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Research Director
Infrastructure, Planning and Natural Resources Committee
Parliament House
George Street
Brisbane Qld 4000
Sent via email to: ipnrc@parliament.qld.gov.au

Dear Mr Chair and Committee Members

Re: Submission to Minerals and Other Legislation Amendment Bill 2016 (MOLA)

Lock the Gate Alliance is a national alliance working to protect land and water resources from unsafe or inappropriate mining and unconventional gas development. We have over 240 supporter groups and over 70,000 individual supporters. We appreciate the opportunity to comment on this Bill.

We fully support the measures to restore community objection rights that are included in the Bill, in relation to site specific applications and mining leases, and we are very pleased to see the Qld Government moving to deliver on the election promises that it made in this regard.

These rights are very important to landholders, Traditional Owners and local community groups in our movement. They provide the basic opportunity to have evidence tested in court and to have the impacts of mining on water resources, public health and other industries properly considered.

We note that there are frequently allegations made by the mining industry and some politicians relating to community objection rights leading to 'vexatious' complaints to the Land Court, in an attempt to dissuade governments from granting basic third party legal rights to the community. We would point out the Land Court already has the ability to summarily dismiss an action due to it being frivolous, vexatious, or an abuse of process. To our knowledge the Land Court has never thrown out any Land Court objections for being frivolous or vexatious. Notably, given the large number of mine approvals granted each year in Qld, only a very tiny percentage of them are ever challenged in court.

From our perspective, community Legal Centre, EDO Qld, appears to have undertaken a useful role in ensuring that landholders' objections are appropriate to the issues that can be considered by decision makers, including the Court, and to ensure that objections are *not* frivolous or vexatious, as well as to assist the proponent mine in understanding landholders' legitimate concerns with respect to these large mines.

We are opposed to any artificial time constraints being placed on community objection rights, which have been mooted in the media recently by the Qld Government, because we believe it would affect access to justice for communities and landholders. The issues that are raised by community groups are by their very nature complex issues of science and law, requiring considerable expert evidence, and Land Court processes need to be free to give these issues the time that is required without any artificial constraints.

We also thoroughly support measures contained in this Bill to reinstate of the full list of criteria for consideration for the Land Court in relation to the grant of mining leases, to include technical and financial capabilities of the proponent.

We note that this Bill includes complex amendments to the already very complex *Mineral and Energy Resources (Common Provisions) Act 2014* (MERCPA), and in this submission we have only addressed major problems that we see with MOLA or major omissions in MOLA to address the worst failings of MERCPA. This submission does not attempt to delineate all the problematic provisions of MERCPA, because those were extensive.

Restricted Land Provisions Are Inadequate

Whilst we do support strict set-back distances on mining and gas activities from homes and farm infrastructure and improvements, we believe the provisions contained in the Bill are inadequate to adequately protect landholders and farmers.

The provisions should be improved so that:

- The buffer on residences is at least 600m, and preferably 1km, given the body of recent scientific evidence from the US revealing the health impacts and risks of unconventional gas mining. See summary and links below.
- Restricted land should cover all irrigated cropping land and other significant improvements
- The list of infrastructure should also include all infrastructure for irrigation purposes.
- The 50m on water storages etc is too limited. The buffer should be at least 200m on bores, stockyards and cemeteries, and should apply to water pipelines.
- The definition of infrastructure should be broadened to include all significant improvements

Restricted land should trigger a prohibition on activities, rather than just triggering consent from landholders. It should be a strict set-back provision that properly protects people and infrastructure from mining and gas activities. Section 70 of MERCPA should be amended to provide a proper prohibition, rather than just a consent provision.

It is notable that the MOLA does not address the exemption contained in MERCPA for pipeline construction on restricted land without consent. Section 67b) of MERCPA exempts the construction of a pipeline which takes less than 30 days from the definition of a prescribed activity, and it is only prescribed activities that require consent on restricted land by virtue of s70. Given that pipeline construction is extensive in CSG activities, and does represent a significant intrusion on a property in close proximity to homes or infrastructure, as well as posing a safety risk, we contend that pipeline construction should not be excluded from the definition of prescribed activity.

There is a growing urgency arising from the peer-reviewed literature to better protect Queenslanders from the health risks posed by unconventional gas mining. In addition to the survey by Dr Geralyn McCarron of residents living near Chinchilla, which raised serious concerns about the health impacts of CSG, there is a rapidly growing body of evidence from the US which should urgently trigger proper buffer distances on gas infrastructure in Australia. In 2015 alone, the

following four studies were published which should trigger action by the Qld Government to act immediately to protect public health:

1. A study published in mid-2015 by researchers from the University of Pennsylvania and Colombia University after analyzing 95,000 inpatient records, found that drilling and fracking activity was associated with increased rates of hospitalization, revealing significant associations for cardiology and neurology.

   LINK: http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0131093

2. A study by the University of Pittsburgh published in 2015 linked fracking to low birthweight in three heavily drilled Pennsylvania counties, finding that the greater exposure that a pregnant woman had to gas wells, the higher her risk for a low birthweight baby.

   LINK: http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0126425

3. A study published in late 2015, involving a retrospective cohort study using electronic health record data on 9,384 mothers, found that prenatal residential exposure to unconventional natural gas development activity was associated with two adverse pregnancy outcomes; preterm births and high risk pregnancies.

   LINK:
   http://journals.lww.com/epidem/Abstract/publishahead/Unconventional_Natural_Gas_Development_and_Birth.99128.aspx

4. A study published in January 2015 into the relationship between household proximity to drilling and fracking operations and reported health symptoms in Washington Country found that rashes and upper respiratory problems were more prevalent among persons living less than 1 kilometre from drilling and fracking operations.

   LINK: http://ehp.niehs.nih.gov/1307732/#tab2

Unless restricted land provisions are improved, as recommended above, included extension of the distance, then the previous 600m rule should be retained. It ensures that landholders have a right to negotiate a Conduct and Compensation Agreement if a company proposes to conduct activities within 600m of a principal residence. The loss of the 600m rule represents a weakening of provisions on petroleum activities near residences which are already far too weak to prevent significant and negative impacts on landholders.

Opt-out Agreements Should Be Revoked

This Bill does nothing to revoke s45 of the MERCP Act, which means that it allows opt-out agreements to be signed by landholders. Opt-out agreements represent a massive erosion in landholder rights, and will result in gas companies putting pressure on landholders to accept these very weak agreements instead of a proper Conduct and Compensation Agreement. It is extraordinary that this is being allowed at a time when the stress and pressure being felt by landholders due to CSG mining is a topic of widespread community concern.

We refer you to the comments made by Shine Lawyers when opt-out agreements were first proposed by the Newman Government as part of the MERCP Act.

Peter Shannon of Shine Lawyers stated that *"Finally, the suggestion that 'opt out' agreements will protect landholders just beggars belief. The full extent of protection contained in the bill is the need to sign and lodge a form wherein the landholder confirms they are wanting to opt out and that they are acting independently. There is no specific obligation of the companies to behave themselves in such dealings, no code of conduct, nor any ability to address sharp practices. To say this document ensures landholders are protected is as ludicrous as saying all landholders stand in an equal bargaining position with the companies, or that companies won't engage in sharp practices to get that letter signed"*[1].

In their submission to MERCP, Shine Lawyers stated that *"We have had numerous experiences where a Land Access Representative of the resource authority holder company will use tactics, tricks and pressure to get Landholder's to sign documents which are not in their best interests. The "opt-out" framework has the potential to increase such incidents and provides little rights of recourse to a Landholder who signs one*"[2].

Public Notification Changes

The import and motivation for the changes to the various public notification sections of this Bill are unclear. For example, the changes to clause 89, to insert the section s252A in relation to mining lease notifications appear to allow publication periods to wait until 15 business days before the last objection day or to allow a shorter period if approved by the chief executive. We are opposed to any diminution in notification timeframes or any reduction in public exhibition and objection periods.

We would like a clear written explanation of the full import of the proposed changes to the various notification processes. We note that these changes were not promises that were made pre-election and hence do not seem to fit within the framework within which the other changes are occurring.

We are concerned about public notification on an EIS being considered sufficient public notification on an Environmental Authority, and question what the impact of s260 will be in relation to notification processes and the ability for the community to properly participate. Whilst our members generally do not want to write multiple, time-consuming submissions which are generally largely ignored, nor do they want to lose timely opportunities to comment.

We are seeking to better understand the full import of the changes to public notification procedures contained in the Bill.

Other Weakening of Landholder Interests at Expense of Mining

As noted in the introduction, the MOLA and the MERCPA which it amends are both complex statutes and have far-reaching implications for landholder access issues relating to CSG. The amendments contained in MOLA make very changes to MERCPA as it relates to land access, and therefore it does little to address the substantial weaknesses that MERCPA contained in that regard.

At the time that the MERCP Bill was under consideration, Shine Lawyers wrote a detailed submission which outlined numerous technical concerns with regard to the extent to which it would weaken and undermine landholder protections. Very few of those matters have been addressed by MOLA. This includes issues such as relegating requirements to regulations instead of retaining them in the

[1] https://www.shine.com.au/blog/coal-seam-gas-law/bill-undermines-landholders/
[2] http://www.parliament.qld.gov.au/documents/committees/AREC/2014/24-MinEngResBill/submissions/015-ShineLawyers.pdf

Act, allowing access for companies outside their authority area, and allowing verbal notice rather than written notice in certain circumstances, amongst many others.

We consider any weakening of the provisions relating to landholder protections is unacceptable, as the situation is already substantially stacked against them.

We refer you to the detailed submissions made by Shine Lawyers to the Mineral and Energy Resources (Common Provisions) Bill in July 2014, which identified many aspects of the Bill that would result in the erosion of landholder rights[3].

We believe that none of the changes identified by Shine Lawyers as leading to a weakening of negotiating rights or protections for landholders should proceed. We believe it is crucial that specific amendments are made to the MOLA to amend MERCPA to prevent landholders ending up substantially worse off when it comes to land access negotiations, in relation to each of the points raised by Shine.

Thank you for providing an opportunity to make this submission.

Yours sincerely,

Carmel Flint,
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Lock the Gate Alliance

[3] http://www.parliament.qld.gov.au/documents/committees/AREC/2014/24-MinEngResBill/submissions/015-ShineLawyers.pdf