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Ms Kate Jones,
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Dear Premier and Ministers,

Mining and Coal Seam Gas Access to information, Fair Process and the Land Court

The Environmental Defenders Office of Queensland ('EDO Qld') and the Environmental Defenders Office of Northern Queensland ('EDO NQ'), (collectively, 'EDOs'), appreciate that the State government has taken some welcome initiatives to improve transparency of government processes and access to information held by government agencies, including introduction of the *Right to Information Act 2009* that, amongst other matters, provided government-owned corporations were subject to its provisions.

When the State government's response to the Solomon Review was introduced in August 2008, Premier Bligh stated:

*For members of the public access to information will be easier and quicker.
It will break down bureaucratic barriers and make us the most open and accountable
Government in Australia.*

EDOs are non-profit community legal centres that work on environmental law matters of public interest for individuals and communities. We have hundreds of clients, both city-based and rural-based, who are suffering from a lack of fairness, accountability and transparency in Queensland judicial and administrative processes for assessment of proposed coal mines and coal seam gas ('CSG') projects.

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This lack of fairness, transparency and access to information and restrictions on appeal rights is of the gravest importance to our clients and the general public. This is due to the vast disparity of resources, given that the mining and gas industries can afford huge networks of paid lawyers and communication staff to promote approval of their projects, whereas individuals and communities affected by those projects can rarely afford a single paid lawyer. It is also due to the major impacts these projects have on communities and the natural environment, and the number of mining and gas proposals. There are at least 22 major coal mines, plus CSG projects, under application in Queensland right now.

And by way of comparison, we find it extraordinary that in many ways the community has less rights to access information on 'mega mines' and CSG projects than on some housing extensions¹ or small townhouse developments under the *Sustainable Planning Act 2009*.

From our experience talking to clients from rural areas and city areas, a number of legislative reforms to processes relating to CSG and coal and mining are needed urgently. A discussion of those reforms, with a brief summary of recommendations, is attached to this letter. Note this letter and summary does not address the criteria by which decisions on environmental authorities for mining and gas are made: that will be addressed in a later letter.

Yours faithfully,



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Environmental Defenders Office (Qld) Inc.



Patrick Pearlman
Principal Solicitor
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Mining and Coal Seam Gas, Access to Information, Fair Process and the Land Court Brief Summary of Recommendations

Public notification and Public submission rights

Amendments needed to Environmental Protection Act 1994 (“EP Act”) to:

- Introduce public submission and appeal rights for all applications for all environmental authorities relating to coal seam gas. Currently those rights only apply for some types of environmental authorities relating to coal seam gas applications.
- Introduce public notification of public submission opportunities concerning applications for mining and coal seam gas environmental authorities online at a central government website. Put the application and supporting information online too so potential submitters can see the materials easily. Brisbane City Council does it for local developments. Why is the State government lagging behind? Require more detail in public notices for applications for coal seam gas environmental authorities.
- Increase minimum legislative time frames for public notification from 8 to at least 20 business days for applications for coal seam gas environmental authorities, the same as for environmental authorities relating to mining. Ideally the minimum time for public notification for both types of environmental authorities ought to be at least 30 business days so citizens may gather expert assistance and prepare submissions.
- Ensure notification of applications for environmental authorities for CSG is made at the minimum by letter to landholders in the subject area or within a 5km radius of that area, as well as online on a central government website. Similar amendments are needed with respect to opportunities to make a submission/objection on environmental authorities for mining.
- Ensure that for any approved projects, the final environmental authorities, monitoring data and other material on the public register under the EP Act is available online.

Coordinator General, and Land Court powers

Amendments needed to EP Act & State Development and Public Works Organisation Act 1971 to:

- Remove decision-making powers of the Coordinator General on conditions of environmental authorities for mines and coal seam gas that are “significant projects”, so that instead the Department of Environment and Resource Management makes the decision. Currently the Coordinator General has a conflict of interest under legislation -both promoting development and assessing environmental impacts.
- Ensure the Land Court on appeal can consider and address all relevant issues and is not constrained by any decision-making of the Coordinator General on conditions.
- Introduce powers for the Land Court to make a decision, rather than a recommendation to government on proposed environmental authorities for mining leases. Independent Courts, not governments need to have the final say on mining environmental authorities, as is the case with planning applications under the *Sustainable Planning Act 2009*.

Costs and Resources

Amendments needed to the Land Court Act 2000 and State funding required to:

- Change the costs rules in the Land Court to each party pays own costs, subject to exceptions. Currently people are cautious of costs orders and this discourages vital public participation.
- Provide additional funding to Environmental Defenders Offices, so that we can help community clients scrutinise mining and coal seam gas projects. Currently EDOs are grossly understaffed to provide advice.
- Provide State legal aid for public interest environmental cases, concerning coal mines and gas. Currently Queensland provides no legal aid for any environmental cases. How can ordinary community groups get a fair go if they don’t have funds for experts/barristers and are up against multinational coal mines? End summary.

Discussion of Proposed Reforms

A. The requirements for public notification of opportunities to make submissions on proposed environmental authorities for coal mining and CSG under the *Environmental Protection Act 1994* ('EP Act') are inadequate and need urgent reform.

1. Public Submission and appeal rights for all applications for all environmental authorities relating to coal seam gas

- The environmental authorities ('EAs') under the EP Act for mining or CSG activities contain the detailed conditions meant to safeguard water, vegetation, air quality and to prevent contamination, so they are very important.
- Currently there are only rights of public submission on certain CSGs proposals—those which fall under level 1 Chapter 5A activitiesⁱⁱ. Because of the risky nature of coal seam gas productionⁱⁱⁱ, *all* CSG proposals ought to be subject to public notification and submission rights.
- Many Landowners or others potentially affected by relevant projects have important local knowledge which can be of enormous assistance in enabling DERM to discharge its functions under the Act. Often applications rely upon identification of residences or places of work by reference to out dated information and/or are not prepared in a detail that enables identification of important local characteristics or impacts^{iv}.
- This is important as only submitters can later apply to the Land Court^v for debate and scrutiny in open Court of their valid public interest issues concerning public health or groundwater or protection of vegetation or other issues.
- The *Sustainable Planning Act 2009* continues long practiced planning requirements for public participation in planning process, effective notification of development applications and rights to participate in or initiate appeals. It is incongruous that even landowners directly affected by mining and CSG do not have equivalent or greater rights.

2. Public Notification of coal mining and CSG environmental authorities by letter and online

- When a CSG proposed environmental authority is subject to public notification,^{vi} the current legislation only requires one public notice in a newspaper^{vii}. Sometimes (but not always) gas companies take extra steps to publicise this opportunity.
- Reference is often also made to the relevant fields by their industry names rather than by usual local geographical references. Advertisements that do appear are therefore often overlooked because landowners are unfamiliar with the industry terminology or naming of areas (e.g. Reference to the "Ruby" field will mean something to the gas company but nothing to a landowner)^{viii}.

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- This does not properly inform the public, and more detail is needed in the public notices. More extensive and thorough mechanisms are needed to ensure people can exercise their rights and make a submission.
- Many city-based and rural-based people have missed their chance to make a submission or objection on a proposed environmental authority, due to simply not knowing about the project or its time frames, as public notification was inadequate^{ix}.
- This is unfair as only submitters can later apply to the Land Court^x for debate and scrutiny in open Court of their valid public interest issues, for example concerning public health or groundwater or protection of vegetation or climate change. Critically also public input is a vital part of enabling DERM to discharge its statutory functions and aids balance to the process. DERM cannot be expected to have the local knowledge and insight available to the affected public.
- For EAs for coal seam gas, but also for EAs for mining, there is nowhere on the Qld State government websites^{xi} that lists these opportunities for submission or objection.
- In stark contrast, many local authorities list development applications online; for example, for developments in the jurisdiction of Brisbane City Council you can search what development applications have been lodged by street or suburb.
- The only way a community group can keep up to date with opportunities for comment on both mining and coal seam gas EAs is to ring all the mining registrars in various districts and the Department of the Environment and Resource Management ('DERM') every two weeks. This is time consuming and simply not acceptable if Queensland is to have "the most open and accountable government in Queensland".
- DERM's website has a section headed "Opportunities for Public Comment"^{xii}. The EDOs suggest that in addition to the current newspaper requirements, the webpage could be used to inform the public of opportunities to make a submission under the *Environmental Protection Act 1994* on EAs for proposed CSG projects and proposed mining projects.
- Landholders in the subject area or within a 5km radius of that area need to be directly informed by letter of the proposal to be given a chance to make a submission. In the current climate many Landowners feel extensively disempowered and excluded from the process which undermines public confidence in the process, adds to tension and ensures that vital information is not included in the decision making^{xiii}.
- An amendment to the EP Act is needed to ensure notification of EAs for CSG is made at the minimum by letter to landholders and online on a central government website.
- We also propose that there be a corresponding amendment of the EP Act so that public notification of opportunities to make a submission/objection on EAs for mining^{xiv} is required to be online as otherwise numerous concerned people miss their chance to object and have the opportunity to go to the Land Court to have their valid concerns heard.

3. Extend Timeframes for Public Submissions on environmental authorities

- The minimum public submission timeframe is too short for CSG projects. The minimum time for public submission under the EP Act on level 1 Chapter 5A activities, which includes CSG, is a mere 8 days, with discretion to DERM to extend that time.
- For mining, the current minimum public notification period is 20 business days^{xv}.
- This is wholly inadequate given the complexity of the impacts of major projects, for example on vegetation or ground water and the need for submitters to gather information to make well-informed objections. Many of the potential submitters are in rural locations and have limited access to the relevant information^{xvi}, compounding the inadequacy of the timeframe. This is aggravated by the sheer volume of material often required to be digested and responded to by the Landowners of significantly varying education levels and with an obvious lack of experience in industry matters and legislative procedures.
- There are many complaints of Landowners being unable to access relevant material without having to travel a significant distance to some office (e.g. In Brisbane) whilst the appeal period is running^{xvii}..
- The EDOs recommend that CSG projects need to be at least brought into line with mining so that the minimum time for public submissions is 20 business days. We strongly recommend that there needs to be a minimum of 30 business days for public notification/submissions on both CSG and coal mining, with discretion to DERM to extend that time.

4. Put applications and supporting material online on government website

- There are unacceptable delays for members of the public to obtain copies of the application and supporting information for both coal seam gas proposals and proposed mining, so that they can consider the material and make a submission or objection.
- For example, some EDO clients have rung up DERM and if they cannot get to the DERM office to view materials about CSGs proposals, have needed to wait for materials, either a disk or hard copy of the application and supporting information to be posted out which has wasted a number of days of the public notice period.
- For example, in May 2011 EDO rang the Emerald Mining Registrar who provided the application number for a proposed coal mine but said for a copy of the application EDO needed to call the coal company.
- Proponents of CSG projects should be required to provide applications and supporting materials to the State in electronic format specified by the State in order to facilitate posting of that information on the Government's websites. The Application and supporting materials ought to be available online on a State government website (the obvious place is the DERM website under opportunities for comment) as well as in hard copies at DERM offices, to save wasting the time of community members. This is what occurs for development applications under the *Sustainable Planning Act 2009*, for example see Brisbane City Council's website where you can view the application and supporting materials and lodge your submission by email. If this can be achieved for urban developments it is

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clearly achievable as well as essential to have information online for major coal seam gas and mining proposals.

- Both a hard copy and electronic copy of the application and supporting materials should also be required to be provided to, and maintained by, the local council(s) in whose jurisdiction the proposed CSG project is to be located for ease of access by local citizens and community groups.
- Proponents of CSG projects and mining projects should also be required to provide links to the application and supporting materials on their websites.
- Applications and supporting materials must be in an electronic format, such as pdf, that is readily printable, permits word search capability and can be cut and pasted by any person viewing the materials online^{xviii} and must not otherwise be in a restricted format.

B. For projects declared “significant projects”, the decision-making processes unfairly reduce the powers of DERM and unfairly limit open debate of key issues in the Land Court.

1. Restore DERM powers

- For most activities where contamination may be caused, including mining and coal seam gas, DERM is the decision maker as to the contents of the environmental authority and the conditions to govern water, air, soil etc.
- However, for mining or CSG projects that are declared “significant projects” under the *State Development and Public Works Organisation Act 1974* (‘SDPWOA’), DERM loses most of its decision-making power. Instead the Coordinator General may state in the Coordinator’s Report the conditions to be included in the environmental authority^{xix}.
- The Coordinator-General is a public servant who wears two hats: firstly promoting development as well as secondly, overseeing environmental assessment for significant projects. The Coordinator-General thus has a conflict of interest by nature of the two hats. The SDPWOA does not have the ecologically sustainable framework that the *Environmental Protection Act 1994* has. For example, the SDPWO Act does not include provisions specifically incorporating the principle of ecologically sustainable development or the precautionary principle, which are included in the EP Act administered by DERM. These factors coupled together mean that for “significant projects” development is favoured unfairly and the chance that inappropriate developments are approved is increased.
- The EDOs urge that the decision-making powers of DERM for EAs relating to significant projects need to be restored by amendments to SDPWOA and to the EP Act.

2. Remove Restrictions on DERM and the Land Court concerning Coordinator General’s decisions

- Special provisions of the EP Act “lock in’ the conditions mandated in the Coordinator- General’s Report. This means that citizens who make submissions or objections to mining or CSG EAs on a “significant project” will not be able to get conditions changed if their submission is for conditions inconsistent with the

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Coordinator-General's conditions in the Coordinator-General's Report ^{xx}. This restriction applies both to decisions by DERM on the environmental authority for coal seam gas and mining, as discussed above, and also later in the Land Court.

- This goes against openness and accountability and undermines public confidence as it means that DERM and the Land Court are not able to respond fully and completely to issues raised in the public submissions or objections.
-
- The Land Court does not have decision making authority in relation to objections or appeals for EAs for coal mining, but may only make a recommendation to government who makes a final decision on the mining tenure and environmental authority. This also goes against openness and accountability and public confidence in the process.
- Therefore the EDOs recommend that you change the legislation so as to give the Land Court the final say on whether or not the environmental authority for mining ought to be issued.

C. There is poor public access to environmental authorities that contain conditions of approval and to monitoring information, which makes it hard for people to see the rules that apply to a project or if the law has been observed.

1. Put environmental authorities, monitoring data and other material on the public register online on government website

- Currently it is hard to get copies of EAs: you need to know the relevant regional office of DERM, ring them up and pay for a copy of the environmental authority to obtain a copy of the conditions of approval. Access to, via the Public Register under the *Environmental Protection Act 1997* is not as streamlined^{xxi} as it should be. This creates an unacceptable barrier for the community knowing if environmental activities are lawful or not. The public are often the source of information which allows government to enforce the law.
- The situation is aggravated by the rapid growth of the industry and the constant changes to the various tenures being undertaken. Understanding the terms and conditions governing a company's behaviour is a fundamental pre-requisite to landowners understanding the protection afforded to them and to receiving legal advice. It is patently necessary for the EAs to be publicly and readily available to facilitate an understanding of these matters.
- Further, the government has undertaken the initiative of encouraging complaints to be made to the CSG hotline and/or for the public to make known concerns they may have. Without understanding what is and is not permitted under an EA and, importantly, the relevant terms applicable from time to time where EA's are reconditioned or substituted, the complaints process is necessarily flawed.
- Copies of EAs and monitoring data and the other items on the public register under the EP Act ought to be readily available by being online.
- The Victorian Environmental Protection Authority launched a searchable database of licences in 2010, giving the public full access to pdf versions of environmental licences. Their website states that the licencing reform program 'aims to make licences more accessible to the public, increasing transparency and community

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awareness.^{xxii} Surely Queensland can provide the same level of access that Victoria is already providing.

D. Members of the community lack resources to challenge CSG and mining and the costs rules of the Land Court discourage its use by community litigants.

1. Introduce legal aid for public interest environmental cases such as involving CSG and mining

- Many affected land holders simply lack the funds to afford lawyers as mentioned at the start of this letter. Yet there is no Queensland legal aid whatsoever for representation for affected landholders faced with well-resourced mining companies^{xxiii}. This is a major barrier to access and equity for landholders in having their legitimate concerns addressed in the Land Court. The integrity of the regulatory process is undermined without the involvement of those most affected in the relevant processes, so such costs rules are needed.
- Further, the costs rules in the Land Court give the Court a discretion^{xxiv} with respect to awarding costs, which discourages poorly resourced community members from challenging approvals of mining and gas in that Court.
- The EDOs recommend that an amount of legal aid is allocated for public interest environmental matters to the Queensland Legal Aid office, so that community groups can apply for funds to help them use the Land Court.

2. Change the costs rules in the Land Court so the usual rule is that each side pays his or her own costs

The EDOs also recommend that the costs rules in the Land Court are altered by legislative amendment, so that the rule is that each side pays his or her own costs, with very limited exceptions to address vexatious litigants, as is the case in the Planning and Environment Court^{xxv}.

ⁱ For example, in 2010 a proposed house extension and new carport in Highgate Hill on a 430m square block was advertised by notice on the land inviting submissions. The application and proposed plans were available for potential submitters to view online at the Brisbane City Council's website and also by attending the Brisbane City Council's office. It was essentially easy to obtain materials and decide whether or not to make a submission.

ⁱⁱ Section 310B, 310G *Environmental Protection Act 1994*

Public submission rights are available only for level 1 petroleum activities. The main level 1 petroleum activities are:

1. A petroleum activity on a site containing a high hazard dam or a significant hazard dam; (DERM has a manual about what constitutes hazard dams that is being revised. The hazard relates to the design and contents of the dam and the risks to health and ecology if the dam broke or failed to contain its contents).
2. Certain other petroleum activities that also include as part of the project activities such as fuel burning, waste treatment, sewerage treatment or certain other activities set out in Chapter 4 of the EP Act;

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3. A petroleum activity that is likely to have a significant effect on a Category A or B environmentally sensitive area (the areas are in the *Environmental Protection Regulation* 2008 which includes many types of protected areas under the *Nature Conservation Act* 1992, but not nature refuges or water catchment areas

ⁱⁱⁱ <http://www.abc.net.au/news/stories/2011/05/24/3225059.htm?site=southqld> See report of Arrow Energy coal seam well accident that discharged water and gas 40 metres into the air in a widely reported accident on Sunday 21 May 2011 at the property of farmer Tom O'Connor on the Darling Downs, Queensland.

<http://www.abc.net.au/news/stories/2011/02/21/3144688.htm?site=southqld> See report of Queensland Gas Company fracking or blasting coal seams at its Myrtle 3 well, accidentally connecting the Springbrook aquifer to the coal seam below, the Walloon coal. An event as uncovered by beef and grain farmer Anne Bridle and reported on 4 Corners.

^{iv} This is the experience of Dalby lawyer Mr Peter Shannon of Shannon Donaldson Province lawyers.

^v Section 520, 524 *Environmental Protection Act* 1994

^{vi} Public notification of opportunities to make submissions on terms of reference for environmental impact assessment statements and draft environmental impact assessment statements themselves are well publicised. Just to be clear, this occurs earlier in the assessment process but is no substitute for the submission opportunities on specific provisions of environmental authorities that may later lead to scrutiny by the Land Court.

^{vii} Section 310 G *Environmental Protection Act* 1994

310G Public notice of application

(1) The applicant must, within 2 business days after the application date publish a notice about the application (the *application notice*) in a newspaper circulating generally in the area where the relevant chapter 5A activities are proposed to be carried out.

^{viii} This is the experience of Dalby lawyer Mr Peter Shannon of Shannon Donaldson Province lawyers.

^{ix} For example the Lafrenz family at Cecil Plains lodged a submission objecting to an Arrow Energy Coal Seam gas proposal that is now in the Land Court as part of the case Clapham v Arrow. EPA-030-11. But like most of that community they were completely unaware of the chance to make a submission on another major coal seam gas proposal, part of the Dalby Expansion Project for a major coal seam gas production in their area. If they and other landholders had known they would have objected, due to major concerns about impacts of that proposal on the Condamine Alluvium aquifer on which their agricultural property relies.

^x Section 520, 524 *Environmental Protection Act* 1994

^{xi} See for example http://www.derm.qld.gov.au/public_notices/index.html#petroleum – the notices relate to environmental impact statements, not rights to make submission on environmental authorities.

^{xii} http://www.derm.qld.gov.au/public_notices/index.html#heritage

^{xiii} This is the experience of Dalby lawyer Mr Peter Shannon of Shannon Donaldson Province lawyers.

^{xiv} The notice must:

- Be posted at the office of the mining registrar; ad
- Be posted on the datum post of the land the subject of the proposed mining lease;
- Be given to the owner of relevant land or land necessary for access;
- Be given to the local council;
- Be published in an approved newspaper circulating generally in the area of the relevant land

Sections 64B, 252A and 252B *Mineral Resources Act* 1989

^{xv} Sections 64B, 252A and 252B *Mineral Resources Act* 1989

^{xvi} For example, some rural clients only have a twice weekly mail service and so need to wait for a disc to be posted by DERM to arrive.

^{xvii} This is the experience of Dalby lawyer Mr Peter Shannon of Shannon Donaldson Province lawyers. EDO Qld has also had clients tell the same experiences.

^{xviii} This was an issue on the Hancock Alpha Mine project EDO NQ worked on. The application and supporting materials were available on the company website, but the electronic format made it virtually impossible to use – the digital document was formatted so that person's accessing it couldn't search, copy or print the information.

^{xix} Section 47C, 49 *State Development and Public Works Organisation Act* 1974

^{xx} Section 210 & 222(2) *Environmental Protection Act* 1994; s310O(5) 309Z(5) *Environmental Protection Act* 1994

^{xxi} The database is accessible on the Victorian EPA website - <http://www.epa.vic.gov.au/compliance-enforcement/licences/corporate-licence-search.asp>

^{xxii} <http://www.epa.vic.gov.au/compliance-enforcement/licences/corporate-licence-search.asp>

^{xxiii} <http://www.edo.org.au/edoqld/edoqld/new/10.06%20Public%20Interest%20Funding%20call.htm>

EDOs have long called for public interest environmental legal aid as it is simply inequitable for major companies and industries to afford lawyers yet the community struggle without resources to raise valid public

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interest concerns. And in 2010, EDO Qld specifically sought funding from the State government so that EDO Qld could provide legal assistance to community clients impacted by CSG and mining, but that application was refused.

^{xxiv} Section 34 *Land Court Act 2000* provides that

(1) Subject to the provisions of this or another Act to the contrary, the Land Court may order costs for a proceeding in the court as it considers appropriate.

^{xxv} Section 457 *Sustainable Planning Act* Costs

(1) Each party to a proceeding in the court must bear the party's own costs for the proceeding.

(2) However, the court may order costs for the proceeding, including allowances to witnesses attending for giving evidence at the proceeding, as it considers appropriate in the following circumstances—

(a) the court considers the proceeding was instituted, or continued by the party bringing the proceeding primarily to delay or obstruct;

(b) the court considers the proceeding, or part of the proceeding, to have been frivolous or vexatious;

(c) a party has not been given reasonable notice of intention to apply for an adjournment of the proceeding;

(d) a party has incurred costs because the party is required to apply for an adjournment because of the conduct of another party;

(e) without limiting paragraph (d), a party has incurred costs because another party has introduced, or sought to introduce, new material;

(f) a party has incurred costs because another party has defaulted in the court's procedural requirements;

(g) if the proceeding is an appeal against a decision on a development application or master plan application and the applicant did not, in responding to an information request, or to a request for information for the master plan application, give all the information reasonably requested before the decision was made;

(h) the court considers an assessment manager, referral agency, coordinating agency for a master plan application, compliance assessor or local government should have taken an active part in a proceeding and did not do so;

(i) an applicant, submitter, assessment manager, referral agency, coordinating agency for a master plan application compliance assessor, a person requesting compliance assessment or a local government does not properly discharge its responsibilities in the proceeding.