ENVIRONMENTAL DEFENDERS OFFICE (SA) INC.
A Community Legal Centre specialising in public interest environmental law

Michelle Marron
Environment Protection Authority
GPO Box 2607
ADELAIDE SA 5001

29 November 2013

Dear Ms Marron

Radiation Protection and Control Bill 2013

The Environmental Defenders Office (SA) Inc ("the EDO") is a community legal centre with over twenty years experience specialising in public interest environment and planning law matters. EDO functions include legal advice and representation, law reform and policy work and community legal education.

We appreciate the opportunity to consider the *Radiation Protection and Control Bill 2013* ("the Bill").

The proposed Bill relates to updating the administrative and enforcement provisions of the existing Act. In addition it looks to implement such national initiatives as the National Directory for Radiation Protection and the Code of Practice for Security of Radioactive Sources. We welcome certain provisions of the Bill including acknowledgment of the need to protect people and the environment from the harmful effects of radiation and increasing penalties to reflect the serious consequences of non-compliance with various provisions of the Bill.

Our key concerns are centred on the clauses contained in Schedule 1 relating to the Indenture contained in the *Roxby Downs (Indenture Ratification) Act 1982.* We make the following points:

1. Schedule 1 of the Bill should be removed or, in the alternative, amended to be in accord with the licencing processes contained in the Bill

Schedule 1 of the Bill contains various provisions which have the effect of limiting the application of the Bill in relation to operations authorised by the Indenture. Some of these include:

· Clauses 3 and 4: the Minister must consult with the Mining Minister, the Joint Venturers and the Radiation Protection Committee when an application for a mining licence is made,

· Clause 6(2): The Minister must grant a licence after a certain period of time,

· Clause 7(1): Conditions may be attached to a licence after consultation with the Mining Minister and the Joint Venturers,

· Clause 10: the mining licence granted to the joint venturers must not be suspended or cancelled while the Indenture is in force, and

· Clause 11: the proposed sections 25(4), 43, 45(2), 45(3), 49 and 50 no longer apply. Section 25(4) provides that the Minister must not grant a licence to carry out mining or mineral processing unless satisfied that the proposed operations would comply with the Regulations. The remaining sections are general provisions relating to such matters as the granting and suspension of accreditations and authorities and the review of decisions.

Generally, a person must not carry out mining or mineral processing without a licence granted by the Minister[1] and in this regard the Minister must refer the matter to the Radiation Protection Committee and give due consideration to the Committee's views[2], in addition to ensuring compliance with the Regulations. Licences relating to s 25 operations represent significant activities[3]. Other licences such as those relating to the handling or use of radioactive materials or preparing a site for a radiation facility require the Minister to be satisfied that the relevant person is a fit and proper person[4]. The clauses contained in Schedule 1 leave much doubt as to the discretion of the Minister when granting or suspending licences particularly if the Minister is satisfied that a licence should *not* be granted because the relevant requirements were not met.

Similar considerations apply in relation to sections 45(2), (3) and 49 which govern the process for imposing conditions on accreditations and authorities and suspending or revoking these. The Minister generally has the discretion to impose conditions without consultation with (and consent) of the applicant, as well as the discretion to cancel such an accreditation or authority for a number of reasons including that the holder has previously been in breach of a condition. One notable exception in Schedule 1 however is clause 7(1) which requires the Minister to consult with the Mining Minister and the

Joint Venturers before imposing conditions. Furthermore it is implied that if there is disagreement as to the nature of these conditions the matter will be determined by arbitration pursuant to clause 5(1).

Dealing with radioactive materials and radiation sources is a serious matter because of the detrimental effects that they may have. There is no doubt that the Bill is concerned with the appropriate handling of radioactive materials and radiation sources. This is seen in the objects of the Bill which seek to protect people and the environment, the principles of radiation protection which require the setting of limits and magnitude of exposure and ensuring that the benefits outweigh the detriments, and imposing significant penalties for breaches of the Bill. The provisions in Schedule 1 appear to be granting the Joint Venturers certain latitude in relation to operations at Roxby Downs which seem to undermine this commitment to the protection of people and the environment. There are no other provisions which grant the same grace to any other mining operation or exploration projects whether existing or yet to come and it is for this reason that we recommend that:

· It is our submission that Schedule 1 be removed in its entirety from the Bill. In the alternative we recommend that clauses 6(2), 10 and 11 are removed and replaced from Schedule 1 to ensure that the the objects of the Bill can still apply without being directly or indirectly compromised.

2. A specific requirement that current codes and other standards must apply at all times should be included

Clause 9 of Schedule 1 of the Bill provides that any conditions attached to a licence should not be more stringent than the most stringent requirements and standards contained in clause 10 of the Indenture. Clause 10 of the Indenture requires compliance with certain codes and standards, namely the:

· *Code of Practice on Radiation Protection in the Mining and Milling of Radioactive Ores, 1987*;

· *Code of Practice for the Safe Transport of Radioactive Substances, 1990*;

· *Code of practice on the Management of Radioactive Wastes from the Mining and Milling of Radioactive Ores, 1982*;

· Codes based on current scientific studies and scientific assessment issued by the National Health and Medical Research Council of Australia; and

· Codes or recommendations issued by the International Commission on Radiological Protection or the International Atomic Energy Association; or

· Any codes, standards or recommendations substituted thereof.

The first three Codes have been superseded by the *Code of Practice for the Safe Transport of Radioactive Material (2008)* and the *Code of Practice and Safety Guide for Radiation Protection and Radioactive Waste Management in Mining and Mineral Processes (2005)*. The amended Indenture (which has yet to come into force even though it has received royal assent) incorporates these updated Codes into clause 10. However for the sake of clarity and streamlining we recommend that clause 9 of Schedule be removed and if necessary replaced by a clause stating that s 26 of the Bill applies until such time as the relevant amendments relating to compliance in the Indenture commence.

We would appreciate the opportunity to respond further in this process when Regulations have been drafted.

Please do not hesitate to contact us should you have any queries in relation to this submission.

Melissa Ballantyne

Coordinator/Principal Solicitor

Environmental Defenders Office (SA) Inc.