Submission on the Resources Sector Regulation draft report

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Doctors for the Environment Australia (DEA) is a national voluntary organisation of medical doctors and students. We are from all specialities of medicine - GPs, surgeons, physicians, anaesthetists, psychiatrists, paediatricians, public health specialists, academics, medical students and researchers. We bring together an extraordinary level of leadership and expertise drawn from every branch of medicine. Good health is inextricably linked to healthy, stable environments. Our mission is *to promote health through care of the environment.*

SUMMARY
DEA is pleased to provide input into the Productivity Commission's Draft Report on Resources Sector Regulation as regulation of this sector has the task of balancing economic gains from extraction with losses from environmental destruction and pollution.

1. Environmental costs from resource development include the costs to human health in both the short- and long-term. These costs include not only the physical but mental, social and emotional components of health.
2. Development costs also include those on biodiversity and sustainability of complex ecological systems.
3. Health costs and damage to infrastructure arising from global warming and climate change due to greenhouse gas emissions must be taken into account.
4. Regulation has the onerous responsibility of balancing benefits with costs at all levels, from local individuals to planetary health.
5. To provide this balancing role, regulation must consider community input at the early stage of the development process. Social licence from those affected by development must be given the highest consideration. Since global citizens may be adversely affected, country and world views must be given due consideration.
6. Resource development should not be considered 'automatic' just because a resource is present. Extraction must be beneficial at all levels.
7. In the determination of cost/benefit, contribution to GDP gives a false impression as economic activity is counted at the time of production and again at reparation. Use of a General Progress Indicator would be more valid.
8. Resource companies should fulfill a 'fit and proper person' test to avoid the potential for destructive extraction and subsequent litigious activity.
9. More effective and stronger federal environmental laws via the EPBC Act would clarify issues for all parties involved in resource development.
10. Laws are only effective if there is strong monitoring and enforcement.
11. Accuracy in environmental assessments is more important than efficiency.
12. That resource companies have unfettered land access in Australia needs review, particularly where there may be violation of Indigenous land rights.
13. The use of benefit sharing for communities is questionable as it has the capacity to be used as a bribe to the detriment of health and our environment.

Overview

DEA will first respond to nine of the Key Points on Page 2 of the Productivity Commission Draft Report (PCDR) Overview and then to the Overview itself.

Point One

DEA considers that "reasonable requirements" for environmental impacts are very often assessed with no true understanding of the importance of environmental health for the future health of all Australians. Health includes not only the physical but mental, social, cultural and emotional health. In addition, impacts on biodiversity and the sustainability of resource activities need to be given the highest priority. Recognising these imperatives invariably means that resource activities should be examined under a different lens where community wishes and expectations are afforded prominence.

Point Two

It may be possible to improve regulatory processes and reduce unnecessary burdens but because environmental considerations are so essential to our future well-being, it is important that these are not diluted. The problem may be that there are no clear over-riding guidelines on which environmental approvals can be based. The need for an updated federal EPBC Act is crucial. For example, there should be no need for a protracted debate if a particular project results in high carbon emissions when a low or zero-emissions alternative is available. Much delay occurs when resource companies continue to contest fundamental environmental principles rather than accepting them and working with them.

Point Three

It is clear that regulation of resource development is split into so many jurisdictions that no one regulator has the overall view of what is happening across state boundaries, bioregions and the country as a whole. Perhaps the fault lies with regulators of the resource sector who do not consider fully the public interest when approving resource developments.[1] Perhaps there needs to be a paradigm shift in assessment of the usefulness of resource development. A full and detailed life cycle analysis of the project must weigh up costs to human health, future generations and climate change. Projects must pass the test that the overall benefit of resource development outweighs the negatives. Costs to future generations are barely considered e.g. in the coal industry, there is no liability accepted for contribution to greenhouse gas emissions or the costs faced by the community to deal with air pollution.

The "market" may not be the best decision-maker. The Australian government must bring its expertise to decide if a project goes ahead and take into account all the contributions to environmental damage, the cost of which would be passed on to future generations.

Attempts to oversimplify the regulatory process are not the answer. Resource developments must comply with issues such as human rights, Indigenous rights,

[1] Submission to Australian Government Productivity Commission Resources Sector Regulation - 2020: Professor John Chandler, Co-Director, Centre for Mining, Energy and Natural Resources Law, University of Western Australia

the precautionary principle, intergenerational equity, and be required to honour social licence.

Point Four
Regulators need to be cognisant of the downside of reckless resource development. We agree that successful reform will require attention to factors which protect the intricate ecology and human values impacted by mining. Clearly there are many resources that can be mined which have limited environmental impact for which effective governance and accountable frameworks can be applied.

Point Five
Regulatory systems differ from country to country because of geographical, financial and resource differences. We need to recognise that all of Australia's as yet undiscovered fossil fuel resources should not be developed in the foreseeable future.

Australia is a desirable place to invest. Even though regulatory processes are complex, they are equally so in other countries. Regulation alone is not the major factor impeding investment.

Point Six
While a "risks and outcomes" approach could be fostered, greater awareness of the downsides of resource mining should be clearly discussed with the community. Currently there is an inbuilt expectation that resources should be developed just because they are there.

Point Seven
Communities and landowners understandably want to know how a project may affect them and to have the opportunity to comment early on proposals. Enhanced regulator accountability and transparency would help in building confidence in the regulatory process.

Point Nine
Both governments and companies have responsibilities for addressing negative impacts of resources projects on local communities. Communities must have the opportunity to voice opposition to a development; if the majority oppose a development, then the development should not proceed. We believe companies must legally require social licence to operate.

Although companies in consultation with local governments and community groups can share benefits with local communities, the capacity for these benefits to act as a bribe to obtain social licence should not be overlooked.

Point Eleven
Although many resources projects are located on native-title land, Aboriginal and Torres Strait Islanders do not own their mineral rights. This is a broken promise by the Australian Government which needs to be rectified.
There needs to be protection for indigenous cultural and heritage sites and all companies should be required to document these to an up-to-date and transparent public register.

Key Issues from the Overview

The Productivity Commission seems to be particularly concerned about the expense and uncertainty caused by environmental oversight for little apparent benefit (Box 4 Pg 12 PCDR).

However, the problem may lie with the resource sector which traditionally had every expectation that resource approvals would be obtained with just a cursory attendance to environmental requirements and a token effort to achieve social licence. The other problem is that environmental laws have been generally weak and fragmented.

Now resource extraction needs to be assessed through a different lens. With the planet moving towards unsustainability, environmental breakdown and ecological mayhem, simple cost/benefit analyses are not sufficient.

Firstly, there is a need to take into account costs over a wider sphere. Fossil-fuel mining inevitably leads to increasing greenhouse gas (GHG) emissions contributing to global warming and climate change. Costs, locally and globally, of consequent adverse health effects[2] and damage to infrastructure and the biosphere are predicted to be enormous and cannot be simply passed onto future generations.[3] We have already experienced the costs arising from unprecedented drought and bushfires which are still only a glimpse of what the future holds under unbridled global warming.

Secondly, why the urgency to extract so much in such a short period? Time-frames for resources have been mentioned in terms of hundreds of years (Fig 2 PCDR). Should we not be thinking in terms of thousands of years?

Thirdly, "social licence" is not some vague, insubstantial notion, but represents a true democratic assessment of the overall value of a project, not just its capital returns. We contest the statement that *"Policy positions not based on sound evidence, such as blanket bans on gas exploration undermine investment and community welfare."* (Pg 22 PCDR), as in some circumstances, a blanket ban could be regarded as legislated extension of social licence. Blanket bans can save resource industries both time and money which they would otherwise spend on attempting to overturn overwhelming community attitudes and scientific argument.

Fourthly, consideration needs to be given to scope 3 GHG emissions. Australia is now one of the highest exporters of GHG emitting products, second only to Saudi Arabia. We are propping up global industries which will delay transition to low emissions technologies. Australia is not just a small-bit global player, and has the resources to be a leader in exportable renewable energies. We contest that *"targeting scope 3 emissions on a project-by-project basis is likely to be an ineffective mechanism for reducing global emissions"* (Pg 22 PCDR). Scope 3 emissions make a major contribution which may not be counted elsewhere.

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[2] https://www.dea.org.au/wp-content/uploads/2017/02/DEA_Climate_Change__Health_Fact_Sheet_final.pdf

[3] https://www.climatecouncil.org.au/resources/compound-costs-how-climate-change-damages-australias-economy/ https://phys.org/news/2019-11-climate-impacts-world-trillion.html

When our governments have struggled to reach decisions which have far-reaching health, scientific and social implications, it is hard to avoid a *project-by-project* approach.

1. About the study

Because of our concern for the environment, DEA will comment on the interaction between resource sector aspirations and care of our environment. DEA notes the Resource Sector paper deals with the following resources: iron ore, oil and gas (conventional and unconventional), thermal and metallurgical coal, other metal ores including gold, bauxite, copper, uranium, mineral sands, rare earths and other critical minerals and construction material mining. It does not deal with large-scale renewable resources. DEA would argue that renewable resources should be included to diminish the political hostility that exists between the two approaches to energy production.

Examining the capacity and the suitability of renewable resources would enable a more sophisticated analysis of fossil-fuel derived energy production to be examined in the context of what is best for Australia and our planet. Just because there is a mineral resource does not mean it should be mined without a full consideration of the consequences. That the Commission has *focused on the issues that have the most potential to impose material and unnecessary impediments to investment* implies that investment is an end in itself. It is disappointing to read that *The life cycle of a resources project* (Pg 65 PCDR) does not refer to impacts on our environment except at the rehabilitation stage, although it does acknowledge the EPBC Act, native title legislation, community engagement and benefit sharing. While in agreement with the main outcomes of benefit sharing (Pg 67 PCDR), this should not entice approval of a project which ultimately is unfavourable to the local and wider community. In other words, benefit sharing should not act as a bribe. DEA has contributed to the current review of the EPBC Act, which needs to have strong and clear protective environmental laws and simultaneously allow for mining which conforms with these laws.

2. Resources activity in Australia

Much is made of the GDP as a suitable index for measuring the value of an enterprise to Australia. However, the GDP does not measure the value of assets, be they tangible or intangible. Resource activities by their very nature can result in loss of an asset, for example, through pollution, or loss of amenity caused by increased traffic noise, or from diminution of fresh water supplies. Repairing an environmental problem is counted doubly in the GDP; when the problem is caused by an activity and then when it is rectified. Unless the GDP treats remedial action following a destructive activity as a negative, a more suitable marker for resource activity is the **Genuine Progress Indicator (GPI)**.[4] The GPI accounts for the negative effects which are mainly health, and more remote social and environmental values. The GPI can also include resource capital depletion and recognize the need for sustainability. Accounting for these shortcomings emphasises that GDP is particularly inappropriate for the resources and mining industries.

[4] https://www.tai.org.au/sites/default/files/DP14_8.pdf.

A vital question is, "Who benefits from resource development?" The beneficiaries are large mostly foreign owned companies which are developing our resources now owned by the Crown, for company and shareholder profit. The Australia Institute estimates that 86% of mining is foreign owned, and in this report [5] raises serious questions about foreign corporate lobbying for resource development.
The Australia Institute in its recent submission to the Inquiry into Foreign Investment Proposals, Submission 8 to Senate Economics Committee, 2020 (page 4)[6]; stated that "*We might wind up these preliminary comments by noting that the presumption that Australian interests are advanced by foreign investment is often wrong. Take the example of foreign interests taking over a profitable company in Australia without changing its business model and content to sit on the profits formerly enjoyed by the previous owners. Nothing changes with respect to its output, employment and so on and so GDP is exactly what it would have otherwise been in the absence of the foreign investment. However, Australia's net national income has fallen because the profits generated no longer accrue to Australian owners but to foreign investors.*"

Hidden Costs

Australian citizens and tax payers are left with an increasingly degraded environment; loss of health, amenity and biodiversity; ever declining and potentially contaminated water reserves; deleterious effects of climate change from GHG accumulation, such as extreme weather events, drought and catastrophic bush-fires; and air pollution from the burning of fossil-fuels. Resource companies do not pay for the bulk of these damages.

- Climate change is predicted to create huge economic costs for Australia.[7]
- Air pollution from fossil-fuel use in Australia is estimated to cost between $11.1 billion and $24.3 billion annually solely as a result of mortality.[8]
- Water depletion. The value of water used by coal mining and coal-fired power stations per year in NSW and Queensland is estimated to be up to A$2.5 billion.[9]
- Mine rehabilitation. There are 60,000 mine sites around Australia that need to be rehabilitated.[10] Costs of rehabilitation are estimated to be billions of dollars.[11]
- Heavy metal contamination from Acid Mine Drainage (AMD). The outflow of acidic water from a mining site leads to heavy metal contamination of water and soil. AMD *"is a worldwide problem, leading to ecological destruction in watersheds and the contamination of human water sources by sulfuric acid and heavy metals, including arsenic, copper, and lead. Once acid-generating*

[5] https://www.tai.org.au/content/undermining-our-democracy-foreign-corporate-influence-through-australian-mining-lobby
[6] https://www.tai.org.au/sites/default/files/Submission%208%20-%20The%20Australia%20Institute.pdf
[7] https://www.climatecouncil.org.au/wp-content/uploads/2019/05/costs-of-climate-change-report-v3.pdf
[8] https://www.dea.org.au/wp-content/uploads/2014/05/DEA-Policy-Ambient-Air-Pollution-June-2017.pdf
[9] https://reneweconomy.com.au/australias-black-coal-industry-uses-enough-water-for-over-5-million-people-98731/#:~:text=In%20total%2C%20coal%20mining%20and,high%20security%20water%20licence%20costs).
[10] https://www.abc.net.au/news/2017-02-15/australia-institute-report-raises-concerns-on-mine-rehab/8270558
[11] https://independentaustralia.net/business/business-display/who-will-pay-the-178-billion-mining-rehabilitation-bill,7772

rock is crushed and exposed to oxygen and the surface environment, acid generation is very difficult to contain or stop, and can continue for tens or thousands of years until the available sulfide minerals are exhausted".[12] In Australia in 1997 this was estimated to cost $60 million per year.[13]

- Water contamination has an environmental cost.[14]
- Potential costs to agricultural, community, and mental health from unconventional gas mining.[15]

Climate change

Climate change policies will have a huge effect on demand for Australia's traditional fossil fuel resources in the future. The resource industry will need to consider the prospect of "stranded assets" in fossil-fuels which might prevent companies from attending to remedial measures and impose a risk to governments and shareholders who face a huge potential loss. As the potential of these industries is likely to be compromised, there is a need for regulatory authorities to widen the concept of resources to include the role of sun, wind, tidal, wave and geothermal when assessing project potential.

"Untapped resources represent a rich endowment" (Pg 74 PCDR) is a simplistic view of our resources and ignores the responsibility for managing these sustainably and free of adverse environmental outcomes which may emerge years later. That *"Large volumes of discovered resources have not yet been mined"* does not mean that we can exploit them without regard to the long-term future.
The fact that larger resource companies tend to be internationals does not augur well for environmental protections in Australia. Flagrant environmental abuse either here or overseas is common, the financial penalties of which can be absorbed by large budgets.

Climate change policies will affect resource development, not only in Australia but throughout the world. Australia's recent ascendancy in gas exports via liquid natural gas (LNG) is an example of the pitfall of over-enthusiastic development of a resource which has led to the increasing contribution of fugitive methane emissions to GHGs and to adverse effects on domestic prices. All mining, gas, oil and coal operations must progressively reduce their emissions to zero by 2050, which will only be possible if ambitious interim targets are set and achieved.[16]

3. Regulation: rationales, principles and landscape

In balancing the degree of government intervention, the scale has to swing further towards environmental and social protections for it is these which will be

[12] http://www.groundtruthtrekking.org/Issues/MetalsMining/AcidMineDrainage.html#ixzz6Uc3vgxN4

[13] http://www.environment.gov.au/science/supervising-scientist/publications/ssr/acid-mine-drainage-australia-its-extent-and-potential-future-liability

[14] https://onlinelibrary.wiley.com/doi/abs/10.1111/wej.12469

[15] https://www.dea.org.au/wp-content/uploads/2018/11/DEA-Oil-and-Gas-final-11-18.pdf

[16] https://www.unenvironment.org/news-and-stories/press-release/cut-global-emissions-76-percent-every-year-next-decade-meet-15degc

valued in the future, not how much the resources have been exploited. Certainly, there needs to be a balance, but ever since resource development expanded in the last few decades, the balance has been in favour of miners.

There is a hugely important role for governments to strike a balance between extraction and profits, and equity and environmental care. Markets can establish price signals to determine *how much should be produced, prompt production by the most efficient companies and ensure that output goes to the consumers who value it most highly* (Box 3.1 Pg 91 PCDR) but the potential problems are too great to be left to markets alone. Under this system, the effects of environmental destruction usually only become evident when they are too far advanced for efficient repair.
For comment on the EPBC Act, see Section 7.

4. Resource management

For the government to provide pre-competitive geoscience information would seem to be a very reasonable way to reduce industry costs, which would then allow more time and expense for a sound and accurate assessment of viability and environmental compatibility. Data repository and sharing must occur between all jurisdictions, public and private companies.

That large resources projects be treated separately for licensing processes introduces the danger that the development becomes a *fait accompli* without true checks being applied. When Adani was granted approval, it is astonishing that the "fit and proper person" test was unavailable in Queensland as surely Adani would have failed under the criteria listed (Pg 111 PCDR). Resource companies must have 'fit and proper testing' to see if they are suitable to hold tenements. Transparency International Australia (TIA) noted in a 2019 report (page 3)[17]: *"Corruption risks are not just a developing country paradigm. This research confirms even mature mining jurisdictions, such as Australia, have vulnerabilities in the mining approvals process that could result in corruption and compromised decision making. A key risk identified for large scale mining and coordinated projects (associated infrastructure), is inadequate due diligence investigation into the character and integrity of applicants for mining approvals. This includes a lack of investigation of beneficial ownership. Without adequate due diligence—even basic research into the track record of mining applicants—there is a risk that permits will be awarded to companies with a history of non-compliance or corruption, including in their operations in other countries."*

The wisdom of special State Agreements must be questioned, such as Western Australia's State Agreements, and South Australia's Roxby Downs Indenture Act. As stated in an opinion piece, *"Olympic Dam ought to be subject to legislative and regulatory controls and standards at least as rigorous as those that apply to smaller projects. To apply considerably weaker standards is indefensible".*[18]

DEA contests that bans and moratoria, particularly on unconventional gas, are *"driven for political purposes"* as claimed by Australian Petroleum Production and Exploration Association APPEA (Pg 118 PCDR). These bans were the outcome of

[17] https://transparency.org.au/wp-content/uploads/2019/10/Australia-Summary-Report.pdf
[18] https://www.adelaidenow.com.au/ipad/green-and-mudd-indenture-act-scourge/news-story/415de1c962103b4de8a911101ee557b9

extensive review and input from local people, communities, farmers and environmentalists concerned about damage to subterranean formations, soil, water and air. APPEA has not acknowledged it is science, not politics, of further gas exploration and usage that is inconsistent with the global aim to reduce greenhouse gas emissions. Nowhere in the discussion in this section has any proponent of development mentioned fugitive emissions of methane, which are higher than previously thought.**[19]** There is evidence to show that, apart from all the local risks, fugitive methane emissions when added to the emissions from the use of gas result in ***as much contribution*** to greenhouse gas emissions as the use of coal for equivalent energy production[19]. In addition, vast quantities of precious water are used, valuable farming land is damaged, there is potential for water, air and soil contamination, and evidence is accruing of harmful health effects on nearby residents.[20]

DEA has summarized Unconventional Gas (UG)[21]: *"Good health is dependent on having clean air, clean water, a safe sustainable food supply and a stable climate. There are serious threats to these determinants of health from unconventional gas development. They relate to water, land and air pollution by chemicals used and mobilised in the process, water security, degradation of productive agricultural land, community health and loss of livelihood and landscape. Methane release and leakage also inexorably adds to the greenhouse gas burden of our planet. Cumulative long-term effects risk damaging the natural systems upon which we rely for our well-being."*

The despoliation caused by UG activities overseas and the collapse of huge enterprises should sound a warning for Australians.[22] Rather than causing uncertainty, bans on UG activities provide certainty that a development cannot proceed and that the interested company can spend its money and efforts more profitably elsewhere.

The availability of more gas may reduce domestic prices relative to global prices in the short term, but market volatility and Australia's involvement in the complex international market provides no guarantee for future prices.

As the Environmental Defenders Office (EDO) wrote[23] in their submission on page 4 *"Ensuring the assessment process is transparent and accountable to the public through meaningful community rights improves the company's social licence to operate, gives the public confidence in the assessment process and reduces opportunities for corruption. It is also a* ***fundamental principle of***

[19] https://www.nature.com/articles/s41586-020-1991-8.epdf?sharing_token=c7mo5DQU2WPiN5PdcV4d9tRgN0jAjWel9jnR3ZoTv0NsP7YL6bUMs5U2mb93hxTh3dwZVOOiq02DPQ_6gyAu8aymFiuqKho1ZpyOC8M7T5CHyzfozTq2d3Itm-BRuSszwaDMM4MzYj4IPrGcH68C-fN8S-pypeVf2sN4VVAGACmXqjd0sb-kTq5cpFXdlntdw5zSmm0IuwIcWZNk1DZuvRiNoQJG_yUoUEZc0N_OUtSOMYBLpv4Ri2rtikxJC5ZbToz2_Uu2r0qRFUJZJ2ImDl-uLHJ7Tc7ztc5r58PdZJ9WlyGiyTkF1I71z49iRdZhi2ivDK3t5YJMy4e27WYpXEjKewXkiW6HsbtCouwbs94%3D&tracking_referrer=www.theguardian.com

[20] https://www.canberratimes.com.au/story/6829180/theres-enough-questions-around-csg-that-it-makes-sense-to-turn-it-off/

[21] https://www.dea.org.au/unconventional-gas/

[22] https://www.nationalgeographic.com/environment/energy/great-energy-challenge/big-energy-question/how-has-fracking-changed-our-future/

[23] http://www.edo.org.au/wp-content/uploads/2019/11/191108-EDO-Submission-to-Productivity-Commission-on-Resource-Regulation.pdf

natural justice *that individuals should have the power to have a say in decisions which affect them, and decisions surrounding the exploitation of our state-owned resources and consequent impacts on our shared environment affect us all."*
There is a large body of evidence showing direct and indirect environmental, land, soil, air and water damage (EPA USA) from unconventional and conventional gas exploration and production as outlined in this Compendium.[24]

In spite of the statement (Pg 118 PCDR) *"The weight of evidence presented to these inquiries, and the experience of jurisdictions where unconventional gas development takes place, suggests that its risks can be managed effectively. The evidence base from operations in Queensland and overseas is building over time and likewise suggests that the risks of unconventional gas (and other controversial resources projects, such as offshore petroleum) can be managed effectively with regulation",* there are multiple examples of failures by regulators to monitor and enforce compliance documented by Lock the Gate[25], Community over Mining[26], EDO[27], the Australian Conservation Foundation[28] and other conservation and community organisations. In the south east of South Australia (SA), the Limestone Coast Protection Alliance (LCPA) prepared a submission[29] for the SA and Victorian Inquiry into unconventional gas in 2015 and 2016 which contained many examples of failure of regulators to monitor and enforce compliance.

5. Land Access

In Australia, underground resources are owned by the Crown on behalf of the community, not by landowners which is different to other countries such as USA and UK. Historically, the Crown owned gold and silver and it is only more recently for example in NSW, that petroleum (1955), coal (1981) and uranium (2012) rights have been given to the Crown. Many Australians are unaware of Crown ownership and are shocked to learn that landownership does not include resource ownership and that anyone with an exploration licence can come onto one's land and mine or drill for gas and oil.

Many Australian bodies including National Farmers Federation, Grain Producers SA, Lock the Gate and LCPA have called for right to veto by landowners.

In a 2017 survey by CSIRO on attitudes to mining[30], *"Australians believed quite strongly that the consent of local communities and Indigenous communities needs to be gained before mining development takes places. This did not vary across the regions and had also not changed since 2014."*

DEA agrees that it is always important to reduce unnecessary burdens in regulatory processes but it seems that current regulation is heavily in favour of the resource company since Australian landowners do not have a right to veto a

[24] https://www.psr.org/blog/resource/compendium-of-scientific-medical-and-media-findings-demonstrating-risks-and-harms-of-fracking/
[25] https://www.lockthegate.org.au/about_us
[26] http://www.communityovermining.org/index.html
[27] https://www.edo.org.au/the-latest/
[28] https://www.acf.org.au/our_organisation
[29] LCPA submission to SA and Victoria and Senate Select Committee on Unconventional Gas mining.
[30] https://publications.csiro.au/rpr/download?pid=csiro:EP178434&dsid=DS1

development. However, veto should be supported by sound arguments based on the necessity of a mine, and a clear cost/benefit ratio where the full health impacts, environmental costs, climate and water impacts, and social licence are included.

Land access agreements set out compensation to be paid by the resources company to the landholder but this mechanism does not take into account environmental costs or intangibles. That *"Leading-practice policies seek to balance the trade-offs between resources development and other land uses to maximise economic benefits for the community"* (Pg 128 PCDR) ignores health, environmental and intangible effects and also neglects economic effects on the wider community, nationally and globally.

Except for bans and moratoria on gas mining, examples where resource activity does not prevail over agricultural or other uses of land are exceedingly rare. The Council of Australian Government's Multiple Land Use Framework (MLUF) (COAG SCER 2013), sets out several goals which provide a useful toolkit for state and territory governments when determining land use issues. The MLUF's direct impact on policy appears to be limited, with only SA explicitly developing its own MLUF. However, similar ideas have been incorporated into the development of strategic land use policies in other jurisdictions (Pg 127 PCDR).

"The MLUF is intended to be used where land access and land use conflict has the potential, real or perceived, to arise. Whilst it has been developed with the minerals and energy resources sectors in mind, the underlying concept can extend to all sectors, interests and values including but not limited to agriculture, minerals and energy resources, environmental, heritage, cultural, tourism, infrastructure, community and forestry" (MLUF page 2).[31]

Areas of high conservation value with critical habitats and threatened species are irreplaceable and need priority and protection over resource extraction. Resources will remain but endangered species will disappear for ever. Although it is important to reduce unnecessary burdens in regulatory processes, current regulation is heavily in favour of the resource company:

- Landowners in Australia do not have a right to veto a development.
- Communities do not have the right to veto resource activity
- Not all jurisdictions have landowner appeal processes in place.
- Land access agreements that set out compensation do not take into account environmental or intangible factors.
- Monetary compensation cannot replace biodiversity loss.

DEA recommends:

- Economic profits and benefits should not override health, safety, environmental factors and sustainability of projects.
- Free, prior and informed consent (FPIC) for all parties should be required
- Written notification agreements need to be in place before all exploration activities in all jurisdictions.

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31 http://www.coagenergycouncil.gov.au/sites/prod.energycouncil/files/publications/documents/Multiple%20Land%20Use%20Framework%20-%20Dec%202013.pdf

6. Approval processes

There needs to be meaningful consultation with communities about regulatory design for resource projects prior to approval. The environmental approval process must consider not only environmental, economic, and social impacts of projects but also health, climate change and water impacts and state this explicitly. Clearly timeframes for scoping environmental assessments are unrealistic and inadequate and provide little opportunity for community engagement.

"*In contrast, the planning phase of impact assessment in Canada, which culminates in tailored impact statement guidelines, can take up to 180 days and involves multiple stages of consultation with Indigenous groups and other interested stakeholders (Impact Agency of Canada 2019)"* (Pg 158 PCDR)

In developing an Environmental Impact Assessment (EIA), data gathered should not be commercial-in-confidence but kept in a data repository available to other proponents (Box 6.4 PCDR). This would help to de-mystify environmental effects and assist resource companies in developing greater understanding and appreciation of their importance.

While the terms of reference for an EIA are set by the regulator, the regulator should not be deterred from requiring broad-scale data as mining, storage and treatment operations can have wide-reaching and long-term consequences. In the past, these have sometimes been overlooked with disastrous outcomes. Currently GHG emissions are not considered as *material, or a significant level of risk* but as Judge Preston ruled in the Rocky Hill case in 2019, the effects on climate change were an additional reason to reject the expansion of a mine in the Gloucester Valley.[32]

DEA support EDO of Australia who in their submission[33] has recommended;
"Support best practice community engagement in resource regulation by recommending the introduction of:
(a) meaningful third-party submission and post-approval merits appeal rights across all jurisdictions in Australia and nationally;
(b) tailored community engagement for First Nations people with interests of any kind in the land;
(c) open standing for submission, appeal and third-party enforcement of resource regulations; and
(d) consistent reporting on public participation methods, statistics and outcomes; and
(e) meaningful free, prior and informed consent requirements for all landholders, particularly for First Nations people, across all Australian jurisdictions, to similar or better standard as that provided under the Aboriginal Land Rights (Northern Territory) Act 1976 (NT)".

[32] https://www.abc.net.au/news/2019-05-09/rocky-hill-coal-mine-dead-as-company-abandons-appeal/11095326
[33] https://www.edo.org.au/publication/submission-to-the-productivity-commission-inquiry-into-resources-sector-regulation/

7. Managing environmental and safety outcomes

Because resource development places additional stresses on the environment which is being severely challenged by global warming and climate change, there needs to be a framework of management. To guide this, an entirely new generation of environmental law is required, as developed by the Australian Panel of Experts on Environmental Law (APEEL).[34] DEA particularly supports the notions that:

a) under new law, approval powers for nationally significant matters should be retained by the Commonwealth, not handed over to the states and territories;
b) new law must equip the Commonwealth with the necessary regulatory tools to ensure the law can be effectively implemented;
c) new federal institutions should be created to improve governance and accountability, including an independent National Environment Protection Authority to administer national environment law at arm's length from the government and a National Environment Commission to set national environment standards, develop national and regional environment plans and report on national environmental performance.

EDO in their submission[35] on page 4 noted that: *"A new National EPA can greatly assist in effectively addressing challenges through acting as a trusted institution capable of undertaking independent assessment and enforcement, as well as providing independent advice to decision-makers on, and oversight of, national resource regulation outcomes. An independent National EPA can operate at arm's-length from government to remove the risks of corruption or conflicts of interest and to ensure regulations are implemented efficiently, in a non-biased, non-political way."*

EPBC Act

The Environment Protection and Biodiversity Conservation Act 1999 requires amendment.

Although some Australian states have taken a default position and are creating stronger environmental controls, DEA's view is that there is a clear and vital need for the Commonwealth government to hold responsibility for delivering environmental and heritage outcomes. The premise of the EPBC Act is that the Commonwealth is responsible for "matters of national environmental significance". Yet under the present system, environment law is predominantly enacted by the states and territories, with minor input from the EPBC Act.

This fragmented and decentralised model of governance means there is no one body charged with coordinating efforts to protect our environment nation-wide and it is unclear who is ultimately responsible for outcomes. It also means that standards and therefore levels of protection vary markedly between states and territories.

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[34] Australian Panel of Experts on Environmental Law, *Blueprint for the Next Generation of Australian Environmental Law, August 2017*

[35] http://www.edo.org.au/wp-content/uploads/2019/11/191108-EDO-Submission-to-Productivity-Commission-on-Resource-Regulation.pdf

There is also inconsistent environmental monitoring and reporting by the states and territories, with the result that Australia's environmental accounts are incomplete and grossly inadequate to facilitate evidence-based decision making.

As noted in the State of the Environment (SoE) Report 2016[36], *"The lack of effective monitoring and reporting has been raised in every jurisdictional report, and multiple other reports and papers, as a major impediment to understanding the state and trends of Australian biodiversity."* The SoE report further comments that *"no consistent national-level data are available on the impact of pressures on all aspects of biodiversity in the past 5 years."* How can we adequately protect our environment if we do not know what it is that we are trying to manage?

An additional issue is a lack of transparency in process, decision making and accountability. Whereas the Commonwealth Parliament is transparent in some of the information it considers, and it is possible for the public to read submissions to parliamentary committees and benefit from the information supplied by experts, this is generally not the case for State and Territory Parliaments. DEA and Climate and Health Alliance (CAHA) wrote[37] in an open letter to the independent Review Panel of the EPBC Act: *"In reforming Australia's environmental laws, we urge that:*

- *Human health considerations are kept front and centre. While our precious natural environment deserves protection for its own sake, human health and wellbeing also depend upon it.*
- *An entirely new generation of environmental law is considered, as developed by the Australian Panel of Experts on Environmental Law (APEEL). Much greater and more robust environmental protections will be required if we are to survive and thrive as a community into the future.*
- *The institutions responsible for developing and delivering national environmental law include individuals with public health expertise. This will ensure our environment and our health are seen as an integrated and indivisible whole."*

Our environmental indices are deteriorating, not improving. A robust EPBC Act is of vital importance to the future wellbeing of this country and will go a long way to restore our environmental reputation globally.

From the SoE report 2016[38], *"Mining developments have slowed in recent years, although the management of former mining sites is an emerging concern. So too is the expansion of unconventional gas extraction, particularly because of concerns about safety, but also because of competition for land with other uses."*

And from Australia's SoE report from ANU (2019)[39]:

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[36] https://soe.environment.gov.au/theme/biodiversity

[37] https://www.dea.org.au/wp-content/uploads/2020/05/Open-letter---EPBC-Review-.pdf

[38] https://soe.environment.gov.au/theme/overview/framework/pressures

[39] https://fennerschool.anu.edu.au/news-events/events/australias-environment-report

"The national Environmental Condition Score was at its lowest since at least 2000, decreasing 2.3 points out of ten to a score of 0.8. Scores declined in all states and territories. The poorest conditions occurred in NT, NSW and WA. In all cases this was due to dry and hot conditions. The largest decline occurred in WA. Relatively less adverse conditions prevailed in Queensland and Tasmania. Greenhouse gas emissions remained high, decreasing only 0.1% from the previous year. They were 5% above the 2000–2018 average. Emissions decreased due to floods and drought in agriculture (-5.9% from the previous year) and due to cleaner technologies in electricity generation (-1.2%) and transport (-0.5%). These reductions were offset by increases from fugitives (+4.4%), direct combustion (+3.6%) and industry (+0.6%), mostly from oil, gas and mining."

CSIRO report (2018)[40] revealed that while most Australians accept mining and hold positive views about its role in contributing to the nation's economy, they hold low levels of trust in the industry, and don't feel they have a voice in shaping the industry's practices or faith in the governance surrounding mining.

Health and Safety

Doctors for the Environment Australia is concerned by the overall adverse health effects of coal mining.[41]

"The burning of coal emits hazardous air pollutants, including particulate matter, sulphur dioxide, nitrogen oxides, carbon dioxide, mercury and arsenic. Australia has one of the most carbon intensive and polluting electricity supplies in the world, with around 80% of electricity generation coming from coal. By investing in renewable energy sources and rapidly transitioning from fossil fuels, we can save lives and improve health immediately due to improved local environments, prevent unmanageable climate change with its associated devastating health consequences, and make sound economic investments in Australia's future."

Mining has specific dangers. In 2018 the overall case fatality rate per 100,000 mine workers was 3.7[42] which is the third highest rate in industry.

In Queensland; *"The last 20 years has seen no significant improvement in the industry fatality rate which continues to be of major concern. This year has seen the commissioning of a fatality review by Dr Sean Brady, a forensic engineer, who will analyse the last 20 years of fatalities, serious incidents and high potential incidents to identify key causes and effects, and identify key focus areas for the industry to improve its performance over the next 20 years…. Over the past five years, the overall number of serious accidents in mines and quarries has increased each year and the serious accident rate has almost doubled"*.[43]

There were five fatalities in Queensland in 2018/2019…. *"In many of our investigations into fatalities, serious accidents and other incidents, supervision has been identified as a causal factor. Effective supervision is one of the key*

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[40] Moffat, K., Pert, P., McCrea, R., Boughen, N., Rodriguez, M., Lacey, J. (2017). Australian attitudes toward mining: Citizen Survey – 2017 Results. CSIRO, Australia. EP178434

[41] https://www.dea.org.au/coal/

[42] https://www.safeworkaustralia.gov.au/statistics-and-research/statistics/fatalities/fatality-statistics-industry

[43] https://www.dnrme.qld.gov.au/__data/assets/pdf_file/0007/1464523/safety-performance-report-2018-19.pdf

preventive factors in minimising workplace incidents and the industry must ensure that supervisors are competent and supported and that supervision is appropriate for the work being undertaken".[44]

Mine dust lung disease should not be a disease of the 21st century.

A summary of recommendations, which DEA supports, was published in The Medical Journal of Australia in 2016 [45]**:**

- standardisation of coal dust exposure limits, with harmonisation to international regulations;
- implementation of a national screening program for at-risk workers, with use of standardised questionnaires, imaging and lung function testing;
- development of appropriate training materials to assist general practitioners in identifying pneumoconiosis; and
- a system of mandatory reporting of CWP to a centralised occupational lung disease register.

Key strategies in combating mine dust lung disease are prevention, detection and a safety net for workers affected.

Prevention
DEA supports the recommendations of Safe Work Australia[46] which has published revised workplace exposure standards (WES) for respirable crystalline silica and respirable coal dust:

- Respirable coal dust will be reduced to a time weighted average (TWA) of 1.5 mg/m^3
- Respirable crystalline silica will be reduced to a TWA of 0.05 mg/m^3.

However, DEA would like to point out that in an article published by in *The Medical Journal of Australia in 2016* [47] *"The Australian Institute of Occupational Hygienists has recommended that the limit (respirable coal dust) be reduced to 1.0 mg/m^3, and it could be argued that it should be even lower."*

DEA would support a further reduction in TWA targets to comply with this recommendation.

DEA are further concerned that these targets will not be applied until **1 October 2022** after allowing for a three year transitional period.[48]

Detection
Major reforms for all coal workers has occurred recently in Queensland in response to increasing cases of Black Lung disease in coal workers.

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[44] IBID
[45] https://www.mja.com.au/journal/2016/204/11/coal-workers-pneumoconiosis-australian-perspective#19
[46] https://www.safeworkaustralia.gov.au/exposure-standards
[47] https://www.mja.com.au/journal/2016/204/11/coal-workers-pneumoconiosis-australian-perspective#19
[48] https://www.safeworkaustralia.gov.au/exposure-standards

In 2016, there was an independent review of the respiratory component of the Coal Mine Workers' Health Scheme[49] undertaken by Monash University in collaboration with the University of Illinois at Chicago. The Coal Workers Pneumoconiosis (CWP) Select Committee released its final report[50] in 2017, with a further 68 recommendations. Queensland government accepted all recommendations and this was tabled in parliament in September 2019.[51]

Queensland now requires all coal workers to have 5 yearly medical examinations, a Chest X-ray and spirometry. There are new standards for the Chest X-ray which is examined against the International Labour Organization (ILO) International Classification of Radiographs of Pneumoconioses[52], and by at least 2 medical experts. These experts have achieved B-reader accreditation from the US National Institute for Occupational Safety and Health.

The Queensland Government has published clinical pathways which provide a consistent and evidence-based approach to coal workers lung disease[53] with information supported by a website[54] and publication of the numbers affected.[55]

While Queensland appears to have gone a long way towards improving safety for its coal workers DEA is concerned that these clinical pathways and Xray requirements have not been adopted by all States and recommends other states take a similar approach.

The Productivity Commission noted (Pg 219 PCDR) that safety regulations are currently under review in NSW, Queensland, WA and for Offshore oil and gas exploration. It is hoped that the recommendations from the above reviews will improve resource sector's health and safety performance.

In relation to the questions regarding compliance monitoring and enforcement by regulators (Information request 7.1 PCDR), there are many reports outlining failures. These can be provided to the Commission by Lock the Gate, Mining advocates, EDO and other similar bodies. LCPA [56] prepared a submission for the SA Inquiry into unconventional gas in 2015 which contained multiple pages of failure of the regulators to monitor and enforce compliance.
Regulators would appear to be inadequately resourced and there is evidence of cost cutting and inaccuracy. In some cases, modern technology can now be used to objectively achieve quality monitoring.[57]

Remediation and reparation
Remediation and reparation must be stipulated in legislation as enforcement powers among regulators are generally inadequate. That token penalties are

[49] https://www.dnrme.qld.gov.au/__data/assets/pdf_file/0009/383940/monash-qcwp-final-report-2016.pdf
[50] https://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2017/5517T815.pdf
[51] https://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2017/5517T1647.pdf
[52] http://www.ilo.org/safework/info/WCMS_108548/lang--en/index.htm
[53] https://www.dnrme.qld.gov.au/__data/assets/pdf_file/0005/1278563/cmwhs-clinical-pathways-guideline.pdf
[54] https://www.rshq.qld.gov.au/miners-health-matters/what-is-cwp
[55] https://www.business.qld.gov.au/industries/mining-energy-water/resources/safety-health/mining/accidents-incidents-reports/mine-dust-lung-diseases
[56] LCPA submission to SA and Victoria and Senate Select Committee on Unconventional Gas mining. https://www.parliament.vic.gov.au/images/stories/committees/EPC/Submission_872_-_Limestone_Coast_Protection_Alliance.pdf
[57] INFRARED VIDEO-RECORDING METHANE EMISSIONS IN THE QUEENSLAND COAL SEAM GAS FIELDS FEBRUARY 2017 Tim Forcey

imposed and that companies can evade their obligations by going into liquidation[58] is completely unacceptable. There is little evidence that monitoring and enforcement have been effective and efficient or that regulators have the information and knowledge to identify risk.

It is heartening to see (Pg 200 PCDR) that *"The Northern Territory Department of Environment and Natural Resources fact sheet on Environmental Reforms (2019, p. 1) spells out several inadequacies identified in their current system, and states that:*
These issues result in our current system being slow and costly for industry and government, complex for regulators and unclear in its outcomes for the community. These are not matters that can be resolved with minor 'tweaking' of the existing legislation. These inadequacies have contributed to a general lack of confidence in the Territory's capacity to manage the environment, and to attract and facilitate industry investment for ecologically sustainable development."

Rehabilitation of land fully restores ecological and hydrological processes. In the case of agricultural land the aim should be to restore the site to the same productivity that existed prior to mining. Bonds have often underestimated rehabilitation costs. Progressive rehabilitation can lead to a better understanding of rehabilitation requirements.

Offsets have been used by companies to circumvent rehabilitation but the system has failed because of inappropriate selection and lax scrutiny. Maintenance of a register would aid scrutiny and transparency. Currently many offsets are meaningless and fail to address biodiversity loss.

8. Other factors affecting investment

On page 221 PCDR is the statement *"Policy and regulatory uncertainty is regarded as a major impediment to investment."* While this may be true, the knowledgeable and wise investor will have known that unrestrained investment in the fossil-fuel industry has been in jeopardy since the predicted influence of GHG emissions on the planet's climate was first clearly enunciated 3 decades ago. It is surprising that the concept of "stranded assets" has not been mentioned. Resetting our economy with a focus on renewable energy[59], which can also be a low-cost way of processing our resources, makes economic sense. (Garnaut in Superpower[60])

DRAFT FINDING 8.4 states *"Not approving proposed resources projects or curtailing their exports on the basis of potential greenhouse emissions in destination markets is an ineffective way of reducing global emissions."* This is an extraordinary statement as all GHG add to global warming and Australia's current fossil-fuel exports make a considerable contribution.[61] Reducing fossil-fuel exports will clearly have some role in driving down dependence on coal, will

[58] https://envirojustice.org.au/sites/default/files/files/EJA_Dodging_clean_up_costs.pdf
[59] https://www.acf.org.au/recover_renew_rebuild
[60] https://www.rossgarnaut.com.au/australian-economy/superpower-australias-low-carbon-opportunity/
[61] https://climateanalytics.org/media/australia_carbon_footprint_report_july2019.pdf

dampen the coal market and will assist Australia and other countries in their transfer to renewables.[62]

More certainty and a better outcome for our future would result from a price on carbon as recommended by The Commission in 2017 *"that Australian governments 'stop the piecemeal and stop-start approach to emission reduction, and adopt a proper vehicle for reducing carbon emissions that puts a single effective price on carbon'"* (Pg 164 PC 2017).

Insurance and public liability issues over environmental degradation will become more frequent as fossil-fuel enterprises and governments neglect the impacts of climate change.[63]

9. Community engagement and benefit sharing

As described on page 241 PCDR, social licence to operate is an extremely important objective of resource industries, for without this there is likely to be a series of attempts to delay and eventually to annul a project. Adverse outcomes can emerge as a result of protests or blockades, political pressure leading to governments retracting legal licences to operate, or financiers withdrawing funding from projects.[64]

Resource development is prone to disadvantage local communities because of adverse health effects, visual disturbance, noise, dust, disruption to farming, despoliation of farming land, and, more recently, social problems created by fly-in-fly-out (FIFO) workers. Promises of local employment are usually grossly inflated. Many studies have shown that FIFO workers also are adversely impacted upon by FIFO arrangement.[65] The problems created by FIFO workers require resolution.

A recent national survey on citizen attitudes toward mining shows that three-quarters of Australians think mining companies should gain consent from local communities before development.[66] For some projects, social licence can be obtained fairly, but there are cases where attempts have been based on misleading information.[67]

While individual landowners are the first to be engaged, activities which affect the wider community should also seek licence. The majority of Australians (about 70%) reject Adani; an example where the "broader community" will be impacted from long-term effects of climate change. In some notable examples, resource companies have continued to contest their pursuit of mining in spite of

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62 https://www.stopadani.com/godda?utm_campaign=godda_doco_launch&utm_medium=email&utm_source=stopadani

63 https://www.lockthegate.org.au/palaszczuk_govt_must_fix_csg_laws_after_insurers_deem_gas_too_great_a_risk_to_fully_cover_farmers

64 Boutilier, R. 2014, 'Frequently asked questions about the social licence to operate', *Impact Assessment and Project Appraisal*, vol. 32, no. 4, pp. 263–272.

65 https://www.mhc.wa.gov.au/media/2547/impact-of-fifo-work-arrangement-on-the-mental-health-and-wellbeing-of-fifo-workers-full-report.pdf

66 https://www.csiro.au/en/News/News-releases/2018/Australians-want-community-consent-on-mining

67 https://wanganjagalingou.com.au/author/wanganjagaling/

widespread community objection.[68] Recently, over 450 communities across Australia[69] have "locked their gates" on resource developments demanding moratoriums on coal, gas and oil developments.

Unfortunately, some companies continue seeking the right to mine when there is clear and persistent evidence of the community's rejection, which is costly and physically and emotionally draining to all concerned as in the Rocky Hill Mine Appeal 2019.[70]

DEA supports the approach in Victoria where mining licence holders have a general duty to consult with individuals and the community and give sufficient opportunity for an expression of views. *Victoria also explicitly considered a company's capacity to engage with the community in a tender process for exploration in the Stavely Arc in western Victoria* (Pg 258 PCDR). It was one of the criteria for awarding the tender, but it is not clear to landowners in the Stavely Arc project areas how this was assessed. It is reassuring to see that a company's licence may be rejected if it has been unethical in its engagement.

While benefit sharing is a reasonable democratic principle, it can very easily lead to a financial "bribe" to obtain consent when it would not have been possible otherwise. Benefit sharing would not be appropriate if an individual is rewarded but the wider community suffers from adverse consequences.

10. Indigenous community engagement and benefit sharing

This is an extremely important issue as greater than 60% of Australian resource projects are on areas of native title claim or determination. (Fig 5.2 Pg 134 PCDR)

"The Native Title Act 1993 (Cwth) sets out an expedited procedure that can enable low-impact exploration activity to take place without negotiation with traditional owners, potentially reducing impediments to investment." (Pg 123 PCDR).
"However, the Western Australian Government, as a matter of practice, declares that all exploration and prospecting licences in the state are covered by the expedited procedure." (Pg 140 PCDR)
The PC report goes on to say that *"in practice, more than a third of all expedited procedure declarations face objections from the native title holders or claimants (National Native Title Tribunal (NNTT), pers. comm., 11 March 2020)."* DEA contends that given one third of all activities that are under expedited procedures are disputed by Aboriginal groups this is clearly not appropriate.

DEA would support the
"DRAFT FINDING 5.5 Exploration activities have differing impacts on native title land. Consequently, a case-by-case approach by States and Territories to assessing whether the expedited procedure under the Native Title Act 1993 (Cth) applies is necessary to give effect to the intention of the Act." (page 136)

[68] https://www.theguardian.com/business/2017/oct/08/nearly-70-of-australians-oppose-government-loan-for-adani-mine-poll
[69] https://www.lockthegate.org.au/about_us
[70] https://www.iucn.org/sites/dev/files/content/documents/2019/the_rocky_hill_decision_a_watershed_for_climate_change_action.pdf

and the recommendation that

"DRAFT RECOMMENDATION 5.1 The National Native Title Tribunal should publish guidance about the circumstances in which the expedited procedure will apply." (page 141)

DEA fully supports free, prior and informed consent (FPIC) and believes that this should be a requirement for all landholders, particularly for First Nations people, across all Australian jurisdictions.

DEA would go further to encourage resource companies to withdraw development proposals if an Indigenous community withholds its consent. The Productivity Commission noted (Pg 282 PCDR) that *"the United Nations Global Compact, a voluntary initiative based on CEO commitments to implement universal sustainability principles and support UN goals, advises members in its business reference guide on the United Nations Declaration on the Rights of Indigenous Peoples 'not to proceed with a project after the withholding of consent by indigenous peoples'"* and the United Nations declared (page 58) *"When indigenous peoples decide to withhold their consent with regard to a business project, respect that decision and do not move forward with the project".*[71]

DEA has concerns that agreements between Indigenous groups and resources companies are generally confidential private contracts and points out that Transparency International Australia (TIA)[72] argues that secrecy arrangements between Indigenous parties and resource companies have the potential for corruption. TIA stated that *"Mining companies have the opportunity to negotiate agreements that may not distribute benefits to native title parties in accordance with native title rights, and the lack of accountability means that implementation of agreement terms are not monitored."*

DEA condemns the serious violation of Native Title Rights when they were annulled by the Queensland government in order for the Adani mine to proceed.[73] This action is the very antithesis of what is expected in a truly democratic country and may not have happened if Australia had true human rights legislation.[74] There needs to be meaningful free, prior and informed consent (FPIC) requirements for all landholders, particularly for First Nations people, across all Australian jurisdictions.

11. Improving regulator governance, conduct and performance

Governments are responsible for the foundations of robust regulatory systems. DEA in its Submission into the 2019-2020 Independent Review of the EPBC Act April 2020 has argued that there is a clear and vital need for the Commonwealth

71 *https://d306pr3pise04h.cloudfront.net/docs/issues_doc%2Fhuman_rights%2FIndigenousPeoples%2FBusinessGuide.pdf*

72 https://transparency.org.au/wp-content/uploads/2019/10/Australia-Summary-Report.pdf

73 https://www.theguardian.com/business/2019/aug/31/queensland-extinguishes-native-title-over-indigenous-land-to-make-way-for-adani-coalmine

74 https://unimelb.libguides.com/human_rights_law/national/australia

government to hold responsibility for delivering environmental and heritage outcomes.

Merits review

There does need to be an opportunity for individuals and community to appeal[75] and it should be possible in all jurisdictions.[76]

In NSW the EDO (page 4 2016)[77], reported that *"merits review is an essential part of the planning system and it is crucial that it continues to be recognised and facilitated in NSW. In addition, there are clear benefits to allowing third party merits review in relation to major projects in NSW. These benefits relate to improving the consistency, quality and accountability of decision-making in environmental matters. In particular, merits review has facilitated the development of an environmental jurisprudence, enabled better outcomes through conditions, provides scrutiny of decisions and fosters natural justice and fairness. Better environmental and social outcomes and decisions based on ecologically sustainable development is the result. Merits review has a long history in NSW, being a key element of planning reforms introduced in 1979."*

And in 2019, NSW EDO[78] submitted (page 10) *"that significant improvements must be made to the way public meetings and hearings are conducted in terms of procedural fairness, examination of expert evidence, transparency and accountability. While a more robust Independent Planning Commission process would reduce the likelihood of merits reviews (thus making the system more effective and efficient), merits review rights must be retained as an essential accountability mechanism."*

DEA believes that all resource sector activities should consider short- and long-term health and environmental impacts, and work within a system that respects expertise, fairness, transparency and accountability.

[75] https://www.courts.qld.gov.au/courts/land-appeal-court

[76] https://d3n8a8pro7vhmx.cloudfront.net/edonsw/pages/2998/attachments/original/1467777537/EDO_NSW_Report_-_Merits_Review_in_Planning_in_NSW.pdf?1467777537

[77] https://d3n8a8pro7vhmx.cloudfront.net/edonsw/pages/2998/attachments/original/1467777537/EDO_NSW_Report_-_Merits_Review_in_Planning_in_NSW.pdf?1467777537

[78] http://productivity.nsw.gov.au/sites/default/files/2019-12/Environmental%20Defenders%20Office%20NSW.pdf