16 December 2004

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

Dear Sir/Madam,

Water Reform as proposed is one of Australia's great defining moments and the decisions will alter the political, economic and environmental landscape into the foreseeable future. It is therefore imperative that the process setting this agenda be fully accountable and equitable.

EEMAG members wish to submit additional information on the urgent need for an inexpensive, impartial and accessible merits review and appeals process on Water Resources Plans (WRPs) as part of a transparent and independent assessment of compliance with Water Reform. It is important to stress affordability for the proposed process so as not to exclude individuals or minor parties on financial grounds. The availability of such a process would greatly improve legislative review processes, and is essential to protect the rights of all parties.

We understand that Immigration, Taxation and the Australian Competition and Consumer Commission offer a review/appeals process, and thus do not see our request as irregular or unreasonable.

- **EEMAG members are unable to access an affordable merits review and appeals process to challenge alleged dishonest science and false benchmarking by the Queensland Government in assessments of water resource matters that we interpret facilitated the exemption of Cement Australia's mine dewatering from compliance with the *Water Act 2000* and the CoAG Agreements on Water Reform and Ecologically Sustainable Development.**

Two EEMAG members received legal advice dated 10 November 2004 that there is no basis under the Mining Lease, statute or common law by which to obtain a merits review of the decision of the chief Executive of DNR&M, that the only way a merits review could be obtained is as part of an action against the mining company and the Queensland Government, and that this would be an extremely large and very expensive case with potentially huge adverse costs likely to exceed $500,000.00 if unsuccessful. The advice concluded 'In these circumstances, there is no way forward for such an application for a merits review.' (Copy of legal advice of 10 November 2004 Attachment 1 - Confidential)

An EEMAG member who lives 8 km from the mine wrote to DNR&M on 23 September 2004 (again) claiming shortcomings in his DNR&M Assessment and requesting an independent review. DNR&M's response of 11 November 2004 advised that there is no provision in the special conditions that provide for an "independent review" of DNR&M's determination and quote: '….you may commence an action in the Land and Resources Tribunal which has jurisdiction to hear and determine matters regarding any assessment, damage, injury or loss

arising from activities purported to have been carried on under authority of the MRA or any other Act relating to mining.' and 'Any such action commenced by you in the LRT would in effect amount to an "independent review"'. (Copy of letters Attachment 2)

Legal opinion dated 25 November 2004 is that the Mining Registrar seems to be referring to Sec. 363(2)(h) of the MRA 1989 and states, quote: **'I do not consider that such proceedings amount to "an independent review" as referred to by the Mining Registrar.** To be successful under this section you would have to prove the liability and quantum of your claim [against Cement Australia] and this is quite different to you having a review merely of the decision of the Chief Executive under special Condition 4 to the Mining Leases.' (My bold) and

'This is a huge undertaking and given the fact that it would be an action against a corporate giant such as Cement Australia with huge resources to defend such an action, you as a landowner would be at a distinct disadvantage……The reality of these circumstances mean that it is virtually impossible for you to consider commencing such an action unless you are prepared to commit huge resources to proving your claim and defending any judgement which may be made in your favour against any appeals. I consider that there is a potential for costs, including any costs orders made against you, in such proceedings to be as high as $450,000.00 - $550,000.00.' End of quote. (Copy of legal advice of 25 November 2004 Attachment 3 - Confidential)

We interpret that the legal opinion of 25 November 2004 applies equally to the Ombudsman's recommendation (Refer EEMAG's submission 25 June 2004.) that the Land and Resources Tribunal is the appropriate forum to settle EEMAG's complaints against DNR&M and EPA, and that it was reasonable to require EEMAG members to take our case to the LRT as the most effective process for settling the dispute.

After the Ombudsman refused to continue to investigate EEMAG's complaints, we wrote to the Minister for Natural Resources and Mines on 1 October 2002 seeking funding to enable legal action to obtain a remedy to the dispute prior to renewal of the company's mining leases. On 5 November 2002 the Minister advised that he did not propose to accede to our request for funding. (Copy of Minister's letter 1 October 2002 Attachment 4)

EEMAG members have exhausted all State avenues for an attainable/affordable remedy, with the advice received from the Mining Registrar and the Ombudsman shown to be hollow and ill-founded.

ISSUES IN THE PRODUCTIVITY COMMISSION DISCUSSION DRAFT THAT IN OUR VIEW ARE RELEVANT TO OUR SITUATION

Exemptions under the public interest test etc

We refer to Box 2.4 The public interest test on Page 17. We interpret that Governments being allowed to secure exemptions for anti-competitive arrangements through the public interest test and by other means allowed the Queensland Government to exempt Cement Australia's mine pit dewatering (of up to 10 megalitres per day) from Water Reform and ESD. We have provided evidence that the Government used dishonest science and false benchmarking to rule that the mine has not caused Serious Environmental Harm (which is being used to justify the exemption) despite authoritative assessments of water monitoring data (collected since 1977) that mining has caused a reduction of up to 18 metres in water levels in an area of more than 60 sq km of agricultural land with loss of approx 30 km of perennial flows from 4 creek systems.

We respectfully request the Commission to consider whether an exemption under these circumstances complies with National Competition Policy Arrangements, taking into account the weight of technical evidence and findings that contradict the Government's position and the fact that there is no scope for disempowered stakeholders to access a proper merits review of the Government's technical assessments. If the exemption does comply, we consider it signals that there are serious shortcomings in NCP Arrangements that need to be remedied.

EEMAG wrote to our local Shire Council in January 2004 seeking support for a process to reinstate district water supplies. The Shire Council responded on 21 January 2004 that they were unable to assist and stated, quote: '… I advise that in a recent letter to council the Gladstone Area Water board has identified (through a process undertaken by the Queensland Competition Authority on behalf of the State Government) that **the current full cost of water provided to the East End Mine and the town of Mt Larcom from the source at Lake Awoonga is $4939 per megalitre.** To put this into perspective, Mt Larcom residents currently pay between $500 and $950 per megalitre under the current three tier rating structure.' End of quote. (My bold.) (Copy of letter from the Shire Council of 21 January 2004 Attachment 5.)

If the mine's exemption complies with NCP Arrangements, and since infrastructure/water costs under competition arrangements cause options for alternative supplies to be way out of reach for landholders (who are independently assessed as having lost their supplies to the mine's dewatering) then we believe that NCP Arrangements and Water Reform discriminate against local landholders in every aspect of our water supply options.

We observe that Water Reform is robustly enforced on landholders elsewhere in the State, with some taken to Court and fined for infringements that we perceive as quite minor in comparison to the mine's alleged wilful abuse of our districts water resources and inadequacies in the company's water monitoring programme.

- We request the Commission to recommend that **all** exemptions from Water Reform - when there is well founded and quantifiable dissent - be subject to an inexpensive and impartial merits review and appeals process under National Competition Policy arrangements.

Trading of water entitlements

We refer to Box 8.3 The National Water Initiative on Page177. EEMAG members interpret that the Queensland Government may have pre-empted the concept of 'allocation of tradeable water entitlements, separate from land, as perpetual or open ended rights in accordance with water plans' and basically allocated the bulk of the district's water supplies to Cement Australia's mine for the Draft Calliope River WRP. During a meeting with DNR&M in early 2004 to discuss the Draft Calliope River WRP, a DNR&M Officer advised that it is not possible to allocate mine pit discharges back to water users who have lost supplies upstream of the mine.

In our experience, the way the mine's interception (and discharge as waste) of the bulk of our districts accessible water resources is administered amounts to Government expropriation and trade-off of the bulk of landholders' supplies including for small scale irrigation, without fair and just redress, as a substantial financial benefit to big business. We have provided evidence of dishonest science and false benchmarking that in our view facilitated the trade-off by allegedly covering up the extent of the mine's impacts on landholders' supplies.

We request the Commission to consider whether a trade-off arrived at in this manner is legitimate and condoned under Water Reform and whether it complies with the spirit and intent of Water Reform, which is supposed to provide greater equity and certainty to water users. If it is legitimate, we believe it identifies shortcomings in Water Reform arrangements that represent a significant threat to the security of the entitlements of all small landholders.

- We therefore request the Productivity Commission to recommend in your Final Report that **before** any water rights can be traded, that Water Resources Plans be independently assessed as in compliance with the spirit, principles and objectives of Water Reform with entitlements of all parties fairly and justly established and properly protected, and with opportunity for dissenting individuals/parties to access an inexpensive and impartial merits review and appeal process.

Page 2376 of Hansard shows that in the Queensland Parliament on 24 September 2004 the Minister for Natural Resources and Mines conceded that his Department had not arrived at a formula or a means of valuation of land separated from its water entitlement. The foreseeable valuation effect of stripping (ground) water supplies from land title is partly reflected in the Land Court decision of 28/02/2002 which by arrangement with DNR declared as blighted approx 170 sq km in the Cement Australia mine project area and reduced primary industry unimproved valuations by up to 25% due to water loss and district negativities. (The Land Court Decision of 28/02/2002 is included in the Mt Larcom CRP Report as Appendix 11.)

- An inexpensive and impartial merits review and appeals process under National arrangements for Water Reform is EEMAG members' (and probably other dissenting small landholders') only hope for protecting our rights and for implementation of efficient and ecologically sustainable management of water resources in our district with fair and just sharing of the resource. We again appeal to the Productivity Commission to recommend the urgent establishment of such a process.

Yours sincerely,

Heather Lucke
Secretary,
East End Mine Action Group Inc