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Ref: 20190320_1_F2 Let GCA to QLD ParlComm Re NROLA 2019 Bill

20 March 2019

Committee Secretary
State Development, Natural Resources and Agricultural Industry Development Committee
Parliament House
George Street
Brisbane QLD 4000
Email: sdnraidc@parliament.qld.gov.au

Stakeholder comment on the
Natural Resources and Other Legislation Amendment Bill 2019

Dear Committee Secretary,

Glencore Coal Assets Australia Pty Limited ("Glencore") thanks you for the opportunity to provide a submission on the Natural Resources and Other Legislation Amendment Bill 2019 (NROLA 2019 or "the Bill") introduced by Minister Lynham into the Queensland Parliament on 26/2/2019. We also thank you for the extension of time granted to us on 19/3/2019 to lodge this submission with the Committee before 3PM EST on 20/3/2019 (as was relayed to us via Ms Emma Hansen of the Queensland Resources Council (QRC)).

Glencore is recognised as Australia's largest coal producer with 16 coal mining complexes across New South Wales (NSW) (9) and Queensland (Qld) (7). Our managed production in 2017 totalled almost 90Mt of quality thermal and coking coal for export via five key coal chains and ports. The company is a major explorer for and developer of coal resources and has a track record of bringing major coal resource developments onto production. Pre-feasibility studies and exploration programs are being actively progressed on a number of Qld projects. Glencore is a very significant contributor to the Qld economy and community.

NROLA 2019 is an omnibus Bill that amends some 29 differing Acts. Of particular interest to Glencore are the proposed amendments to the Mineral Resources Act 1989 (MRA89) to implement measures to continue to improve performance of resources tenure management systems, to correct minor errors, clarify the application of provisions and improve the administration of the Acts.

Glencore commends the Minister and the Department of Natural Resources Mines and Energy (DNRME) on their commitment to reform and their constructive engagement with industry over many years. Glencore has been an active participant in, and supporter of, the 6 year tenure reform process that has culminated in the Bill. Glencore is of the opinion that the Bill promotes many well considered reforms and is broadly supportive of its contents. This said Glencore is highly concerned about a number of aspects of the Bill that act to amend the Mineral Resources Act 1989 (MRA89) and here draws these concerns to the attention of the Committee.

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Concerns with regards transitional arrangements for existing Exploration Permits

Bill silent on the treatment of relinquishment conditions attached to deeds

Many (likely most) current Exploration Permits (EPs) were conditioned at grant or renewal (i.e. have conditions attached in writing to the EP tenement deed). It is common that these conditions set out the partial relinquishment obligations attached to the EP over its term (e.g. 'holder must relinquish 20 sub-blocks by the end of conditioned period 1 (being the end of the third year of the term)'. These partial relinquishment conditions are typically reflective of the obligations otherwise set out in MRA89 s139. Transitional arrangements in the Bill are silent on the treatment of these on-deed conditions. In consequence a holder could, subsequent to commencement, be forced to relinquish in compliance with both the existing on deed conditions and new Sections 857-860 – i.e. be forced to relinquish at twice the rate intended by the Bill. This is unacceptable.

Bill does not recognise alternate partial relinquishment arrangements

In the course of conducting exploration the holder of an EP may, acting in good faith and often in consultation with the Regulator, have applied for, and/or have had approved, an alternative (e.g. reduced or deferred) partial relinquishment arrangement pursuant to the MRA89 s139. Where such applications have been approved, the Minister has found that "reasonable grounds" exist for the new alternative arrangement. Glencore is highly concerned that the Bill does not recognise:

a. any existing alternate partial relinquishment arrangement approved by the Minister;
b. any application made for such an arrangement and undecided at commencement

This is of particular concern to Glencore. In a real world example Glencore has in its portfolio an EP (Coal) nearing the end of its first 5 year term. Glencore purchased the EP from Rio Tinto 6 months ago for a very large sum of money. The EP is highly prospective for coal. Pursuant to an application made by Rio Tinto to, and approved by the Regulator, the partial relinquishment obligation attached to the EP that fell due at the end of year 3 was cancelled on account of the pending sale process on "reasonable grounds". In consequence the EP has had no prior partial relinquishments. A renewal application for the EP must be lodged before COB 25/3/2019. In consequence Glencore met with DNRME on 26/10/2018 to discuss whether the Regulator would give favourable consideration to an application (pursuant to MRA89 s139 and s141C) to have the end of term (end of Year 5) relinquishment obligation deferred to the end of year 3 of the proposed renewal term as Glencore has not, and would not, have had reasonable opportunity to explore the EP in full (but has commenced on-ground activities). DNRME advised Glencore that there were 'reasonable grounds' for giving favourable consideration to such a request. Glencore intends to lodge the renewal application by 25/3/2019 and the MRA89 s139, 141C variation requests by 25/4/2019 to defer the end of term relinquishment obligation. The EP expires 25/6/2019. If the amendments set out in the Bill were to commence before the renewal of the EP the holder would be forced to relinquish 50% of the EP, irrespective of any application request to vary relinquishment obligations attached to the EP – whether approved or under assessment. This introduces significant **sovereign risk**.

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Transitional arrangements do not provide any mechanism for the retention of current EP areas in large measure for several years to permit exploration to be completed before enforced relinquishment

The conducting of exploration requires both time and tenure area on which to explore. Transitional arrangements attached to the Bill provide that current EPs may be renewed for terms totalling 10 years from first expiry after commencement. This is appropriate and commendable and will give the holder time to conduct exploration. Unfortunately the Bill does not provide a fair mechanism by which a tenure holder may retain the area of an EP in large measure for a transitional period of time by deferral (in whole or in part) on "reasonable grounds" of a relinquishment obligation attached to that EP for a one-off transitional period of time (say 2-3 years) if reasonably required. There is little point having a transitional arrangement that provides time to explore, if the EP holder is unable to retain relevant key areas under tenure to explore. Such a facility is a critical component of any fair transitional arrangement.

Such a transitional facility could be easily provided for by permitting current MRA89 s139 to continue in effect for current tenures for the remainder of their current term. The Bill (s 855) has made similar provisions with respect to the continuity of MRA89 s 141C. We understand that it was the intention of the drafters of the Bill that s 855 would provide relief with respect to relinquishment obligations over the remainder of the current term of current EPs – but we believe that this will not be the practical effect of the Bill as drafted.

Concerns with regards non-recognition of the fact that a pre-existing application for conditional relinquishment of an Exploration Permit (in whole/part) into the grant of a higher form of tenure (Mineral Development Lease (MDL) or Mining Licence (ML)) will, on approval, make a contribution to the meeting of a subsequent relinquishment obligations attached to the Exploration Permit

Bill does not provide for pro-rata deferral of a relinquishment obligation attached to an Exploration Permit pending assessment of an existing complete application for conditional relinquishment of all or part of the area of that Exploration Permit

Such a facility is critical to fair management of EPs and is currently practiced and given fair consideration by DNRME in relation to applications made pursuant to current MRA89 s139 to vary (defer) a relinquishment obligation attached to an EP. In such circumstances DNRME may assess and recognise that EP holder explorer has made 'reasonable' efforts to meet their partial relinquishment obligations and the fact that the partial relinquishment has not as at that time been completed is in significant measure outside of the control of the EP holder (e.g. in circumstances where the EP holder has to conclude Native Title agreement(s) before the MDL or ML can be granted). In a worst case scenario an explorer that has a singular EP as an asset and that has applied for the grant of a ML over that EP (and that that has acted in good faith and in full compliance with its statutory obligations) could have the source EP forcibly relinquished before the ML is granted. This sets a dangerous precedent in relation to **sovereign risk** in the State of Queensland.

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If the above-listed concerns are realised they it will have a detrimental impact on the level of exploration activity and sovereign risk in the State of Queensland and on royalty and stamp duty revenue streams to the State of Queensland.

Should you require any additional information or clarification please contact me as required.

Glencore would be delighted to attend the Public Hearing of the Committee scheduled for Monday 25 March 2019 if the Committee is so interested. If so please contact me by email as below.

Yours faithfully,

Peter Leah
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