EDO Qld.
Environmental Defenders Office
Using the law to protect our environment.

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MQRA Project Team
Department of Natural Resources and Mines

By email only: mqra@dnrm.qld.gov.au

Dear MQRA Project Team,

Standardised consent framework for restricted lands across all resources types consultation

Thank you for the opportunity to make a submission on the consultation regulatory impact statement, *Towards a standardised consent framework for restricted land across all resources types* (the **restricted lands discussion paper**).

Who we are

The Environmental Defenders Office, Queensland (**EDO Qld**) is a not-for-profit, non-government, community legal centre specialising in public interest environmental law. We provide legal representation, advice and information to individuals and communities, in both urban and rural areas, regarding environmental law matters of public interest. We also use our experience to deliver community legal education and inform law reform.

A comment on the consultation process

We note that changes to the restricted lands process are set out in two papers currently open for comment: 'The Restricted Lands Discussion Paper' and the 'Notification and Objection Discussion Paper.' Both these papers represent very significant policy changes which are interconnected due to their impacts on landholders, communities and the environment. We therefore ask that our comments on the Restricted Lands Discussion Paper be considered in context of our submission on the Notification and Objection Discussion Paper.

We would also like to point out that some readers might be misled by the approach of dealing with restricted lands in two separate papers, particularly given the Notification and Objection Discussion Paper proposes to ***entirely remove restricted land status*** when open cut mining rights are granted. That important change should have at least been made clear in the Restricted Lands Discussion Paper as the 'increased distances' and 'extended neighbour consent rights' effectively mean nothing if an open cut mine is approved.

The changes won't provide certainty to landholders or communities

In relation to the proposed changes in this discussion paper, the Minister for Natural Resources and Mines has stated the changes provide:

> *"…certainty and clarity to any neighbouring residence within 200 metres of resource activities. It gives an extra 100 metres of protection around coal and mineral companies while landholders who engage with CSG and other resource companies will have 200 metres of protection for the first time. The proposed new restricted land framework is designed to focus on impacts rather than resource type and will provide certainty of rights and obligations to landholders and resource companies."*[1]

This statement is misleading. In the case of open cut mines it provides no certainty for landholders or neighbouring properties as restricted lands will be removed. In the case of CSG pipelines which are proposed to be exempt, it provides no certainty for landholders or neighbouring properties that they can refuse the construction. In relation to non-permanent business related infrastructure which isn't proposed to be included as restricted lands, it provides no certainty at all.

In order to safeguard important 'public infrastructure' - such as halls, local parks, community gardens, workspaces, and other community spaces which are not covered by the restricted land framework - is the government suggesting that landholders (provided they are 'directly affected') must go to the Land Court, at their own cost, and participate in an objection process?

This is very concerning when viewed in the context of the proposal to remove community objection rights to the mining lease applications and restrict community rights to the EA application for all but the State's largest mines.

Solution: The exemptions and narrow definitions used in the proposed framework provide no certainty to landholders or communities. It provides no significant protection to communities or our environment (and removes protection in the case of open cut mines and CSG pipelines). The only solution is to remove the exemptions and expand the definitions of protected infrastructure.

The paper narrows what infrastructure is protected

Currently, the MRA divides 'restricted lands' into either category A or category B:

Category A restricted land means land that is within 100 metres of a building used as:

(a) accommodation or business purposes; or
(b) for community, sporting or recreational purposes or as a place of worship.

Category B restricted land means land that is within 50 metres of any of the following:

(a) a principal stockyard;
(b) a bore or artesian well;
(c) a dam;
(d) another artificial water storage connected to a water supply;
(e) a cemetery or burial place.

The proposed types of infrastructure from the discussion paper are (page 11)[2]:

Proposed infrastructure types to which restricted land will apply.	**Proposed Restricted Land distance**	
	Any Exploration authorities, Production authorities or Petroleum Facilities Licences	*Other authorities*
Residence	200 m	50 m
Place of Worship or School	200 m	50 m
Building for business purpose (including a school)	200 m	50 m
Intensive animal husbandry (eg feedlot)	200 m	50 m

Cemetery or burial place	50 m	50 m

Whilst there has been an increase in the distance for some infrastructure (100m to 200m) which we support, it is clear to see that stockyards, wells, dams and other water supplies are no longer protected.

Where are the rights for those landholders and communities that rely on these? Why have they been removed from the list of restricted lands?

It is also clear to see that community sporting or recreational purposes have been specifically removed unless they can somehow fit into the definition of 'business purpose'. Where are the protections for those organisations that run local sustainability activities including community gardens, small nature refuges etc. but might not be classified as 'businesses'?

Mining should not be allowed at all in private national parks, known as nature refuges, such as Bimblebox Nature Refuge.

Solution: We recommend that the definitions and types of infrastructure be significantly expanded to include public community infrastructure including halls, gardens, parks, national parks, schools, not for profit centres etc. Why limit infrastructure to churches, houses and businesses?

Exemption for CSG pipelines should not be allowed

Page 11 of the restricted land discussion paper indicates that some types of activities such as coal seam gas (CSG) pipelines can occur within 200 metres of a residence or other place without being subject to the restricted land provisions.

We do not support this exemption. The discussion paper offers no explanation for why such interference should be exempted from the restricted land provisions, other than "requiring landholder consent could make these activities unviable" thereby placing the company's commercial considerations over those of the community.

What about the health risks of a potential pipeline rupture to local communities? If the pipeline complies with eligibility criteria, then there will also be no requirement to publicly notify it for community submission/appeal rights? The public and landholders will effectively have no rights to challenge the construction of a CSG pipeline in or near (or directly beneath) their communities.

Solution: The exemption should not apply. There must be minimum safeguards for CSG infrastructure. Buffer zones greater than 200 metres from public buildings and spaces particularly those frequented by the public (churches, schools, parks, sporting ovals etc.) must be mandatory in the interests of taking a precautionary approach to public health.

The definitions and categories of protected infrastructure are vague and ambiguous

The 'Building for Business Purposes' definition (page 21) includes:

> *"permanent building from which a business is operated, and which is the primary use of the building. Examples include veterinary premise, place of worship, school and intensive animal farming. This generally excludes pump houses, stockyards, temporary accommodation."*

Firstly, 'permanent' is far too restrictive for landholders and communities who may construct temporary structures to carry on their activities. What is the definition of 'permanent'? 10 years? 20 years? Does it relate to the type of material the building is made of? This can't be appropriate, the test should be whether the building or other structure has an intrinsic private or public use.

Secondly, why does a 'building for business purposes' include a 'school' but that school is also included above under 'place of worship or school'? Why does it include 'place of worship' when that is separately defined as 'place of worship or school'? Why does it include 'intensive animal farming' when that is separately defined as 'Intensive animal husbandry (e.g. feedlot)?' Is it proposed that there is a different between animal 'husbandry' and animal 'farming'?

Solution: The definitions need serious attention so landholders and communities can have confidence in what types of infrastructure will be protected.

Landholders outside of 200 metres are offered reduced protection

EDO Qld is supportive of the proposal to extend the restricted lands provisions for petroleum and gas authorities. However this introduction comes at a cost – Conduct and Compensation Agreements (CCAs) will no longer be required for those people living within 600 metres of such activities. Additionally, the removal of notification and objection rights means that people living in say, 300 metres of a proposed mine may not even be aware of the proposal.

Example - CSG impacts on cotton farmer

Under the current system, a cotton farmer who lives with his family on the Darling Downs (but outside of a Priority Agriculture Area)[3] is approached by a CSG company seeking access to his property. The company needs to drive trucks carrying heavy drilling machinery to the CSG wells on a nieghbouring property. The family home is 400 metres from where the trucks will be driving on his property and within the lease area, so a CCA is negotiated and includes a condition requiring the spraying of the truck's tyres to avoid weeds being spread to his farm. Under the newly proposed system however, the farmer is outside the 200 metre buffer, so no CCA needs to be negotiated.

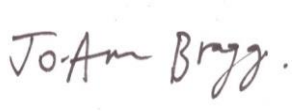
The restricted lands discussion paper argues that in the absence of agreement with the landholder, such activities would be caught by the EA condition to not cause environmental nuisance, so the proponent would need to come to some agreement anyway so as to not be caught by the EA provision.

The problem with this reasoning is that if the company does engage in environmental nuisance, then the onus is put on the farmer or resident to do something about the breach of the EA condition, whereas previously the CCA negotiation would force the company to sort out any access issues in advance.

Solution: one way to resolve this issue is to extend the restricted land distances from 200 metres to 600 metres. This would mean that landholders and communities will not be any worse off under the proposed changes. A better and more certain result would be that for all proposed mines, restricted land distances from mines and mine infrastructure be increased to our residences, schools, communities and businesses. Doctors for the Environment suggested given the risk, large separation distances, perhaps up to 10 km separation is more reasonable to protect human health from major mines.

If you have any further queries relating to this submission, please contact Evan Hamman or Rana Koroglu at EDO Qld on (07) 3211 4466.

Yours faithfully,



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Endnotes

[1] http://statements.qld.gov.au/Statement/2014/3/4/greater-certainty-delivered-for-industry-and-landholders
[2] Discussion paper page 11: http://mines.industry.qld.gov.au/assets/legislation-pdf/restricted-land-consultation.pdf)
[3] *Regional Planning Interests Act 2014* (Qld) would therefore not apply