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The Research Director
Agriculture, Resources and Environment Committee
Parliament House
George Street
BRISBANE QLD 4000

via email: AREC@parliament.qld.gov.au

Dear Sir/Madam,

Mineral and Energy Resources (Common Provisions) Bill 2014

Thank you for the opportunity to provide submissions on the abovementioned Bill (**the Bill**).

I am responding on behalf of the Basin Sustainability Alliance (BSA). The BSA is a Queensland-based group representing the concerns of landholders and rural communities.

BSA's charter is focused on ensuring the sustainability of land and water resources for future generations - particularly highlighting the risk CSG development poses to the Great Artesian Basin. It also plays a role as an advocate for landholders who are facing uncertainty and frustration in relation to CSG development on their land and in their communities.

More information about BSA and its official charter can be found at: www.notatanycost.com.au.

As an overall statement BSA embraces the overall aim of the legislation. We like this concept and we are pleased that the serious environmental problems associated with abandoned exploration wells has been recognized.

However, the proposed amendments concern us greatly as they seek to substantially alter long held principles and rights of landholders in Queensland with virtually no benefits flowing back to them. The Government has made and continues to make promises that the idea of the reforms is to harmonise the various pieces of legislation and that no landholders will be worse off unless they agree to be, but the proposals almost entirely make landholders worse off. In fact, the proposed Bill contains many clauses that either create uncertainty or blatantly diminish the rights of land holders and affected individuals.

Placing the interests of industry before the rights of Queenslanders

In the first reading speech on 5 June 2014, the Honorable AP Cripps states that the goal of this Bill is to "*optimize development and use of Queensland's mineral and energy resources and to manage overlapping coal and petroleum authorities for coal seam gas*". BSA agree in principle with this goal

but on reading the detail of this legislation it would seem that the implementation of this Bill will have adverse consequences for land holders and the community generally.

Amendments to the *Environmental Protection Act 1994 (Qld) (the EPA)*

The amendments to the EPA effectively mean that public notification will only be required for site-specific Environmental Authority applications/variations. Standard applications will not require any form of public notification (refer Clause 418 – no notification required in an approved newspaper in the area) and, as a consequence of that, a submission cannot be made by a member of the public on such an application, regardless of the impact that it may have. Such a proposal is fundamentally unfair and unjust to Queensland citizens. BSA may want to object or make submissions on behalf of our members, on the Environmental Authority, or object to its granting, if the proposal will affect landholders or the environment. This is regardless of the size of the proposal

It is a fundamental community right to know what mines are proposed in Queensland. Mines by their very nature have a fundamental impact on communities and any member of the community should be able to know what mines are proposed. If someone will be affected, or even if they are likely to be affected, by the decision to approve an environmental authority for a mine, shouldn't the should have a right to know about the application and have a say on the application before it is approved. The removal of notification for applications which are not site-specific applications is a blatant denial of natural justice and degrades rights that currently exist. BSA does not think the proposal can be justified on the basis that it is just making it consistent with the law relating to CSG matters. CSG matters should be brought in line with mining lease matters.

BSA does not like the idea of the **Minister** deciding whether or not applications that propose to vary an environmental authority in a significant way are to be publically notified. BSA does not understand or accept this proposal. If an environmental authority is to be varied and it is likely to adversely affect a landholder, we want to be able to have a say. BSA believes that applications to vary environmental authorities should be publically advertised and people have a right to have a say in what occurs.

The right to make submissions on, and consequently object to, the conditions of an environmental authority should not be removed. To do so will place the interests of private enterprise extracting a State held resource in front of the rights of Queenslanders.

Objections to Mining Leases

The amendments to section 260 of the *Mineral Resources Act 1989* (Qld) (**MRA**) are among some of the most concerning to BSA. We again emphasise that, under the MRA, minerals are the property of the Crown and they therefore **cannot** be held privately by companies. By removing public objection rights regarding the granting of tenure to extract a Crown held resource, landholders will be denied an opportunity to participate in decisions which will influence a "common resource". All persons and groups should, as they are currently entitled to, be afforded the opportunity to object to a proposed mining lease.

Further, under the Bill, a person who lives next door to a proposed open cut coal mine and is likely to suffer impacts such as **dust, light and noise disturbance**, will have no rights to object to the granting of the mining lease as they do not fall within the narrow definition of an "*affected person*". Neighbours to a mining lease are often the ones most affected and may find that they are seriously affected by the mine with no avenue for compensation. We urge the committee to appropriately consider this proposal – how can a person who suffers the impacts of the mining lease (i.e. a

neighbor) not be an "*affected person*"? Why will community groups not be able to have a say about what happens in their community? This proposal is simply unfair, unjust and denies the rights of all Queenslanders to "have a say" about what happens to their lifestyle, community and the "common resource".

BSA believes the proposed definition of "affected person" is far too narrow as it only includes:

(a) **an owner** of land the subject of the proposed mining claim; or
(b) **an owner** of land necessary for access to land mentioned in paragraph (a); or
(c) the relevant local government.

The definition needs to be widened so that all genuinely affected individuals and community groups have the right to object. The occupier as well as the owner should also be included in this definition.

Given the above, the proposed amendments to section 260 of the MRA, should not be accepted. If they are, the rights of all Queenslanders will be substantially reduced without appropriate justification.

Further, we do not like the idea that many issues that the Land Court now considers in hearing an objection to a mining lease and environmental authority will no longer be considered by the Land Court – an independent body, but rather the Minister. This particularly concerns us when the rights to object are being diminished. The Minister will have all the say and this concerns us particularly when we hear what has been occurring recently in NSW. **Any** adversely affected landholder or community member should be able to have a say and have that say heard by an independent person i.e. the Land Court. Surely this is a basic democratic right.

Restricted Land

We are deeply concerned with the proposal regarding restricted land. Leading up to this reform, government continually committed to not prejudice or reduce the rights of landholders in the course of carrying out these reforms, however, the proposed amendments, when compared to the existing regime under the MRA, do not concur with this commitment.

The areas which are proposed to attract the protection of the restricted land provisions are substantially less than those currently contained in the MRA. In particular, Category B Restricted Land Areas (**which include principal stockyards; bores or artesian wells; dams; or other artificial water storages connected to water supplies**) appear to have been completely removed from the definition under Clause 68.

All of these areas of infrastructure are critical to the ongoing operation of a farming business and to "do away" with them will place farmers and others at a significant disadvantage in what is already an imbalanced negotiation. Removal of these areas is not appropriate as it erodes the basic rights of landholders and places them behind the interests of industry. Even a mid size piggery operation may not be a restricted area if it doesn't come under the guidelines prescribed, *Environmental Protection Regulation 2008*, schedule 2, part 1.

Another fundamental but extremely important issue in regard to Restricted land has been left to later implementation as a Regulation. Clause 68 refers to restricted land as meaning "land that is within a "prescribed distance" of any of the following……" The definition of "prescribed distance" at clause 67 means a "distance prescribed by regulation".

Critical farming infrastructure stands to be greatly affected by mining activities and that people's homes are included in the buildings mentioned in Clause 67 this is definitely **not** an issue to be left in limbo. BSA recommend that CSG wells should not be any lesser than a distance 600 metres or the mandatory distance prescribed by the EPA for light, noise and dust impacts from a landholder's private dwelling. Furthermore, this buffer distance should apply equally to stock yards, feedlots, piggeries and poultry facilities and similar infrastructure regardless of their size.

BSA recommends that harsher penalties should apply for non compliance to the above and that such penalties should be mandatory.

Further, the proposal for restricted land areas to only apply if they are used **at the time the resource authority was originally granted** is concerning as it effectively places the rights of citizens behind those of the interests of persons extracting the "common resource". For example, if the building of a residence is completed two weeks after an Authority to Prospect is granted and some two (2) years later the landholder is approached by the resource authority holder to undertake seismic activity on their land, the resource authority holder is permitted to undertake that activity as close to the residence as they wish, as it was not "in use" prior to the Authority to Prospect being granted. Such a proposal is unjust to landholders and is a degradation of their rights.

Also, the restricted land framework was "touted" as being a great "benefit" to landholders who are affected by coal seam gas activity. It was represented by members of parliament that landholders who are impacted by coal seam gas activity will now have statutory rights to ensure that activity does not take place near crucial areas of importance to their farming operation. However, the reality of the situation could not be more different to those representations. The addition of clause 217 effectively means that an overwhelming majority of landholders who are currently affected by coal seam gas activity will **not** have the "benefit" of the restricted land framework as a majority of the tenure for the current coal seam gas projects **has already been granted or applied for.** This is yet another example of government not following through with its commitments. BSA recommends this clause needs to be amended to include **all** resource authorities granted under the P&G Act regardless of the date they were granted.

We do not want the restricted land regime under the MRA to be altered except to extend it to land within the area of petroleum and gas tenures. Why not extend the current MRA restricted land regime to petroleum and gas matters? That would harmonise the different regimes and not dilute landholder rights.

We are also very concerned with the proposal to amend the restricted land regime so far as it relates to mining leases. The proposal hands far too much power to the Minister to decide the fate of affected landholders. We are very concerned that the Minister will be able to decide whether or not the mining lease can cover what would otherwise be restricted land. It is virtually turning the situation into one of compulsory acquisition by mining companies of private land. Again, the Minister having all the say concerns us when we hear what has been occurring recently in New South Wales. We believe landholders should be able to decide whether or not a mining lease is over their restricted land particularly when their rights to object to the granting of that mining lease have, in most circumstances, been removed. The current MRA restricted land regime allows only a modest amount of land to be restricted and we don't believe those modest amounts should be curtailed – to have that happen will place landholders at the absolute mercy of resource authority holders.

It goes without saying that activity conducted pursuant to a mining lease is, by its very nature, extremely intensive. The restricted land provisions currently contained in the MRA are one of the very few protections landholders have against mining lease activities occurring in areas of high

importance to their lifestyle and business operation – such as their homes, sheds, stockyards, bores and watering points. By not requiring the resource authority holder to obtain a landholder's consent to enter the restricted land under a mining lease, they will most likely be forced to agree and simply have the issue fall to compensation.

The proposal curtails landholder's rights to object to many mining leases and environmental authorities and substantially reduces the restricted land regime. It also removes an independent person from the decision making process and this is a triple blow. Once again, it is a clear degradation of landholder rights and should be removed.

Legislation by Regulation

Many of the provisions contained in the Bill propose to move numerous aspects of the existing resource acts into regulations. Given this proposal, we ask the following of the Committee:

1. How are we to know what rights will be lost or what rights will be amended if the regulations are not made publicly available until after they are passed?

2. How can we be asked to make valuable and considered submissions when numerous crucial definitions and details, which have the potential to interfere with our rights, have been left to be prescribed by regulations?

3. How will we have a say in the content of the Regulations?

BSA believes that there is far too much vital detail being left to Regulations that are easily drafted and passed later without further public input. BSA is especially concerned with the following matters which have been left for the regulations to prescribe:

1. Clause 39 – requirements for an entry notice;

2. Clause 40 – entry which will be of a particular "type" and will not require an entry notice;

3. Clause 43 – entry of a particular type to carry out an advanced activity which will not require any form of notification or agreement;

4. Clause 45 – requirements of an opt-out agreement;

5. Clause 54 – the period within which a notice after entry to the land must be provided to each owner and occupier;

6. Clause 67 – activities which will be exempt from the definition of "prescribed activity" and the definition of "prescribed distance" (refer to comments made above) ;

7. Clause 68 – areas which the restricted land provisions will not apply to (refer to comments made above) ;

8. Clause 81 – requirements of a Conduct and Compensation Agreement; and

9. Clause 81 – requirements of a Notice of Intention to Negotiate.

The above is by no means an exhaustive list of matters which have been left to be prescribed by regulations, they are simply matters which we consider to be of concern as they have the potential to affect landholder rights without any scrutiny or objection.

Opt-out agreements

In our view, an "opt-out" agreement offers very little benefit to a landholder and provides little protection once signed. A landholder already has the option to enter into a Deferral Agreement and I therefore question the inclusion of a further framework which provides yet another avenue for a resource authority holder to avoid entering into a Conduct and Compensation Agreement (**CCA**).

The inclusion of the opt-out framework suggests that government has no real understanding of the pressure, tactics and tricks used by Land Access Representatives to get landholder's to sign documents which are, most often, not in their best interests. We are of the view that the first step in the negotiation between the landholder and the resource authority holder will be an attempt to get the landholder to "elect" to enter into an opt-out agreement, without knowingly understanding the consequences of entering into such an agreement. This approach tips the scales further in the direction of a resource authority holder in what is already a very uneven power balance for negotiations.

Further, a CCA is effectively an insurance policy – i.e. when things go wrong, the landholder is forced to rely on the terms of the CCA. Without it the landholder has very little rights of recourse. Given the foregoing, the resource authority holder **should not** be provided with another avenue to avoid entering into a CCA and we object to the inclusion of the opt-out framework accordingly and recommend that it not be implemented at all.

Remediation of legacy boreholes

We are pleased to see an attempt being made to address this potentially very serious environmental problem. However, there is a major problem with this proposal in that the ability to remediate a bore or well is not strictly limited to *"legacy boreholes"*. Under the proposed clause 567, Section 294B will be inserted into the P&G Act. This will mean that anyone who is authorised by the Chief Executive can remediate any bore which is emitting gas above the lower flammability limit – i.e. a vital water bore used by a Landholder to water a property. The clause provides for **no rights to compensation or notification**, yet it effectively enables a person to enter land without consent and plug and abandon a bore that is being used simply because it is emitting gas above the lower flammability limit – a comparatively low threshold.

There are numerous bores within Queensland that emit varying levels of gas and are relied upon by landholders every day of the week. The proposal contemplated by the clause is therefore simply absurd and requires re-drafting to give effect to the intent of the proposal as explained at page 12 of the Explanatory Notes.

Under Chapter 3 of the Water Act 2000 (**the Water Act**), landholders whose bores are impacted by CSG activities have an entitlement to have the relevant CSG tenement holder provide a make good agreement providing for make good measures in respect of the impairment of the bore(s). BSA are concerned that Section 294B may operate in such a way that landholders will not be able to stop an "authorised person" from accessing their land and plugging and abandoning a bore , such that they effectively lose their existing right to compensation under the current Water Act make good provisions.

On this general issue BSA proposes that **all** mining activity must be required to fully restore the landscape at the conclusion of their activities. This should be a built-in cost to their operations. This should apply to all mining and because we have a legacy of abandoned mines, exploration wells etc, the Government should create a fund, contributed to by all miners (including CSG operators), that is used to repair the damage already caused.

Conclusion

We urge the Committee to carefully consider the proposed Bill and have particular regard to the sheer volume of rights that are being removed from Queensland citizens. Many of the amendments are simply inappropriate, ill-considered and unjustified. Landholders need their existing limited rights to be reinforced and improved so they are placed on a more equal footing when negotiating with large multinational mining companies. Their Australian businesses and resultant production of vital food and fibre are no less important than the production of coal and gas. BSA fears that if this Bill is enacted in its present form that landholder rights will be eroded further and that the general environment surrounding the GAB will be put at increased risk.

We strongly encourage the Committee to heed our concerns as outlined above, and to consider enacting our recommendations in the interests of all affected landholders and the community in general. The Basin Sustainability Alliance committee is available to be contacted to discuss any matters raised in this submission.

Sincerely,

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David Hamilton

BSA Chairman