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Research Director
Infrastructure, Planning and Natural Resources Committee
Parliament House
George Street
Brisbane, Queensland 4000

By email: ipnrc@parliament.qld.gov.au

Dear Research Director,

Submission on Mineral and Other Legislation Amendment Bill 2016

Thank you for the opportunity to make a submission in relation to the *Mineral and Other Legislation Amendment Bill 2016 (the Bill)*.

Who we are

The Environmental Defenders Office of Northern Queensland Inc (EDO NQ) is a not-for-profit, non-government, community legal centre specialising in public interest environmental law. We provide legal representation, advice and information to individuals and communities, in both urban and rural areas, regarding environmental law matters of public interest and also deliver community legal education. Our region covers northern and far north Queensland from the Mackay region to Torres Strait and to the Northern Territory border.

Overview

EDO NQ welcomes the amendments to the legislation. That is, the removal of section 438 of the *Mineral Resources Act 1989* by clause 90 of the Bill which reinstates the rights of community groups to object to mining applications.

However, we have concerns pertaining to the restricted land framework. In particular, the definitions of 'restricted land' and 'owner' which limits the rights of the holders of particular interests in land from seeking compensation or objecting to certain mining applications. We are also concerned to see that mining companies be required to obtain the consent of owners to access the owner's land.

Restricted land framework

Clauses 7 and 8 of the Bill provide for changes to the restricted land framework. As per the first reading from the Minister for Natural Resources and Mines, the Honourable Anthony Lynham, on 23 February 2016 the changes proposed under sections 68 and 69 of the Act are to:

“ extend the restricted land framework to include principal stockyards, bores, artesian wells, dams and artificial water storages connected to a water supply with a protection zone of 50 metres. I am also repealing the provisions in the MERC Act that would allow the grant of a mining lease over restricted land without requiring landholder consent and that sought to establish a ministerial power to extinguish restricted land on mining leases where coexistence is not possible”¹

Whilst we welcome this change, we are concerned that it fails to restore a much broader requirement for mining companies to obtain landholder consent for access to their land. The current Land Access Code has, and continues to, set up a lot of conflict between landholders and mining companies that could be prevented if mining companies were forced to negotiate access rights and not just compensation for damage caused by their activities.

Definition of ‘restricted land’

We regard the proposed definition of ‘restricted land’ as totally inadequate. The proposed 50 metre buffer to house yards and land under cultivation; cemeteries or burial grounds; water supply points; and substantial improvements on land² are ludicrous when they could abut an open cut mine void hundreds of metres deep. We believe that the Bill has proposed these buffer distances in an arbitrary fashion with no scientific basis³.

In 2015, EDO NQ drafted legislative provisions that would reform land access in Queensland and restore the requirement for mining companies to obtain landholder consent prior to access to their land. A copy of the EDO NQ draft Bill is attached in Appendix A. This draft Bill was widely circulated to MPs on several occasions and supplied to Minister Lynham and the Department, but unfortunately did not find a champion.

Definition of ‘owner’

In relation to the definition of ‘owner’, we are concerned that not all relevant interests in land are recognised in the Bill. To this end, we propose that cultural heritage and native title interests in land are recognised, as these interests are also capable of being effected by mining activities. This concern is also addressed in clause 4 of the attached draft Bill in a proposed broader definition of ‘owner’.

Conclusion

To conclude, we appreciate the opportunity to make a submission on the proposed amendments to the above Bill and we welcome the return of community rights to object to mining applications.

¹ Queensland, *Parliamentary Debates*, Legislative Assembly, 23 February 2016, 394 (Anthony Lynham, Minister for Natural Resources and Mines).

² As proposed by clauses 7 and 8 of the Bill

³ Department of Natural Resources and Mines (2016, 16 March) public briefing [transcript, p 3]

Whilst we support the amendments provided in the Bill, we seek to ensure that restricted land is meaningful to those most affected by mining activities and that all holders of an interest in land are captured by the legislation.

To this end, we suggest that the restricted land framework is too limited in its scope. The proposed definitions of 'restricted land' and 'owner' in the Bill do not provide sufficient coverage to those who are most directly affected by mining activities. We propose that mining companies be required to obtain landholder consent prior to gaining access to land. In relation to the definition of 'owner', we hope that all interests in land can be recognised, including cultural heritage and native title interests so that all people with an interest in land can object to and have a right to be compensated for the impacts of mining activities.

If you have any queries relating to this submission, please contact Tania Heber at EDO NQ

Yours sincerely,



Tania Heber
Principal solicitor
EDO NQ

APPENDIX A

Mineral Resources Act & Petroleum and Gas Act Amendment Bill 2015

Mineral Resources and
Another Act
Amendment Bill 2015

Mineral Resources and Another Act Amendment Bill 2015

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2015

A Bill

for

**An Act to amend the *Mineral Resources Act 1989* and the
Petroleum and Gas (Production and Safety) Act 2004, for
particular purposes**

[s 1]

The Parliament of Queensland enacts—

Part 1 Preliminary

Clause 1 Short Title

This Act may be cited as the Mineral Resources and Another Act Amendment Act 2015.

Part 2 Amendment of Mineral Resources Act 1989

Clause 2 Act Amended

This part amends the Mineral Resources Act 1989.

Clause 3 Amendment of sch 1 (Access and compensation provisions for exploration permits and mineral development licences)

(1) After Part 2, Division 1, section 5(2)

insert

(2A) The holder must not carry out any activity other than those specified in the entry notice or increase the extent of any activity specified in the entry notice without an amended entry notice that complies with section 6 and is approved by each owner or occupier of the affected land.

Maximum penalty – 500 penalty units

(2) Schedule 1, section 11(c)(ii) –
omit.

(3) Schedule 1, section 16(2)
insert

(g) a statement of the potential impacts on the subject land, including any reports referenced in the statement.

Clause 4 Amendment of sch 2 (Dictionary)

(1) Schedule 2, definitions *restricted land*, *restricted land (category A)* and *restricted land (category B)* –
omit.

(2) Schedule 2 –
insert–

***land under cultivation* means land being used for agricultural purposes and includes any land, whether cleared or uncleared, used by a person for the grazing of stock in the ordinary course of management of the**

land of that person where the land so used for grazing forms the whole or a part of the land owned or occupied by that person.

owner-

(k) for an area of Aboriginal cultural heritage under the *Aboriginal Cultural Heritage Act 2003* the relevant native title party, Aboriginal cultural heritage body or, in their absence, the chief executive of the department responsible for the administration of the *Aboriginal Cultural Heritage Act 2003*.

(l) for an area of Torres Strait Islander cultural heritage under the *Torres Strait Islander Cultural Heritage Act 2003* the relevant native title party, Torres Strait Islander party, Torres Strait Islander cultural heritage body or, in their absence, the chief executive of the department responsible for the administration of the *Torres Strait Islander Cultural Heritage Act 2003*.

(m) for a State heritage place, archaeological place or protected area under the *Queensland Heritage Act 1992* - the chief executive of the department responsible for the administration of the *Queensland Heritage Act 1992*.

restricted land means land —

- (a) which is in bona fide and regular use as a yard, stockyard, garden, orchard, vineyard, plant nursery or plantation or is land under cultivation;
or
- (b) which is the site of a cemetery or burial ground;
or
- (c) which is the site of a dam, bore, well or spring;
or

- (d) on which there is erected a substantial improvement; or**
- (e) which is a permanent building used mainly as accommodation or for business purposes; or**
- (f) which is a permanent building used for community, sporting or recreational purposes or as a place of worship; or**
- (g) which is situated within 100 m of any private land referred to in paragraph (a), (b), (c) or (d); or**
- (h) which is a separate parcel of land and has an area of 2 000 m² or less; or**
- (i) which contains a threatened species or ecological community listed under the *Environmental Protection and Biodiversity Conservation Act 1999*; or**
- (j) which contains an endangered regional ecosystem listed under the *Vegetation Management Act 1999*; or**
- (k) which is an area of Aboriginal cultural heritage as defined in the *Aboriginal Cultural Heritage Act 2003*; or**
- (l) which is an area of Torres Strait Islander cultural heritage as defined in the *Torres Strait Islander Cultural Heritage Act 2003*; or**
- (m) which is a State heritage place, archaeological place or protected area under the *Queensland Heritage Act 1992*.**

Part 3

Amendment of Petroleum and Gas (Production and Safety) Act 2004

Clause 5 Insertion of new s 24AA

After section 24—

insert—

24AA What is *restricted land*

restricted land means land —

- (a) which is in bona fide and regular use as a yard, stockyard, garden, orchard, vineyard, plant nursery or plantation or is land under cultivation; or
- (b) which is the site of a cemetery or burial ground; or
- (c) which is the site of a dam, bore, well or spring; or
- (d) on which there is erected a substantial improvement; or
- (e) which is a permanent building used mainly as accommodation or for business purposes; or
- (f) which is a permanent building used for community, sporting or recreational purposes or as a place of worship; or
- (g) which is situated within 100 m of any private land referred to in paragraph (a), (b), (c) or (d); or

- (h) which is a separate parcel of land and has an area of 2 000 m² or less; or
- (i) which contains a threatened species or ecological community listed under the *Environmental Protection and Biodiversity Conservation Act 1999*; or
- (j) which contains an endangered regional ecosystem listed under the *Vegetation Management Act 1999*; or
- (k) which is an area of Aboriginal cultural heritage as defined in the *Aboriginal Cultural Heritage Act 2003*; or
- (l) which is an area of Torres Strait Islander cultural heritage as defined in the *Torres Strait Islander Cultural Heritage Act 2003*; or
- (m) which is a State heritage place, archaeological place or protected area under the *Queensland Heritage Act 1992*.

Clause 6 Amendment of s 24A (Making of code)

Section 24A —

renumber as section 24AB.

Clause 7 Amendment of s 500A (Exemptions from conduct and compensation agreement requirement)

Section 500A(e)(ii) —

omit.

**Clause 8 Chapter 5, Part 2, Division 1 - Amendment of 495 –
Entry Notice Requirement, 496 - Required Contents
of Entry Notice and Insertion of new Subdivision 3**

(1) Section 495(1) -

insert.

- (c) carry out any activity other than those specified in the entry notice or increase the extent of any activity specified in the entry notice without an amended entry notice that complies with section 496 and is approved by each owner or occupier of the affected land.

(2) Section 496(1) -

insert.

- (f) the potential impacts on the subject land, including any reports referenced in the statement.

(3) After Subdivision 2—

insert—

**Subdivision 3 - Consent requirements for entry
onto restricted land**

**500C - Petroleum authority over surface of restricted
land**

- (1) A petroleum authority authorises a person to enter the surface of restricted land only if—
 - (a) the owner of the land where the relevant feature is situated, consents in writing to the application;
and
 - (b) the applicant lodges the consent with the chief executive.

- (2) Consent given pursuant to subsection (1) shall specify the period of the consent and any conditions applicable to the consent.

Clause 9 Amendment of Schedule 2 (Dictionary)

Schedule 2 —

insert—

land under cultivation means land being used for agricultural purposes and includes any land, whether cleared or uncleared, used by a person for the grazing of stock in the ordinary course of management of the land of that person where the land so used for grazing forms the whole or a part of the land owned or occupied by that person.

owner—

insert

(r) for an area of Aboriginal cultural heritage under the *Aboriginal Cultural Heritage Act 2003* the relevant native title party, Aboriginal cultural heritage body or, in their absence, the chief executive of the department responsible for the administration of the *Aboriginal Cultural Heritage Act 2003*.

(s) for an area of Torres Strait Islander cultural heritage under the *Torres Strait Islander Cultural Heritage Act 2003* the relevant native title party, Torres Strait Islander party, Torres Strait Islander cultural heritage body or, in their absence, the chief executive of the department responsible for the administration of the *Torres Strait Islander Cultural Heritage Act 2003*.

(t) for a State heritage place, archaeological place or protected area under the *Queensland Heritage Act 1992* - the chief executive of the department responsible for the administration of the *Queensland Heritage Act 1992*.

restricted land see section 24AA.

