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Using the law to protect our environment.

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

Dear Mr Chair and Committee Members

Submission on Mineral and Other Legislation Amendment Bill 2016

Thank you for the opportunity to make this submission on the Mineral and Other Legislation Amendment 2016 (**MOLA Bill**). This Bill seeks to amend the *Mineral and Energy Resources (Common Provisions) Act 2014* (**Common Provisions Act**), passed by the previous government.

The MOLA Bill contains important provisions which fulfil an election commitment made by the Queensland Government to fully restore objection rights to mines. We are pleased to see the government taking action to meet this commitment.

We have provided our submissions in summary in this letter, and in detail in the **appendix** to this letter.

Objection rights to mining proposals are essential in a functioning democratic system

The decision by the previous government to limit who could object to mines, which have a large impact on communities and the environment at a broad and localised level, was ill-considered and highly unjust. We support all amendments which provide for adequate and meaningful public objection rights on mining related activities, and protections for landholders rights, including repeal of sections 71, 259 and 261 of the Common Provisions Act.

Contrary to claims made by representatives or stakeholders in the resource industry, there is no evidence that these objection rights have been used to commence frivolous or vexatious proceedings in the Land Court. In particular, EDO Qld have never represented any clients, or assisted any community members, with objections which were considered to be frivolous or vexatious by the Land Court. To the contrary, EDO Qld assist our clients and other stakeholders such as rural farmers and landholders, to better understand their rights to get involved in decision making and to ensure that the objections that they raise are valid and relevant to the considerations required by decision makers, including the court.

The Australian Productivity Commission reported in 2013 that there was, in fact, no evidence of frivolous or vexatious litigation in relation to major projects, and that courts already have sufficient powers to deal with litigants bringing such actions if they did arise.[1] In mining objection hearings the parties can apply to the Land Court to strike out frivolous or vexatious objections. To our knowledge this has never occurred. It is therefore unnecessary to duplicate this power by maintaining the power provided in the Common Provisions Act which again specifically allows the Land Court.

[1] Productivity Commission Research Report, Major Project Development Assessment Processes, November 2013, p. 277,

Further, the Land Court itself provided submissions to a former parliamentary committee in their consideration of the Common Provisions Bill stating: "In the court's experience, there have not really been a lot of stalling tactics. If there is, it generally comes from both sides. It is not just landowners or objectors who generally are not ready to proceed; it is also often the mining companies that are not ready".[2]

Objection rights for major projects such as mines are essential to ensure that the particular concerns of the community with respect to these large scale projects can be heard by an independent arbiter, free from political persuasion. Concerns with respect to noise, air and water impacts, appropriate land uses for high value agricultural land and the downstream impacts posed by the development of projects, are all important and valid considerations frequently raised by objectors and considered by the Land Court. These are the types of objections which EDO Qld represents in mining Land Court objection hearings. We congratulate the government for recognising and supporting the important part that objection rights play in ensuring quality, well-informed decision making that takes into account the concerns of the communities affected.

Summary

We support, and suggest that the Committee recommend the passing of, those clauses which:

- **ensure that community objection rights are fully restored; and**
- **ensure that the full list of criteria for consideration for the grant of mining leases are fully reinstated for the Land Court, as for the Minister, including the financial and technical capabilities of the proponent (for example clauses 92 and 93).**

In addition, we suggest that the Committee consider the following recommendations for amendment or repeal, in order to ensure protections for landholder rights and the environment**:**

- Public notification for mining lease, EIS and environmental authority process should not be coordinated – Repeal Common Provisions Act section 260 of MERCP Act and *Environmental Protection Act 1994* (Qld) (**EP Act**) section 150

  We support the staged public notification of each element, to allow sufficient time for submissions and consideration of each application, along with providing a safety net should an interested stakeholder miss one public notification period.

- Provisions for opt out agreements put landholders at risk of being bullied into giving up rights - Repeal Common Provisions Act section 45

- Protections over community and landholder infrastructure should be supported and extended
  - We support the repeal of the ministerial extinguishment power with respect to restricted land, and the repeal of the ability for mining leases to be granted over restricted land before consent and compensation has been agreed.
  - We recommend the restricted distances be amended to reflect more realistically appropriate distances

If you would like to discuss any of the submissions referred to here, please do not hesitate to contact us. We would appreciate the opportunity to present to the Committee in their consideration of this Bill.

Yours faithfully
Environmental Defenders Office (Qld) Inc

Revel Pointon
Solicitor - Environmental Defenders Office (Qld)

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[2] Agriculture, Resources and Environment Committee, Mineral and Energy Resources (Common Provisions) Bill 2014, Report No. 46, September 2014, , p.15, http://www.parliament.qld.gov.au/documents/committees/AREC/2014/24-MinEngResBill/rpt-main.pdf

APPENDIX

As stated in the letter to this appendix, our key submissions with respect to the MOLA Bill are to recommend that the Committee support those clauses which ensure the:

- **restoration of community objection rights; and**
- **restoration of the full criteria for consideration by the Land Court and the Minister in mining objection hearings.**

Further and also as discussed in detail in the letter, we recommend the repeal of the power to strike out frivolous or vexatious objections, as this power already exists for the Land Court.

The following submissions provide detail in support of our additional recommendations for further amendments required to the Common Provisions Act.

Coordination of public notification for mining lease, EIS and environmental authority hinders public involvement

We do not support the efforts to coordinate public notification into one period for the mining lease, environmental authority and EIS. This means that submitters have only one specific timeframe in which to provide their comment – removing any back up that they might otherwise have had should they not be able to provide a submission in time during the public notification on either the application for the mining lease, the EIS or the draft environmental authority, as was previously available. Many community members are used to mining leases being notified after the EIS has been finalised. Resource projects frequently pose significant impact, it is appropriate that there be multiple public objection opportunities for resource project applications.

The Common Provisions Bill extends section 150 EP Act by allowing public notification held on an EIS under the *State Development And Public Works Organisation Act 1971* (Qld) (**SDPWO Act**) to be considered sufficient public notification on the environmental authority. This coordination exacerbates changes made through the 'greentape reduction' agenda, notably whereby applicants are not required to publicly notify draft EA's if notification was undertaken on the EIS (section 150 *Environmental Protection Act 1994* (Qld) (EP Act). The conditions of an environmental authority determine how the assessment authority intends on managing the impacts of the project; it is essential that the public should have the right to provide commentary on the draft EA to help ensure the conditions are appropriate and strong, as a check and balance. Public notification is therefore also wholly undertaken prior to any supplementary EIS, in which proponents often respond to issues raised by the assessors or objectors and may provide further impact studies.

Further, and as previously raised in the parliamentary committee inquiry into the Common Provisions Bill, the EIS process for coordinated projects under the SDPWO Act is significantly different from the EP Act EIS process. The Coordinator General can impose any conditions he sees fit - rather than be guided by environmental criteria and purposes - and his decisions cannot be challenged by statutory judicial review under the legislation. Further:

- Unlike an EIS under the EP Act, although the Coordinator General must advise the proponent an EIS is required, he is under no obligation to notify the public that an EIS will be required for a coordinated project. This means that the community may have no idea that an EIS is required for a project under a final draft is advertised for submissions some 18 months later.
- There is no requirement for the Coordinator General to publicly notify the draft Terms of Reference for the project. In the past, there used to be a requirement to publicly notify, however

this was changed through the *Economic Development Act 2012* (Qld). This means the community could be left without the ability to comment on what they think is necessary for an EIS to cover; their submissions are limited to only what is in the draft EIS. Contrastingly, under the EP Act the EIS terms of reference must be publicly advertised.

- Statutory judicial review rights are not available for the EIS process for coordinated projects, as they are under the EP Act. This removes a key check and balance in our democratic system. There are no opportunities to statutorily review the Coordinator General's decisions throughout the EIS process, even if he acts improperly, or illegally, or otherwise outside of his power.
- There is no set period for submissions for an EIS for coordinated projects .The period for making submissions is at the discretion of the Coordinator General. There is no requirement for this to be a 'reasonable period' and there is no minimum period set. Contrast this with the EP Act EIS process which must be at least 30 business days

1. **We recommend section 260 of MERCP Act and section 150 of EP Act be repealed.**
2. **We suggest the Committee consider the importance of a staged and separate public notification of the mining lease, environmental authority and associated EISs, to allow sufficient time for submissions and consideration of each application, along with providing a safety net should an interested stakeholder miss one public notification period.**

Opt out agreements put landholders at risk of being bullied into giving up rights - *repeal Common Provisions Act section 45*

The Bill proposes to maintain the ability for landholders to 'opt out' of the rights they are provided in their negotiations with mining proponents. The provision of opt-out agreements opens up the possibility for landholders to be bullied into giving up their right to obtain a Conduct and Compensation Agreement. This in turn would mean the landholder has no recourse to the Land Court if there is a material change to the activity. There is little benefit provided to landholders through this provision, and substantial risk. Landholders need strong laws which support their rights in negotiating with resource operators, not laws which provide slippery rights which a landholder might be talked into giving up with no recourse to a sufficient cooling off period.

Further, the opt-out agreement provisions as provided in the Common Provisions Act are vague as to what is to be contained in an opt-out agreement, further exposing landholders to misuse of this section by mining proponents.

3. **We recommend Common Provisions Act section 45 be repealed.**

4. **If not repealed, the following amendments to the Common Provisions Act must be made:**

(a) The cooling-off period should be extended to at least 20 business days;

(b) Require the resource authority holder to compensate the landholder for the reasonable and necessary legal, accounting and valuation fees incurred by the landholder in negotiating the opt-out agreement;

(c) Require that a Notice of Intention to Negotiate (NIN) must first be provided by the resource authority holder, following which the landholder may elect to enter into an opt-out agreement;

(d) Require that the opt-out agreement will only apply to the activities provided for in the NIN and to the extent identified on the map;

(e) Enable the landholder to call upon the resource authority holder to enter into a CCA for the activities provided for in the opt-out agreement;

(f) Enable the landholder to unilaterally terminate the opt-out agreement where they have a reasonable excuse;

(g) Insert a provision, rather than a note, providing that the resource authority holder still has a compensation liability under section 80.

(h) If it the intention that the opt-out agreement provide for compensation, it is essential that the landholder be provided with the opportunity to receive professional advice before entering the agreement.

Restricted distances are inadequate and should be increased

We support the insertion of prescribed distances into section 68 of the Common Provisions Act to provide some limits on how close resource related activities can occur to other land uses. However, the restricted distances proposed are inadequate to truly protect landholders from the significant impacts of mining activities.

5. We recommend the restricted distances be amended to provide for the following:

(a) a buffer on residences of at least 600m, and preferably 1km;

(b) the 50m on category b land usages is inadequate and should be at least 200m;

(c) all buildings used for a business should trigger a 200m restricted area buffer;

(d) restricted land should cover all irrigated cropping land and other significant improvements;

(e) the list of infrastructure should also include all infrastructure for irrigation purposes; and

(f) buildings should not have provisos requiring them to be buildings that 'cannot be easily relocated' and 'cannot coexist' – which just create confusion and prevent enforceability.

If it was your house, or business, or crops, would you be happy with the distance of buffers proposed?

Remove excluded activities from definition of 'prescribed activities' – amend Common Provisions Act section 67

We note that Common Provisions Act section 67(b) will still provide for exemptions to what is to be considered a 'prescribed activity' and therefore that these activities do not have to comply with the restricted distance provisions provided in Part 4. We do not support the exemption of these activities, being:

(i) the installation of an underground pipeline or cable if the installation, including the placing of backfill, is completed within 30 days; or

(ii) the operation, maintenance or decommissioning of an underground pipeline or cable; or

(v) an activity prescribed by regulation.

Installing pipelines or cables, their operation and the consequent maintenance or decommissioning of those cables, can cause significant impacts to landholders, such as noise, dust and possible

dangers. It is not appropriate or fair that landholders may have gas pipelines or the activities needed to install, maintain or decommission them, very close to their houses. These activities must be listed as prescribed activities with appropriate distances regulated as to how close the activities may be to category a and b restricted lands.

Further, it is not appropriate that a regulation, which is easier to amend than an Act, may prescribe further exempted activities. This creates uncertainty and may be abused by future decision makers.

6. We recommend Common Provisions Act section 67 be amended to provide:

(a) Repeal subsections 67(b)(i), (ii) and (v).

(b) '***Pipeline'*** should be defined in the MERCP Act to clarify that it does not include any ancillary surface infrastructure, such as pumping stations, electricity, substations or vents. This is stated in the explanatory notes for clause 67 but it should be provided for in the Act for certainty.

7. We recommend section 68 be amended to provide:

(a) Broadening of subsection 68(1)(ii)(B) (as amended) to provide for broader activities than those provided under the *Environmental Protection Regulation 2008* (Qld) (EPR) – medium sized activities which do not qualify for listing under the EPR will still be affected by resource operations and should not be exempt from inclusion as restricted land.

(b) Repeal subsection 68(3) – It is unfair to provide that land only qualifies as restricted land if the building, structure or thing had started at the time the resource authority, which includes an authority to prospect, was applied for. Resource authority activities can stretch over many years, and yet landholders are unable to ensure that their proposed land activities that they may require over this time will be protected. There is no such restriction in the *Mineral Resources Act 1989*. The authority holder should fit around the landholder's desired activities for their own land, not vice versa. The authority holder can consult with landholders in their plan making, to understand what they propose for their