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Using the law to protect our environment.

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

Dear Committee Members

Submission: Mineral, Water and Other Legislation Amendment Bill 2017

Thank you for the opportunity to provide comment on the Mineral, Water and Other Legislation Amendment Bill 2017.

Please find our submissions in the **Appendix** to this letter.

We have regretfully not had capacity to provide detailed submissions on this Bill, however we hope these submissions and recommendations are helpful in your inquiry.

Please do not hesitate to contact us if you have any questions or would like to discuss our submissions.

Yours faithfully
Environmental Defenders Office (Qld) Inc

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APPENDIX

Increasing fairness for landholders when negotiating with resource industry

We recommend the Committee supports the changes proposed in the Bill which increase protections of the interests of landholders when they are negotiating conduct and compensation agreements (**CCAs**) or make good agreements (**MGA**) with resource industry operators. Under our laws, landholders have little to no ability to refuse resource operators commencing operations on their land. It is only fair that the industry that profits from this activity should compensate the landholders they are impacting in their negotiations to protect their land and interests.

We therefore support all provisions in the Bill which improve the fairness of these negotiations for landholders, and note particularly our support for the following provisions:

- **Clause 45 section 91 and clause 64 (definition 'negotiation and preparation costs')**
    - expanding the resource authority holder's liability to compensate landholders for necessarily and reasonably incurred professional fees to include the cost of an agronomist to assist in evaluating the impact of the proposed activities on the landholder's land; and
    - ensuring that the resource authority holder's liability to compensate landholders for professional fees (legal, accounting and valuation fees) that were necessarily and reasonably incurred when negotiating or preparing a CCA exists even where negotiations do not result in an agreement
- **Clause 45 section 89** - requiring that the costs of the ADR practitioner be paid by the resource authority holder, regardless of who issues the ADR election notice;
- **Clause 50 section 96B** - establishing the jurisdiction for the Land Court to make a declaration about negotiation and preparation costs necessarily and reasonably incurred by a landholder when negotiating a CCA or a deferral agreement.

Support removal of automatic referral to Court, and multiple forums for negotiations

We support the decision to remove automatic referral of compensation matters to the Land Court of Queensland under the *Mineral Resources Act 1989* (**clause 78**). We support that the Court continues to be an optional forum parties can seek assistance from in their negotiation process. We also support the establishment of a distinct arbitration process as an alternative to making an application to the Land Court if a CCA or MGA has not been reached following the statutory negotiation process (**clause 45**).

The various forms of alternative dispute resolution, from more formal and decisive arbitration and Court processes, to less formal mediation, have distinct benefits and disadvantages which can be of varying assistance in resolving disputes between parties. All options should therefore be open to parties to assist them with settling their disputes. These amendments will ensure that parties are not forced into adversarial court processes against their will, and ensure that the benefits of alternative dispute resolution as a less formal process are available to them. These amendments also ensure that Land Court resources are directed more effectively to matters where the parties are actively seeking the Courts input.

Further consideration needed to protect landholder rights

Clause 33 amends *Mineral and Energy Resources (Common Provisions) Act 2014* section 43. This provision normally requires that operators seek permission from a landholder prior to entering land to undertake 'advanced activities' (as defined under the Act under which the operator is permitted to operate). The amendments seek to allow entry onto private land by an operator to carry out

advanced activities without agreement if landholder is a party to arbitration or an application to Land Court. At this stage, negotiations are ongoing and not yet concluded. Therefore, we raise concern as to the fairness of preventing these landholders from the right to require that the operator seeks their permission before undertaking advanced activities on their land.

We also note further deficiencies in CCAs that are not addressed by the Bill:

- We understand that landholders are unable to access insurance to cover them against damage posed by land access under CCAs. We recommend that the Committee seeks further information and investigation by the Government as to the need and options for enabling landholders to seek insurance against impacts posed by land access.
- We also understand improvements are needed to required terms of CCAs, to ensure that they always cover the following:
    - contamination of surface or underground water;
    - damage to neighbouring properties for which a claim is made against the landholder with the gas mining on their property;
    - loss of industry accreditation; and
    - spread of noxious weeds and other land management impacts.

  Once again, we recommend that the Committee recommends that the Government investigates the implementation of required terms of CCAs which implement the following important matters.

Amendments to the *Water Act 2000*

Clause 237 - Allows the temporary release of water that is not being used from a strategic water infrastructure reserve via a temporary water licence.

To ensure that adequate consideration is given to impacts of the release of this water, we recommend amendment to clause 237 of the Bill to require consideration of the following matters when deciding to allow the release of unallocated water under new s40B of the *Water Act 2000* (**Water Act**):

- environmental values and water quality objectives established under the *Environmental Protection (Water) Policy 2009;*
- policy commitments and actions under the Reef 2050 Long Term Sustainability Plan and Murray Darling Basin Plan; and
- cultural values of Aboriginal and Torres Strait Islander peoples.

We further recommend that these considerations always form part of the required considerations in assessing the impacts of release or allocation of water, or water planning. Amendments throughout the Water Act would need to be considered to implement this initiative.

Clause 239 and 240 – Introducing a requirement to consider 'the water-related effects of climate change on water availability' and 'the interests of any Aboriginal parties or Torres Strait Islander (**ATSI**) parties in relation to the water resources for the plan area' in preparation of a water plan

We support the introduction of a requirement to consider climate change related issues and the interests of ATSI parties in water planning. We commend the Department of Natural Resources

and Mines and Queensland Government for their initiative in introducing these required considerations.

We recommend the insertion of meaningful consultation requirements throughout the Water Act whenever ATSI interests might be affected by water related decisions. The Committee could recommend that the Government gives more thought to how the interests of ATSI parties could be a meaningful required consideration of all decisions under the Water Act which might affect ATSI interests.

We further recommend that clause 239(g) of the Bill be amended to include consideration of "*The effects of climate change on the **quality** and availability of water resources".* Climate change may have impacts on the quality of water resources, therefore we recommend that water planning also consider these impacts, in addition to water availability, to ensure robust water management.

Clause 246 – Provides the power to relocate a water licence via a process under a regulation, water management protocol or water plan.

We are concerned that the process by which relocation of water licences may be undertaken may not be subject to sufficient consideration of the impacts of that relocation on other water users and the environment.

We recommend that clause 246, and throughout the *Water Act 2000*, there be more strict guidance as to the kinds of things that must be considered when deciding where and how much water must be taken.

For example, the 'process' for allowing relocation or granting of a water licence should always require consideration of the impacts of the water licence on other water users, including ATSI interests, and environmental impacts of the water take or interference from a certain water resource,

Also, community submission and appeal rights should always be available around these decisions. Input by the community ensures that decisions are robust, accountable and well-informed.

Clause 255 – Provides the Minister or Chief Executive with the power to take action to address any urgent water quality issues that might arise, for example, to direct the release of water from a dam to flush out a waterway. This is a significant power to affect water rights, but we understand that it is a necessary power and may be essential in preventing or mitigating serious water related incidents.

To ensure that all impacts of this urgent action are addressed prior to enactment, we recommend amendments to s203C(a) to clarify that impacts to the 'environment' must include consideration of the following matters prior to directing urgent action to address a water quality issue:

- the environmental values and water quality objectives established under the *Environmental Protection (Water) Policy 2009* ;
- Governments commitments under the Reef 2050 Long Term Sustainability Plan and the Murray Darling Basin Plan; and
- all terrestrial and marine receiving waters;

in addition to all other matters captured by the definition of 'environment' integrated by the Bill.

We further recommend that consideration should be required of impacts to the interests of ATSI people, in furtherance of our recommendations above to ensure that ATSI interests are considered throughout all relevant Water Act decisions.

Clause 271 – Ensures that associated water licences (for groundwater take necessary to access resources by mining and gas) are able to be accessed by the public. We support this provision to ensure transparency around associated water licences.

Clause 276 – Amendment of sch 4 (dictionary) which introduces a definition of 'environment' into the Water Act. We support the inclusion of a definition of 'environment' which draws in the *Environmental Protection Act 1994* (Qld) section 8, as a robust definition of the various components of an 'environment'.