



A Community Legal Centre specialising
in public interest environmental law

28 October 2011

Mr Malcolm Lehman

Secretary to the Select Committee

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**Re: Roxby Downs (Indenture Ratification)(Amendment of Indenture)
Amendment Bill 2011**

The Environmental Defenders Office (SA) Inc (EDO) is a community legal centre with over 15 years' experience specialising in public interest environmental and planning law. Engaging in law reform processes, including reviewing and proposing changes to environmental bills and legislation, forms an important part of our work and so we welcome the opportunity to make a submission with respect to this Bill.

It is an objective of the EDO (and has been since it was formed) to "seek appropriate law reform to improve environmental protection"¹ and so we support legislation designed to achieve this aim.

Bill

Clause 7- BHP should be subject to the same laws as other mining companies.

Clause 11 of the Indenture.

11(2)

BHP should be required to include appropriate outcomes.

¹ EDO Constitution

11(3)

BHP should be required to incorporate conditions and requirements of any project approval as they relate to protection of the environment.

11(4)

The Mining Minister should be required to consult with the Environment Protection Authority as to the content of any conditions.

11(8)

Whilst reporting is mandatory it is only of value if there are appropriate outcomes within the EMP.

11(9)

The Minister cannot request an EMP be reviewed until there is ‘material environmental impact’ and it must be the first time in 12 months that the Minister has had the EMP reviewed. Technically this means, that if in January, BHP caused material environmental impact (that it didn’t already know it would), then part of the EMP could be reviewed. However, if in October that same year further environmental damage was done relating to another section of the EMP the EMP could not be reviewed again.

11(11)

This enforcement clause is only of value if:

- appropriate outcomes in EMP
- mandatory requirements built in –see (b), (c), (e)
- there are no inappropriate exemptions –see (f),(h).

11(12)

The Minister should be obliged to give BHP notice in writing in relation to audit.

11(13)

The Minister should be required to make available for public inspection within a reasonable time frame (say 1month):.

- EMPs
- approved mitigation plans

- a report submitted with mitigation plan
- an audit submitted
- A notice / direction given by Minister to company
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11(18)

Whilst the State Government is not obliged to ameliorate BHP's costs in these circumstances this does not occur with any other mining company.

11(19)

BHP should be subject to the same noise controls as other mining concerns.

Also recommend:

- **Oversight by EPA or, in the alternative, the EPA should have appeal rights**
- **Reasonable periods of public consultation on proposed EMP, any proposed amendments and when it is up for review**

Clause 11A- Greenhouse Gas and Energy Management Plan

The Plan should:

- Have specific targets
- Require reporting of greenhouse gas emissions for each component of the operation
- Require reporting of energy consumption for each component of the operation
- Require reporting of any on-site energy production

Clause 13- Water Requirements

- Cap of 42ML should apply to all wellfields operated by BHP
- Cessation of extraction from one GAB wellfield should not facilitate new extraction from another GAB wellfield. If proposing to find alternative wellfields any approval should be subject to environmental impact assessment
- Levy on extraction from GAB should also apply to groundwater use
- Levy should be based on size of the water licence, rather than usage, as with other mining operations

Also remove:

- clause 13-12c which caps the NRM levy for 30 years
- clause 13-12d which enables BHP to avoid paying the levy via approved offset projects

Clause 32 – Royalties

Should not be capped for 45 years ie BHP should be subject to the same adjustments as other mining operations.

Clauses intentionally not shown

The following should be made available for public scrutiny:

- Initial Government Obligations
- Condition Precedent
- Special Exploration Licences
- Further Processing
- Royalties in respect of Non-Mine site Product
- Trade Practices Act
- Independent Expert
- Map A

Please contact Melissa Ballantyne should you have any queries in relation to this submission.

Environmental Defenders Office (SA) Inc