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6 April 2018

Committee Secretary
Economics and Governance Committee
Parliament House
Sent via email only: egc@parliament.qld.gov.au

Dear Chair and Committee,

Supplementary Submission: Mineral and Energy Resources (Financial Provisioning) Bill 2018 (Bill)

Thank you for the opportunity to appear at the public hearing for this Bill on 28 March 2018

I write to clarify and correct a matter addressed in my appearance at the public hearing.

Public notification of the proposed PRC plan

The Bill subjects the proposed progressive rehabilitation closure plan (**PRC Plan**) to the same public notification process as the environmental authority for a mining activity under *Environmental Protection Act 1994* (Qld) (**EP Act**) chapter 5, part 4, via clause 101, new s114A(2). Therefore, the proposed PRC Plan would be subject to the Land Court process in the same way as the environmental authority for a mining activity.

Clause 104, new subsections 126C(1)(c)(iii) and (iv) provide a requirement for the proponent to demonstrate in the proposed PRC plan that they:

- have undertaken consultation on the development of the plan; and
- have plans as to how ‘ongoing consultation in relation to the rehabilitation [is] to be carried out under the plan’.

This consultation is in addition to that required of the proponent under the EP Act for the proposed plan, as applied by clause 101, new section 114A(2).

Our submission stands that these consultation requirements for the development of the proposed PRC Plan provided for in clause 104, new subsections 126C(1)(c)(iii) and (iv) do not provide sufficient guidance to proponents and clarity to the community as to what is required in undertaking consultation on the development of the plan outside of the normal public notification procedures under EP Act chapter 5, part 4. Specific guidance in the Act as to what is required for this consultation would assist in bringing more clarity and certainty for the community, the proponent and the regulator.

Significant improvements needed to accountability and transparency of new framework

It is well accepted that access to information and access to justice are fundamental precepts of good governance frameworks and therefore they must be ensured if the new framework is to be successful. We therefore expand on our recommendations that the Bill is amended to strengthen provisions to ensure accountability and transparency in decision making under the rehabilitation and financial assurance framework as follows:

- ***Open or extended standing under the EP Act for decision reasons and judicial review***

We recommend that the Committee suggests that the Bill be amended to provide for open standing under the EP Act to ensure all persons are able to obtain reasons and apply for judicial review of decisions under the *Judicial Review Act 1991* (Qld) (**JR Act**). Given that decisions made under the EP Act, including with respect to financial assurance and rehabilitation requirements, are always of a public interest nature, we suggest that open standing would be appropriate.

At very least, extended standing should be provided to ensure that all interested persons, including those not directly impacted but demonstrating certain criteria proving their interest, are able to apply for reasons or review of decisions under the JR Act, as is provided under the *Nature Conservation Act 1992* (Qld) and *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

The need for this was recently exhibited in two decisions of the Supreme Court of Queensland made on 22 February 2018. The Court upheld relevant departmental decisions to refuse applications for reasons made by Lock the Gate under the JR Act for the decision of the Minister for Natural Resources and Mines to allow transfer of the near end-of-life Blair Athol mine from Rio Tinto to a smaller, less financially secure entity; and for the decision of the Chief Executive of the then Department of Environment and Heritage Protection with respect to the financial assurance required for the new authority holder.¹

Lock the Gate has been and continues to be a key stakeholder across all relevant Queensland Government departments in the reform of the financial assurance and mine rehabilitation frameworks, and has actively worked with communities affected by abandoned mines or near end-of-life mines for many years. The nature of these two decisions were of central interest to Lock the Gate's work in this area, and yet they were not considered by the Department or the Supreme Court to have sufficient interest to obtain reasons for the decisions under the JR Act due to the lack of explicit extended standing. This is a significant failure of the EP Act and demonstrates the need for open or extended standing provisions to be explicitly provided in the EP Act to ensure proper accountability and transparency for decisions made under this Act, including with respect to this new mine rehabilitation and financial assurance framework.

For this reason we recommend that the Committee suggests that the Bill be amended to provide open or extended standing under the EP Act for the JR Act, to ensure in future those interested in understanding how decisions were made under the EP Act will be able to access reasons for the decision, and if necessary to seek judicial review of the decisions.

- ***Right to Information Act 2009 (Qld) should not be excluded under the new framework, or any EP Act decisions***

The attempt to exclude the *Right to Information Act 2009* (Qld) (**RTI Act**) provided under clauses 216-218 of the Bill is of significant concern. We ask why there are deliberate attempts being made to suppress transparency and accountability of decisions made under the framework introduced by this Bill.

¹ *Lock the Gate Alliance Ltd v The Minister for Natural Resources and Mines* [2018] QSC 21; *Lock the Gate Alliance Ltd v Chief Executive under the Environmental Protection Act 1994* [2018] QSC 22

We note and support the submission of the Queensland Office of the Information Commissioner (OIC) provided to the Committee's inquiry into this Bill (submission no. 033).

The RTI Act is a fundamental mechanism for ensuring accountability and transparency in Queensland governance, by ensuring the public has the ability to access information behind actions and decisions made by government.

There are sufficient measures in the RTI Act to ensure that information that is inappropriate for disclosure to the public, such as documents under cabinet consideration or under commercial-in-confidence, are not provided to the public. There is therefore no reason to exclude any decisions or documents made under the EP Act from the application of the RTI Act, including with respect to this new framework.

We support the recommendations that Queensland follow in the steps taken in the Northern Territory to disclose online the total amount of financial assurance for each mining project. As stated by the OIC in their submission '*[t]his proactive disclosure would demonstrate a commitment to openness, accountability and transparency*'.

We further reiterate recommendations made in our original submission made jointly with Lock the Gate on 9 March 2018 that the public register be improved to ensure community access to key documents under this new framework.

The effective operation and community confidence in the new framework being introduced under this Bill will be hindered without ensuring measures are provided for proper accountability and transparency of decision making under the framework.

We would happily provide further explanation on any of the above points.

Yours faithfully



Revel Pointon

Solicitor

Environmental Defenders Office (Qld) Inc