, says in a letter to federal Environment Minister Tony Burke that the expansion to a four million tonne annual operation had already subjected the surrounding population to "serious pollution which is likely to have affected their health and this situation has existed since 2006 when stage 2 commenced".

Emeritus professor David Shearman told Burke it "beggars belief" that the company has not produced adequate data on PM2.5 levels and that of sulfur dioxide and nitrogen dioxide, which are commonly found in high levels around coal mines.

"However the data that is presented, though inadequate, suggests that air quality has been unacceptable for some years," he wrote.

While there has been limited research in Australia on the health effects of coal mining, Shearman pointed out that extensive studies in the US by the Physicians for Social Responsibility found people living in high coal-producing counties had higher rates of cardiopulmonary disease, chronic obstructive pulmonary disease, hypertension and kidney disease compared with people in non-coal-producing counties.

Noise is also going largely unmeasured, despite its impact on human wellbeing.

Plant describes the noise as an almost constant irritant that her daughter sometimes describes as "that loud growly noise" as she puts her hands over her ears. "We often have to shut windows due to noise and even then some nights I haven't been able to sleep for even a whole hour at any point. It is hard for the kids as they get woken too," Plant says.

The risks to the surrounding population extend to the coal dump just 1km from the town of Jondaryan, and then all the way along the railway line to the port of Brisbane, where the coal is loaded on to ships.

From Jondaryan the coal is often trucked through Toowoomba by road to local power stations, but most of it is shipped via rail to export terminals in Brisbane. The coal moved in trucks is meant to be covered with tarpaulins (although locals have taken photographs of uncovered trucks), while the coal moved on trains is not required to be covered.

People who live along the railway lines, and in the towns, say the black soot on their roofs gets into their drinking water.

Peter Faulkner, who lives just 300m from the railway line, has black streaks on the plastic water tank he uses to collect drinking water. Another resident, 600m from the line, says her drinking water is being contaminated by soot from the train. When Inquirer visits her property, she shows a jar of black water produced from washing the soot from her roof.

Asked if he has considered obtaining an assessment from the government, Faulkner says he no longer trusts the institution.

"There's no impartiality when it comes to assessing these mining projects," he says. "The fact they seem to be covering everything up concerns me greatly. They have a duty of care towards us. They are not looking after us at all."

Appendix E

Examples of the Cost of Environmental Damage

In March 2009 the ship Pacific Adventurer lost 31 containers of ammonium nitrate overboard damaging the ship in the process and causing 270 tonnes of heavy oil to leak from the vessel.[23] The damage was said to have occurred due to the failure of lashings holding the containers in place and the company was fined after pleading guilty in the District Court[24]. A summary of basic figure follows:

- Cost ~ $30-34 million – (http://news.theage.com.au/breaking-news-national/qld-unlikely-to-recover-oil-spill-costs-20090705-d8oy.html)
- Recovered: $25 million – Voluntarily paid not necessary quantum of legal liability (http://news.theage.com.au/breaking-news-national/oil-spill-captain-to-face-court-in-nov-20090914-fnet.html)
- Fines $1.2 million– (http://www.abc.net.au/worldtoday/content/2011/s3339372.htm)

Abandoned Mine Management:
Abandoned or orphaned mines across Australia are a great impost and burden on the governments left to manage them. Writing in 1997 a scientific report for the Australian Government indicated that the management of acid generating wastes on abandoned mine sites would cost $100,000 per ha with Queensland having an estimated 60,000 abandoned mining tenements.[25] These costs and poignancy of these issues was reiterated in a report by Associate Professor David Laurence to the Queensland Flood Commission who highlighted this was is not just a historical issue but that mines are still being abandoned such as Mt Oxide.[26] The recent costs of this legacy have also been demonstrated by commitments from 2011-2014 for $24 million of funding.[27]

Treatment of acid sulphate soils from attempted sugarcane farm near Cairns

- Millions of dollars (exact price unknown) (http://www.derm.qld.gov.au/parks/east-trinity/culture.html)
- The costs of acid sulphate soils extend well beyond the rehabilitation costs (http://www.ozcoasts.gov.au/indicators/econ_cons_acid_sulfate_soils.jsp)

[23] http://www.atsb.gov.au/media/1568984/mo2009002_prelim.pdf
[24] R v Santos, Bluewind Shipping Ltd & Ors [2011] QDC 254
[25] Harries J, Acid mine drainage in Australia: Its extent and potential future liability, http://www.environment.gov.au/ssd//publications/ssr/125.html
[26] http://www.floodcommission.qld.gov.au/__data/assets/file/0006/10689/Laurence_David_report.pdf
[27] http://www.miningaustralia.com.au/news/qld-provides-mine-rehab-funding-boost