23 January 2004

Native Vegetation Inquiry
Productivity Commission
LB2 Collins Street East
MELBOURNE VIC 8003

Dear Sir/Madam,

EEMAG members wish to comment on the recommendations in the Commission's Draft Report and to submit some additional information.

Firstly, we would like to congratulate the Productivity Commission on your Draft Report. We feel that the Commission has genuinely considered the issues presented to it. We find this reassuring.

Draft recommendation 4 - Provision of an accessible and impartial appeals and dispute-resolution mechanism

We believe that your most important recommendation is Draft recommendation 4, dot point 6 'provision of accessible and impartial appeals and dispute-resolution mechanisms'. We see this recommendation as ***essential*** to ensuring procedural fairness and natural justice in administration of CoAG agreements and state and federal environmental regimes.

Such a process needs to be invested with the authority to require all relevant information to be made available to all parties.

From our experience, State agencies are not neutral, but they shape/manipulate their scientific findings and administrative processes to fit Cabinet decisions, contrary to the intent of environmental legislation and contrary to the environmental, economic and social wellbeing of landholders.

The 'appeals and dispute-resolution mechanism' would need to have the authority to reverse unjust/wrong State decisions/assessments, if it is to be fair and effective.

Draft Recommendation 3 – improving quality of data and science

EEMAG members believe the issue of ensuring proper accuracy [transparency and accountability]of agency/consultants/industry data and findings is as **crucially important** as provision of an accessible and impartial appeals process.

There is factual evidence that "Independent" Assessments administered and paid for by Government/ Industry commonly do not provide the basis for a fair and accountable appeals or dispute-resolution process.

Therefore landholders/landholder groups/others need a mechanism to enable them to hire their own independent experts (perhaps means tested financial assistance) so that they can participate from a position of equality and fairness with a balanced and comprehensive information base.

This may also assist to re-balance the culture of reports by Consultants who often fear/avoid producing findings that are contrary to the wishes/decisions of government/industry, as evidenced by our Mt Larcom Community Restoration Project Report of October 2003.

During the presentation of the Mt Larcom CRP Report by the Independent Team Leader in Gladstone on 31 October 2003, a spokesperson for the Harbour City Group stated that he believed local Consultants were compromised by their dependence on government and industry and that the community was also constrained from making adverse comments. He commented that there was the same clique of people in important positions of control.

Perceptions that reports by consultants/ bureaucrats/universities very often lacked 'accountability' due to the need for 'repeat contracts', due to fear of making 'career limiting statements' and due to the need to obtain funding was widely recognised by the meeting. No person in the approx 100 attendees sought to deny that this problem exists, despite the Independent Team Leader, on a number of occasions, inviting people who disagreed have their say. The meeting was very cordial. [Industry representatives and consultants, Departmental officers, university staff, people with various environmental concerns and others attended the meeting.]

A letter from the Independent Project Leader for the Mt Larcom CRP Report dated 28 November 2003 stated, 'It is important that all stakeholders appreciate that the present team is neither anti-development nor politically motivated. What makes this team different is that for a number of reasons each of its members have been willing to state honest opinions unimpeded by potential repercussions from influential respondents.' (Copy Attachment 1.)

Evidence of Serious Shortcomings in "Independent" findings for government agencies making them inappropriate to be used as the basis for an appeals dispute-resolution process

Example 1

Inaccuracies in "Independent" Technical Assessment of QCL's Impacts of the Water Table undertaken for EPA

EEMAG has consistently claimed that there are serious shortcomings/inaccuracies in the findings of EPA's "Independent" Technical Assessment of QCL's impacts on the water table of 2001/2002, and that the Report's independence is compromised, to no avail.

However, the Mt Larcom Community Restoration Project Report of October 2003 authoritatively substantiated our claims. Section 2.2 Groundwater Resources consistently and strongly criticised/queried EPA's Independent Consultant's work; one example quote Page 42 'These comments from [EPA's consultants] on surface water hydrology and the effects on recharge are clearly wrong as any textbook on hydrology in Australia will confirm'

In addition, the CRP's Ethics Report, Who Benefits? Who Pays? – Equity and Ethics, Attachment 20, Page 4, II.4 states, 'Probably the most critical matter which can be identified as representing inappropriate management by a government agency of the processes is the charge that the independence of the hydrology study by [EPA's consultant] was compromised. The Preliminary draft dated March 2001 supplied to EPA was stamped 'this draft has been prepared solely for the purposes of discussion with EPA and has not been subjected to [EPA's consultant's] normal review process". EEMAG had sought for the initial [EPA's consultant's] report to be supplied to all parties simultaneously for comment. The EPA account of this transaction which allows the EPA to, apparently, continue to rely on the [EPA's consultant's] study, should be further tested.' End of quote.

Example 2

Wide variations between valuations by government's valuer and landholders' valuer during government land acquisition conferences for government purchase of approx 142 holdings in Targinnie affected by the Stuart Shale Oil plant and alleged government pressures on landholders.

Attached is an extract from Queensland Hansard beginning on Page 5210, of representations by our local Member regarding government acquisition of properties in the Targinnie area that are adversely affected by emissions from the Stuart Shale Oil Plant by the Department of State Development, that included tabling a copy of a letter from the Yarwun/Targinnie Fruit and Vegetable Growers Association.
(Copies extract from Hansard and the tabled letter Attachment 2.)

(The Stuart Shale Saga is included in the Mt Larcom CRP Report beginning on page 65 with the Public Health Survey, and is mentioned in the CRP's Report's Executive Summary and Recommendations.)

In her presentation, the Member for Gladstone stated, 'There is a great deal of disquiet about the government's actions in relation to those property owners. They would still be living there had their quality of life not been affected detrimentally.' This is alleged to be due to inability/ failure to regulate/control the Stuart Shale Oil emissions under the Environmental Protection Act.

Quote from letter from Yarwun Targinnie Fruit & Vegetable Growers Association to the Minister for State Development dated 19th October 2003 that was tabled in Parliament:

'Minister, we have noted your comments regarding the appointment of [Department of State Development's independent] Valuers and we also note your comments in the final paragraph of your letter, that you "consider the commitments provided by my Department in relation to the market valuation process are being met." '

'Despite these comments, we must regretfully advise that in our view these commitments are NOT being met.'

'We do not doubt that you have done everything possible to ensure that a system is in place to ensure that fair and reasonable treatment is afforded affected landholders, however we must respectfully advise that the systems in place are SIMPLY NOT WORKING.'

'The [DSD's independent] valuations verbally advised at the "without prejudice" one on one conferences with landholders are almost invariable well below the values set by landholders' own independent valuers. [DSD's independent] valuers have repeatedly asserted that this or that asset is "too big" for a particular property. These comments have applied to both dwellings and sheds.'

'Arguments put forward by landholders' valuers are repeatedly either ignored or rejected. In many cases, comparable sales evidence offered by landholders' valuers has repeatedly been rejected as being a "high" sale and has been disallowed as a valid comparison by the [DSD's independent] valuer.'

'Conversely, [DSD's independent] valuers have not hesitated to use "low" sales evidence as their basis for comparison.'

'It is incomprehensible that two valuers, whose professional opinions of fair market value are expected to be impartial, can consistently be so widely at variance regarding the same property, as has been the case at the MAJORITY of conferences held to date.'

'At no stage has the comparative property index that [DSD's independent valuer] has been required to compile, been made available to landholders at any of the "without prejudice" conferences held to date.

'The attitude of your Department's representative has on occasions been uncompromising and threatening.'

'For example, it has been said that if DSD/DNR's offer is unacceptable to particular landholder, the landholder's option is to request that the "take by agreement" provision be invoked.'

'Your officer has said that a decision to take by agreement will take "some months", and that there is no guarantee that the Department will in fact do so.'

'Your officer then went on to say that if the take by agreement request from the landholder is rejected by the department, no action by your department is likely before the expiry of the 5 year "no compulsory acquisition period" has expired.'

'He further inferred that even after this 5 year period has expired, the department may not even then decide to resume the property immediately.'

'This leaves the landholder in the take it leave it position, with no recourse to the Land court for arbitration of value in the meantime.'

'Minister, is this what you and your departmental officers intend as fair and reasonable treatment of affected landholders?' End of quote.

Example 3

Omission of important data from the "Independent" Health Risk Assessment for the Stuart Shale Project Independent Health review.

The Stuart Shale Project Independent Health review – Health Risk Assessment (HRA) was prepared by a Melbourne toxicology company for the Stuart Facilitation Working Group (SFWG) through the Department of State Development and was released in December 2003.

The Gladstone Observer of 23 December carried a story (attached) in which the President of the Yarwun Targinnie Representative Group (affected landholders) said the HRA had vindicated the community to a degree, but "did not fully reflect the severity of the problem for the residents", "At least it recognises the odour" the President said. The Yarwun Targinnie Group was critical of the steady state conditions under which data for the HRA was gathered , stating "in practice the upset conditions" are frequent and considered to be significant. That is the consultant for the HRA omitted to collect data when the Shale Oil plant was malfunctioning because it was not considered safe to collect it from the emission site during "upset conditions", and this import information was not included in their assessment. The Shale Oil plant frequently malfunctions. Refer Attachment 5 CRP Report; (Clipping from Gladstone Observer re comments on the HRA Attachment 3).

Note: I consulted with a representative of the Yarwun Targinnie Representative Group to check that what was written in the paper was consistent with their views.

Federal agency process of accepting "Independent" EPA findings as accurate for purposes of administering the 1994 CoAG Agreement on Water Reform etc.

National Competition Council

Early in 2003 EEMAG members learned of the National Competition Council's role in administering the 1994 CoAG Agreement on Water Reform.

On 18 February 2003 we wrote to the National Competition Council (NCC) and requested their assistance to require that water be allocated for environmental purposes, water quality be maintained, and a fair balance be struck in regard to water access by competing users, in an attempt to bring some pressure on the Queensland government to require QCL to begin to repair/reinstate local water resource systems (before QCL's mining leases were renewed).

We provided NCC with data to support our concerns, and supplied the four (4) volumes of the Mt Larcom CRP Report in October 2003.

The NCC has been quite approachable and helpful. However, we are informed that the NCC is not an agency for dispute resolution, and that their process is to accept the EPA's "Independent" findings on QCL's impacts, particularly since the Queensland Ombudsman had given a clearance [we allege inappropriately] to EPA. (Note: Please refer to the Mt Larcom CRP Report, Recommendation 8, Page IX, Action No ii), quote 'A probity audit be conducted of the extent and timing of all correspondence relating to the East End Mining Lease renewal, including the role of the Ombudsman, to validate the legality of the renewal process.')

EEMAG members respect and accept that the NCC is required to act within its role and to abide by its procedures.

At the same time we interpret that this Federal process serves to legitimise the alleged serious inadequacies/inaccuracies in the findings by EPA's "Independent" consultant for purposes of administering the CoAG Agreement on water reform, and also we presume, EPA's position as stated in their letter dated 15 May 2002 'The EPA has reviewed the Land Court decision and has taken into account several audits as well as the report submitted by [EPA's "Independent" consultant] and has come to the conclusion that there is not sufficient evidence to prove beyond reasonable doubt that East End Mine is causing environmental harm.' We understand that EPA's "Independent" Technical Assessment determined that the mine's dewatering discharges were sustainable, but that landholders' small scale irrigation [now reduced to about a third of what it was pre-mining] is unsustainable.

We believe this situation clearly illustrates the need for urgent implementation of your Draft recommendation 4 'provision of accessible and impartial appeals and dispute-resolution mechanisms'. Otherwise administrative processes for CoAG Agreements could act to reinforce wrong and unfair decisions.

Foreign Investment Review Board

On 27 December 2002, EEMAG wrote to the Foreign Investment Review Board and requested that QCL be required to provide an effective remedy for the adverse environmental and socioeconomic impacts from their Mt Larcom limestone mine prior to approval of the proposed merger between QCL and ACH.

On 6 March 2003 Treasury responded, quote 'The Queensland Government's advice indicated that water depletion at the mine was being monitored and addressed to their

satisfaction.' And later 'However, the Government decided to raise no objection to the proposal and the proposal was approved unconditionally.' (Copy of letter attached)

With regard to water depletion from the mine being monitored and addressed to the satisfaction of EPA, EEMAG refers to our initial PC submission 'Alleged Shortcomings in QCL's Water Monitoring Programme', that included copies of letters to QCL's Water Monitoring Consultant claiming that the mine's digital recorder on the pump discharge had not worked properly since at least May 2002, that the Weir flow charts were faulty, and that the rainfall records were not consistent with local rainfall records etc..

Attached is a copy of QCL's Water Monitoring consultant's response dated 1 July 2003 confirming these shortcomings in collection of water monitoring data had occurred. (Copy of letter attached plus a copy of a comparison of the digital pump meter's records and the Weir 6 flow rates and comment in mid 2002 Attachment 5.)

In addition we now realise that QCL's new 2003 Special Conditions omit the requirement to **conduct the water monitoring in a professional manner,** which was included in their original 1976 Condition No 9.

At a time when the Queensland government is robustly enforcing water reform regulations on landholders, there is evidence that it has acted to neutralise QCL's 1976 Special Conditions, water down their EMOS Commitments, and to exempt the company from compliance with water reform.

We interpret that the Foreign Investment Board's procedure that accepted EPA's position that 'water depletion was being monitored and addressed to their satisfaction' serves to federally reinforce the Queensland government's alleged failure of duty of care/abuse of power in their administration of QCL's 1976 Special Conditions No 9 and 11 to 20 March 2003. We interpret this process thus legitimises the Queensland government's decision of 1995 to largely exempt QCL from their obligations to affected landholders and to exempt QCL from being required to operate their mine in an environmentally sustainable way, by way of fixing false benchmarks.

Comment on Overview, Impacts on regions and other industries, Page XXXll
EEMAG members were not surprised that the Commission received little evidence from the mining and infrastructure companies. In our view this signals that mining companies do not feel at all threatened by native vegetation and biodiversity regulations. After more than $8^1/_2$ years' experiences, we believe that this is because government [and elements of the wider community] require only superficial compliance with environmental regimes by mining companies.

EEMAG recognises that QCL [now Cement Australia] has planted plots of trees near the mine. The trees are watered with surface water collected in a dam built by the company.

Comment on Overview, Landholders responsibilities P XXXIX
In relation to proposed regional institutional structures, we ask you to refer to our original submission, P39 where we state we believe the East End Mine Community Liaison Group was used to legitimise QCL/government defaults, and listed 7 dot points of shortcomings. In our view this was because the CLG had no guidelines, because government departments are not neutral, and because EEMAG members are relatively powerless and were outweighed in the process.

From our experience, the main focus of many parties in the wider community [including local Shire Councils] is [misplaced] concern that the QCL/Cement Australia mine may close down. We feel these parties are unaffected by the environmental impacts, focus on the considerable economic importance of mining and are largely indifferent to the welfare of affected landholders.

The process/structure for community forums needs to ensure proper participative representation, fairness and natural justice for affected landholders, and we respectfully request the Productivity Commission to make recommendations for this to occur.

Chapter 7 – Assessment of current regimes – Draft finding 7.6 – Departments providing a reason

On 28 March 2003 EEMAG wrote to DNR&M requesting a written statement of the reasons for DNR&M's decision to renew QCL's mining leases on the basis of their 1996 Application and EMOS, recognising that QCL's 1996 EMOS is based on their 1996 IAS findings of mine-induced depletion of approx 500 metres from the mine pit, and that QCL has since conceded to depleting 30 sq km. When we received no response we wrote again on 11 July 2003. (Copy of EEMAG letter of 28 March and copy of letter of 11 July 2003 to DNR&M Attachment 6)

DNR&M responded on 31 July 2003 quote, 'Accordingly, as the Minister made the decision to recommend the renewal of the mining leases and as you have not requested the reasons for the Minister's decision ("we request you advise in writing a statement of the reasons for DNRM's decision to renew QCL's mining leases") there is no requirement to accede to your request for a statement of reasons.'

The letter quoted section 286(3) of the MRA, mentioned various reports including the independent review commissioned by EPA, the findings of the Ombudsman, the special conditions proposed to be attached to leases on renewal and information of the history of this matter etc. and advised that the Minister was satisfied the holder of the leases had observed and performed all the covenants and conditions applicable to the lease etc. and had recommended the renewals of the mining leases be granted.

DNR&M did enclosed a map - a copy of the "Mine Pit Zone of Influence – Kalf and Associates 2/2000 (Refer Attachment 16, Map 9 in the CRP Report) but added the disclaimer, quote 'However, you should note that it is erroneous for you to be under the impression that map was "used for the purposes of renewing QCL's mining leases". (Copy of letter from DNR&M dated 31 July 2003 Attachment 7)

We did not believe that DNR&M's letter clarified whether QCL's mining leases were renewed on the basis of depletion of approx 500 metres from the mine pit. EEMAG wrote again to DNR&M on 5 August 2003 requesting proper clarification, but DNR&M's response of 11 August 2003 still does not confirm or deny that QCL's leases were renewed on the basis of having caused depletion of ¼ sq km. . (Copies of letters Attachment 8)

From our experience the only way that we could require DNR&M to provide an accurate response on the basis on which QCL's mining leases were renewed is through 'an accessible and impartial appeals and dispute-resolution mechanism' invested with the authority to enforce the information to be made available.

Comment on Overview, Box 3 – Towards regulatory 'best practice' – audits of overall effectiveness and costs and benefits etc.
If regulatory 'best practice' is to be encouraged, standards in audit process needs to be clearly defined so that audits are not selective, and so that results for affected landholders are properly canvassed and accurately reported.

There needs to be impartial mechanism for cost-free appeals by landholders where audits are disputed. From our experience this is not the Ombudsman.

In our initial submission to the PC we raised our concern about EPA/DME selectively consulting 7 out of 20 more than affected landholders to determine QCL was in compliance with Condition 11 during an audit. Obviously DME/EPA omitted to consult those landholders in whose case QCL had not supplied an alternative water supply. Although we disputed the audit findings to the relevant Ministers, the Departments and the Ombudsman, it was to no avail.

Mt Larcom CRP Report findings of loss of aquatic biota due to mining impacts
We wish to bring to your attention that the CRP Report on page 40, Section 2.2.4.2 Surface stream flow, ***finds that there has been a loss of aquatic biodiversity due to water loss from mining.*** Quote: 'In earlier times the major streams in the Bracewell area, including Machine Creek were virtually perennial and even in the driest periods associated with severe drought, pools remained which gave shelter to fish and were also used as a local source for irrigation water for pasture. It is likely that these were replenished by groundwater. The same applies to perennial springs in the area that have now ceased to flow.'

'Not only have the streams lost much flow but it is likely that the reduced flow has caused major changes to the fresh water aquatic biota. For example, in places the stream banks contain many freshwater mollusc shells, these are no longer found in a living state due to the major changes in stream flow. The streams are now also devoid of fish. Nowhere is any [EPA's Consultant's reports] is any comment made on such changes to the aquatic environment and biota.'

Note: An EEMAG member gave evidence that perennial flows had been lost from creeks due to mine-induced depletion at the PC Hearing Brisbane in July 2003.

Quote: 'We have four (4) main creek systems.'

- 'Scrub Creek has lost between 10 and 15 km of surface water'
- 'Machine Creek has lost between 10 and 12 km of surface water'
- 'Hut Creek has lost between 4 and 6 km of surface water'
- 'Jacobs Creek has lost between 4 and 6 km of surface water'

'That is a total of 28-48 km of loss of once perennial creeks.' End of quote.

Responses from relevant sections of the Queensland government to the Mt Larcom CRP Report of October 2003

Minister for Natural Resources and Mines
On 14 November 2003 EEMAG wrote to the Minister for Natural Resources and Mines advising that we believed the Mt Larcom CRP Report is an objective evaluation of impacts on local landholders and seeking to make constructive progress towards resolving the overall dispute. We stated we are very prepared to work with the Departments on dealing with outstanding issues and requested a meeting so that we could progress action and begin to

build constructive solutions to the environmental, economic and social issues that are the basis of the dispute . (Copy of letter attached.)

On 09 Dec 2003 the Minister for Natural Resources and Mines advised 'I have asked officers of my Department to provide me with advice on the matters raised in the report. Accordingly, I am not in a position to commit to the meeting that you have requested, at this time.' (Copy of letter Attachment 9.)

Minister for Environment

On 26 November 2003 EEMAG wrote a similar letter to the Minister for the Environment. (Copy of letter Attachment 10.)

We have received no acknowledgement nor response from the Minister for Environment.

However a senior officer of EPA during a phone discussion on 16 December 2003 commented that the CRP Report's findings from the sophisticated streamflow modelling report on Weir 2 at Machine Creek was 'rubbish' and that the EPA's "Independent" Consultant's findings remained the best work he had seen [on the mine's impacts on the water table]. (Weir 2 is approx 5 kilometres from the mine. The Weir 2 streamflow modelling identifies declining rainfall trends, but also finds that creek flow progressively and disproportionately declined due to mining, and that these effects markedly increased in late 1992, three (3) years before QCL's 1995/95 IAS findings that mine depletion was approx 500 metres from the mine pit.)

We are disappointed but not surprised by his statements. We interpret from these comments that EPA has not shifted its position.

From our interpretation of the Queensland government's responses is that if EEMAG members continue to be unable to access an 'impartial appeals and dispute-resolution mechanism', then degradation of the water resource systems by QCL's/Cement Australia's limestone mine will continue, there will be no redress for affected landholders, and the limestone mine will continue to be exempt from compliance with environmental regimes and the 1994 CoAG agreement on water reform.

Speculation that farmers are paying for tradeoffs

I refer to our CRP Report, the conclusions of the Ethics Professor on Page 50 , where he **speculated that 'the earlier decisions to exclude QCL from limestone quarrying at Mt Etna and on Bulwer Island probably carried with it an acknowledgement that they (QCL) should not be impeded at Mt Larcom. The EEMAG farmers are seemingly paying for this tradeoff.'**

We recognise and accept the necessity for and importance of sustainable tree-clearing regulations. At the same time we ask whether the proposed tree clearing legislation is intended to also be a countermeasure for environmental and resource degradation (air/land/water/vegetation) caused by industry/others, to which government/elements of the wider community have chosen to turn a blind eye; apparently due to the economic importance, and the greater resources and bargaining power of big business?

Because of our experiences, we also have to ask whether the Queensland government, in apparently having fixed the amount of compensation it is prepared to pay, has decided that landholders will pay [to a small or large extent] for this tradeoff?

Given the example illustrated by our case, we respectfully request the Productivity Commission to recommend strong measures so that this type of decision cannot continue to be implemented.

Yours sincerely,

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