25 June 2004

Review of National Competition Policy arrangements
Productivity Commission
PO Box 80
BELCONNEN ACT 2616

Dear Sir/Madam,

The East End Mine Action Group wishes to lodge an additional submission regarding the urgent need for an affordable, accessible and impartial appeals and dispute-resolution mechanism to review and amend disputed State decisions relating to National Competition Policy Arrangements/CoAG Agreements, in our case Water Reform.

We have received a letter from the Queensland Audit Office dated 22 June 2004 advising the matters raised in our requests for a detailed investigation into QCL's lease renewal process are outside the mandate of the Auditor General. (Copy of letter available.)

We have received a letter from the Queensland Ombudsman dated 23 June 2004 in response to EEMAG's requests for a retraction of the "clearance" of DNR&M and EPA. (Copy of Ombudsman's letter dated 23 June 2004 Attached)

On Page 2, Item 2 the Ombudsman advises the context of the statement in his Office's letter of 27 September 2002 to DNR&M (and EPA), quote "To my mind those issues do not presume any failing in the way that the Department has progressed the matter thus far" does not suggest his Officer made any finding about whether there had been maladministration on the part of the Department.

However Item 3 on Page 2 the Ombudsman refers to the letters by the Premier, the Premier's Chief of Staff, the Minister for Natural Resources and Mines and the Regional Mining Registrar. **The Ombudsman states that in at least some cases references in these letters can be interpreted as consistent with his Officer's decision on 27 September 2002**. The letters by the Premier, the Premier's Chief of Staff, the Minister for Natural Resources and Mines and the Mining Registrar indicate that they consider the Ombudsman provided a "clearance". (Letters referred to in our Submission of 1 June 2004 Page 3, Item (e) and copies included as Attachment 13.)

Although the Ombudsman states there was **no** decision by his Office about the substance of our complaint, the wording of his letter to DNR&M of 27 September 2002 has been administratively and politically interpreted, and acted upon, as having provided DNR&M and EPA with "clearance". In our view, the way the Ombudsman has handled this matter amounts to the Ombudsman having made a defacto decision that the substance of EEMAG's complaint was not valid. We believe the Queensland Ombudsman is a party to the dispute.

- **We are concerned that National Competition Council's process may automatically accept exemption of Cement Australia's mine discharges of up to 10 megalitres per day as a matter of process since the Ombudsman provided, and apparently**

continues to provide, "clearance" of DNR&M's and EPA's decisions, and since affected landholders cannot access an affordable, accessible and impartial appeals/dispute resolution process that is independent of State administration.

From our understanding the Ombudsman's letter of 23 June 2003 in his Conclusion on Page 3 may be misleading where it states quote: "(Officer) expressed the view, in his letter of 27 September 2002, that the Land and Resources Tribunal is the appropriate forum in which to settle this dispute if the parties are unable to reach agreement. His letter also discussed the tribunal's jurisdiction and procedures. As he stated, it is a specialist body for dealing with mining and related issues and has the advantages that it is not bound by the rules of evidence, operates informally and the parties usually meet their own costs."

"In a tribunal hearing, each party would be able to call its own experts and cross-examine the experts of the other parties. The tribunal could then make an informed decision. In my opinion, this is the most effective process for settling this type of dispute once mediation has been unsuccessful." End of quote. [Note: There has **not** been any Mediation.]

We understand that the Land and Resources Tribunal (LRT) process referred to by the Ombudsman is for submission of objections, for example Mining Lease applications, Exploration Permits, Environmental Management Overview Strategy (EMOS) documents when there is a 'significant increase in environmental harm' as required under EPOLA 2000, etc. FOI of EPA Memorandum of 22 October 2001 shows that EPA had already circumvented the requirement for formal objections to QCL's 2002 EMOS to be heard by the LRT for lease renewal.

EEMAG Inc as an organisation has **no** standing with the LRT.

Without a formal objection process EEMAG members are restricted in the matters we can raise and in the jurisdiction of the LRT, and there may be limitations on admissible evidence. Please refer attached extract from hopgoodganim.com.au, quote: '**So far as the objector is concerned, the Supreme Court made it clear that the LRT's power is to hear evidence from objectors that relates to the grounds of objections, and no more.'**

The Ombudsman's letter of 23 June 2004 on Page 3 refers to an EEMAG letter dated 4 March 2002. Our letter contained a barrister's pro bono advice on the Ombudsman's suggestion regarding the LRT. The barrister's advice was, quote:

- "We should only proceed if we can obtain the pro bono services of lawyers, valuers, hydrologists, resource consultants, accountants, etc.
- We would be most unwise to represent ourselves in the Land and Resources Tribunal. He commented that most lawyers have learned a great deal from their mistakes, and irrespective of how well EEMAG officers managed in the Land Court, since they have no legal skills they would be naïve to believe they would not make legal mistakes that would sound the death knell on our case, and elsewhere EEMAG officers would be totally out of their depth.
- **The Land and Resources Tribunal is a special government Tribunal which may only have power over certain things, and would limit our scope. (i.e. given the costs needed to participate effectively, other legal avenues may provide a better and more comprehensive remedy.)"** End of quote.

Our letter attached two (2) Statutory Declarations regarding a Solicitor's pro bono advice **not** to take an action in the LRT, stating his belief QCL-Holderbank (the world's largest cement

company) would throw their full weight against any action. The solicitor believed QCL would use legal arguments to use up time and money. He said he had experience of people who had gone into similar legal actions and had been financially ruined. The Solicitor advised **we would need around $500,000** for costs, and just because you have a good case it does not mean you win in Court. The solicitor advised EEMAG continue to pursue a political/administrative solution. (Copy of EEMAG's letter to Ombudsman dated 4 March 2002 available.)

Just how the State distorts water policy can be gleaned by the following example. In December 2003 a landholder applied to DNRM&E for arbitration under the Special Lease Terms & Conditions attached to the Cement Australia leases. This arbitration request arose because of a dispute between the landholder and the company about alleged impacts upon the landholder due to the dewatering practices of the East End mine. The arbitration was completed on 8 June 2004 but prior to release requires the signature of the CEO of that Department. We have now learnt that the arbitration has been submitted for peer review and subsequent to that, consideration will be given to undertaking an "independent review." Our legal advice is that this is extraordinary and entirely inappropriate conduct.

The way the Queensland Government, its agencies and its instrumentalities has administered these matters is indivisible from the administration of Water Reform in our district.

Yours sincerely,

Heather Lucke
Secretary, East End Mine Action Group Inc
Mt Larcom. Qld 4695.

2 Attachments