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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**).

Mackay Conservation Group is a regional environmental NGO covering a region that extends from the Whitsundays to Broadsound and west to Clermont. This area includes many coal and gas mining operations and we have provided assistance to many landowners and communities affected by these projects over the past decade, as well as comment on EISs and EPBC referrals and organise our own biodiversity survey work to looks at impacts. Rarely do we place an Objection in the Land Court mainly because we lack the resources to access experts and the staff and time to pursue such cases.

We usually do an objection at the Level 1 or Level 2 stage because we are concerned, believe it is in the public interest to have the court's attention drawn to important issues placing the environment and communities at risk, and because we do not have to provide an expert witness at those levels. Of course an objection at such levels does not carry the same weight as Level 3 where expert witnesses can appear.

There has been a large increase in scale of new proposed mining projects. Projects in the Bowen basin used to mostly range from 2 to 8 million tonnes per annum of export coal. Projects now proposed in the Galilee Basin range from 20 to 60 Mtpa. They will do vastly more damage to the environment, risk the viability of agricultural operations and communities in regions they affect. Yet no strategic assessments are planned to understand the impacts of such large projects and their accompanying infrastructure to meet transportation and water demands at the appropriate river basin and/or bioregional scale.

This makes the Land Court one of the few instruments available to the public to have the risks of such projects more impartially evaluated than by a State Development Coordinator who has a strong interest in seeing a mining project proceed because of the royalty payments and tax income it produces.

Land use decision making processes for other industries provide for community submission and appeal rights, so there is no good reason why mining tenure should be exempt from this basic standard.

This Bill would remove all existing public rights to lodge formal objections to the Land Court in up to 90% of mining projects in Queensland. This is unacceptable and fails to recognise the positive impact of community objection rights e.g. the recognition by the Land Court in the Alpha court case that groundwater issues had to be properly addressed. I asked the then Planning and Infrastructure Minister Stirling Hinchcliffe in 2006 to address potential mining impacts on groundwater in the Galilee Basin but nothing happened until the issue was addressed by landowners and a community group in the Alpha court case.

If objection rights are reduced to only the directly affected landowner it means that there is no impartial party left to speak for broader environmental and community impact issues. That is not in the public interest because it follows that long-term, especially where there are many projects in a river basin or other region, there will be many impacts outside the borders of a directly affected landowner in which the public has a great interest in seeing the best sustainable outcomes.

We also understand with this proposed Bill that even landowner rights will be restricted to object to mining intrusion into property infrastructure such as water resources on the affected property. That will adversely affect the operation of the landowner's business operations and livelihood.

Under Clause 429 of this Bill a landowner's home could be destroyed by an open-cut mine.

We note that the areas which will attract the protection of the restricted land provisions are substantially less than those currently contained in the Mineral Resources Act. 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.

Many of the areas which have been removed are essential to the 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. It will no longer be a question of whether or not the landholder will be able to continue his operation or retain the piece of infrastructure, but rather, a question of compulsory acquisition and/or compensation.

If a landholder owns land outside of the resource authority but is affected by activities within the tenement by way of dust, noise, odour etc. Under the existing regime in the P & G Act an argument could be made that, provided it could be proven that a compensatable effect has been or will be suffered, the resource authority has a compensation liability to the landholder under section 532 of the P&G Act as they are in the "*area of*" the resource authority. However, by restricting the clause to apply to owners or occupiers who are only in the "*authorised area"* of the resource authority (i.e. *the area which the resource authority relates to*), such claims may be extinguished.

A landowner who lacks the financial resources to object in the Land Court would be no better off under this bill than those outside the affected property and will also be disenfranchised.

Pursuant to clause 8 of the *Mineral Resources Act 1989* (Qld) (**MRA**), subject to a few narrow exceptions, minerals are taken to be the property of the Crown. However, they are not taken to be

held in a private property capacity, rather, they are taken to be held by the Crown as a common resource. As such, the common resource should not be exploited without the interests of the "common" being considered. This Bill however does not comply with this logic and understanding, in fact, the clauses effectively place the rights of citizens behind the interests of industry.

The above is made even clearer in the Explanatory Notes of the Bill which state on page 2 that the reforms are "*industry developed*". It is clear that these reforms are "industry developed" as the interests of industry are placed before the rights of citizens – i.e. limitations to the rights of objectors, degradation of restricted land provisions etc.

What is hard to understand is how a bill that is so adverse to community and public rights could ever even be considered. Why should mining be allowed to operate with so little consideration of the rights of others?

The amendments for discussion concern us greatly as they seek to very substantially alter long held principles and rights of landholders in Queensland with virtually no benefits flowing back to them from the proposal.

Fundamental Legislative principles will not apply

Pursuant to section 4(1) of the *Legislative Standards Act 1992* (Qld), "*fundamental legislative principles are the principles relating to legislation that underlie a parliamentary democracy based on the rule of law"*. We note that section 4(2) of that Act further provides that such principles include requiring that legislation has sufficient regard to the rights and liberties of individuals. We are of the view that many of the clauses contained in the Bill **do not** have sufficient regard to the rights and liberties of individuals.

We refer to page 36 of the *Queensland Legislation Handbook – Governing Queensland* (The State of Queensland, Department of the Premier and Cabinet, Fifth Edition, 2014), where it states as follows: *The greater the level of potential interference with individuals' rights and liberties, or the institution of Parliament, the greater will be the likelihood that the power should be prescribed in an Act of Parliament and not delegated below Parliament.*

But in the Bill numerous aspects of existing resource acts will be moved into regulations. This opens them up to the influence of the powerful mining industry to regulate outcomes suited to their needs. This influence has already been demonstrated where QCoal seconded an employee John Mackay to "work on environmental legislation reforms" with the then incoming LNP Queensland government.

It is strongly in the public interest that adequate public debate accompany any intention to change such important matters.

Using regulations can be a means of ignoring sound legislative drafting techniques and good government. The items proposed to be the subject of regulation should be the subject of the Act. All of the items proposed to be left for regulations throughout the Bill are extremely important and should be given full legislative backing and opportunity for the public to make submissions.

For example, land access by its very nature has the potential to interfere with individual rights and liberties yet a large amount of detail in the Land Access provisions will now be contained in the regulations.

One of the reasons given for the need for this Bill was to eliminate the large number of “vexatious” objections, yet Minister Cripps has yet to provide any detailed evidence of such. Need should be clearly demonstrated before taking such extreme measures to eliminate the public right to object on mining projects such as this Bill presents.

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