Environmental Defenders Office

27 February 2020

State Development, Natural Resources and
Agricultural Industry Development Committee
Parliament House
By email: sdnraidc@parliament.qld.gov.au

Dear Chair and Committee members,

Submission: Mineral and Energy Resources and Other Legislation Amendment Bill 2020

We appreciate the opportunity to provide a submission on the Mineral and Energy Resources and Other Legislation Amendment Bill 2020 (**Bill**).

We start by congratulating the Department of Natural Resources, Mines and Energy (**Department**) on the provision of the Bill with the Regulation as one package; this greatly assists in the revision of how the framework will operate.

Our submissions here centre on the policy focus of improving the regulation of financial assurance and mine rehabilitation in Queensland, through:

- 'Increasing the scrutiny around the financial capability of a resource authority holder when there is a change in ownership ('change of control');
- Increasing oversite of resource sites that enter care and maintenance by requiring significant mineral mining lease holders to submit plans on their proposed activities ('care and maintenance'); and
- Broadening the State's authorised person powers for remediating an abandoned mine and abandoned operating plant sites to make them safe, durable, secure and enable productive land uses ('abandoned mines and abandoned operating plants')."

We are largely supportive of these proposed reforms and commend the Queensland Government for seeking to the risks associated with resource activity transfers, financial assurance and mine rehabilitation.

Please find our detailed submissions below.

1. Change of control

We support the introduction of powers to address indirect changes of control through assessing the changed holder's financial and technical capacity to comply with the conditions of the resource authority.

We recommend that these powers could go further to ensure both direct and indirect changes are reviewed through transparent, strong laws which protect Queensland against risks of poor operators. For example, we recommend laws could be introduced to require information; and to take appropriate action should the holder be found not to have sufficient capacity.

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In order to improve public trust in the process, discretion in relation to this action should be limited, and the public should have a right alongside operators to make submissions on whether the action is appropriate. As taxpayers will ultimately bear the costs in the event that a transferee is unable to meet rehabilitation obligations, they should be involved in the solutions to a greater degree than what is being proposed.

When Rio Tinto transferred its Blair Athol site to junior miner Terracom (Orion) for just $1, it was unknown whether it would be able to meet the rehabilitation obligations with its limited finances. Amendments are required to ensure that:

- the Queensland Government has sufficient powers to regulate the industry in order to restore public trust in the processes;
- the discretion of the Queensland Government to allow for transferees without the requisite technical and financial capability is limited; and
- decisions about indirect and direct transfers do not occur in a vacuum, with the public being invited to participate in decision-making wherever possible.

Further, information about direct and indirect changes in control should be made available to the public without the need for a formal application under the *Right to Information Act 2009* (**RTI Act**). Due to the public interest in the Blair Athol transfer, Lock the Gate was forced to go the Supreme Court of Queensland and the Queensland Civil and Administrative Tribunal to obtain information about this decision. These proceedings incurred great cost to all parties involved, including the State. The crucial point is that the Queensland Government has an obligation to release information administratively via the 'push model', which is a proactive requirement for the release of information to the public, where appropriate, to avoid the need for formal requests. Instead, the public are being forced to fight for information through RTI Act and Court processes.

In addition, the criteria for assessing the financial and technical capability of an operator must be strengthened to be a meaningful assessment the public can have faith in; this is not presently the case. For example, in 2016 Cockatoo Coal Limited was granted an environmental authority and mining lease for the Baralaba North mine expansion while they were in voluntary administration. That this can happen makes a mockery of any financial and technical assessment that would have been undertaken for Cockatoo Coal Limited in seeking to obtain the mining lease, let alone what may be applied in a transfer between operators.

We recommend:

(a) The criteria for the assessment of the financial and technical capability of an operator must be strengthened to be a meaningful and transparent assessment;

(b) Where the Minister becomes aware that there has been an indirect change of control, rather than this being a discretion, the provisions should stipulate that the Minister *must* assess the changed holder's financial and technical capacity to comply with the conditions of the authority, and this assessment should be transparent;

(c) The holder's financial and technical capacity to meet the environmental authority conditions must also be assessed, with equal powers to vary or impose conditions or to suspend or cancel the holder's EA if the holder does not have this capacity;

(d) Details about direct and indirect changes in control should be made easily available to the public under the legislation, without requiring a formal application under the RTI Act.

2. Care and Maintenance

We support the inclusion of minerals other than coal or oil shale in the obligation to submit development plans. We provide the following recommendations with a view to providing more accountability and regulation around care and maintenance, to ensure it is not misused and does not lead to poor mine management. Further, in accordance with our comments above, development plans should be easily accessible by the public.

We recommend:

(a) That there should be a statutory limit to the time operations can be in care and maintenance;

(b) Clear eligibility criteria should be applied to applications for care and maintenance, which includes a maximum risk threshold they must be under and requirement to mitigate risks;

(c) Development plans should be subject to third party enforcement powers;

(d) There should be clear requirements for the following information to be provided by a proponent where a development plan is submitted on the cessation of mining;

  (i) A clear statement describing the reasons why mining has ceased;
  (ii) the expected period of cessation;
  (iii) the conditions needed to bring the site back into production.

(e) All development plans, including initial and amended development plans, should be made available to the public under the legislation, without requiring a formal application under the RTI Act.

3. Managing abandoned mines - Ensuring progress in rehabilitating abandoned mines in Queensland needs a legislative responsibility designated

We support the provisions proposed relevant to managing abandoned mine sites.

For too long abandoned mines have been an unregulated, underfunded area of work that was not prioritised by the Queensland Government, to such an extent that risks to our environment and communities have not always been adequately addressed and very little progress was made to rehabilitate sites. Further, focus has for too long been put only on human health and safety and not impacts to other species or environmental values.

We welcome the broadening of the abandoned mines programme's remit to include a greater focus on the environment. Further, we welcome an increase in funding via the new financial provisioning scheme arrangements. However, we still believe that more could be done to ensure abandoned mines are rehabilitated finally in the state and that significant additional funds will have to be made available if the risks associated with abandoned mines are to be adequately managed in a reasonable timeframe.

We recommend:

(a) placing an obligation upon the Government to manage abandoned mines that pose risks to community or the environment, ideally which could be enforced by the community, would provide greater motivation to ensure Queenslander's can have faith that the work will be done;

(b) as a minimum we believe the Bill should establish a legislated unit within the Department of Natural Resources, Mines and Energy (DNRME) with a clear mandate to address abandoned mines, to ensure they remain a valued function of DNRME;

(c) the remit of the Unit should be framed by relevant national standards including the National Environmental Protection Measures, ANZECC/ARMCANZ or NHMRC guidance to bring environmental harm back to an acceptable standard for soil and water contamination and human health impacts;

(d) the unit should seek guidance from a stakeholder advisory committee including community and local government reps and additional technical expertise (for example expertise regarding acid mine drainage and mine closure);

(e) we recommend that the risk assessment undertaken by AMLP for abandoned mines should be put on a public register to be referred to in the Bill; and

(f) further, we recommend that clause 107 new section 344AA(3)(g) be amended to specifically refer to ensuring the protection of native species and native species habitat.

4. Disqualification criteria for resource authority applicants

We strongly support the assessment of the suitability of applicants to hold resource authorities, considering the performance of the applicant or an associate of the applicant. This is a responsible and sensible proposal considering the responsibility we are giving tenure holders for managing sites, resources held in the public interest and abiding by regulations aimed at avoiding or reducing human, social and environmental impacts from the activities. The test should be mandatory rather than discretionary, for certainty that this test will be utilised by the government.

Transparency International has highlighted the need for adequate due diligence on mining applicants' integrity, such as past unlawful conduct and compliance, regardless of the jurisdiction they are operating in. Their research has established that there is a high risk of corruption under current Queensland law due to inadequate due diligence on mining lease applicants' integrity, such as past unlawful conduct and compliance.[1] It said in its report Combatting Corruption in Mining Approvals:

> *'Governments need to conduct effective due diligence on the past conduct and compliance, financial resources, beneficial owners and technical capacity of licence applicants and their principals. Otherwise, companies can provide misleading information, resulting in mining rights falling into the hands of unqualified investors or speculators. Inadequate due diligence can enable companies with a history of corruption, tax evasion or money laundering to enter a country's mining sector.*
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> *In Australia, the mining states of Western Australia and Queensland have limited mechanisms for due diligence investigations. Requirements for compliance disclosure are limited to the activities of mining companies in Australia. Several companies that have been granted licences in Australia have been investigated or charged with corruption or criminal offences overseas.'*[2]

[1]Transparency International (2017), 'Corruption Risks: Mining Approvals in Australia', pages 28-29, accessible here < https://transparency.org.au/wp-content/uploads/2019/10/Australia-Report.pdf>

[2]Transparency International (2017), ' Compating Corruption in Mining Approvals', page 6, accessible here: <http://files.transparency.org/content/download/2165/13675/file/2017_CombattingCorruptionInMiningApprovals_EN.pdf>

We recommend:

(a) the performance internationally of the applicant and an associate of the applicant must be also part of any review of whether an operator is suitably responsible and worthy of holding a tenure. There is no reason to not require the consideration of this environmental offence history in other jurisdictions. This is particularly the case with new international operators who may not have any history of activities in Australia by which their suitability can be assessed; and

(b) the test of suitability should be mandatory rather than discretionary, for certainty that this test will be utilised by the government.

(c) the discretion for the Minister or decision-maker to decide whether to disqualify an operator from applying for or obtaining an authority should be limited.

5. Requiring payment of security prior to grant of mining lease

We support the proposal to require payment of security prior to the granting of a mining lease to protect the Department and Queensland from irresponsible operators or unforeseen events prior to payment being secured. All applicants should be required to provide security prior to granting of their tenure.

6. Making prosecution periods consistent across Resource Acts

We support the intention of making prosecution periods consistent across all Resource Acts on the basis of the periods provided, which will provide more time for the prosecutor to gather sufficient evidence and undertake legal scrutiny to develop the case before the period terminates.

Yours sincerely,
Environmental Defenders Office

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