

EAST END MINE ACTION GROUP (INC)  
1415 East End Road  
MT LARCOM QLD 4695

SUBMISSION TO  
Access to Justice Arrangements  
Productivity Commission

4 November 2013

Access to Justice Arrangements  
Productivity Commission  
LB 2 Collins Street East  
MELBOURNE VIC 8003

Dear Sir/Madam,

Thank you for accepting the East End Mine Action Group Inc's (EEMAG's) submission to your inquiry into Access to Justice Arrangements.

EEMAG consists mainly of rural landholders in the Mt Larcom area of Central Queensland (close to the industrial city of Gladstone) affected by cumulative dewatering impacts from the East End limestone mine that has continuously discharged mine pit inflow downstream as waste since 1979. Formed in 1995, EEMAG's dispute with the Queensland Government, its regulators and the mine has been ongoing for the past eighteen years.

- It is well recognised that it is almost impossible for small landholders to compete with the legal power of mining companies.

Therefore, like other stakeholders adversely affected by projects, we have an end reliance upon administrative justice to protect our welfare, livelihoods, essential water resources and environment. This reliance on administrative decision making is recognised via Government development assessment and regulatory requirements for projects (claims of stringent environmental standards) and beyond that, by access to administrative review agencies such as the Queensland Ombudsman, Criminal Justice Commission and bodies such as the Productivity Commission (a Government advisory body on economic, social and environmental issues) capable of fully investigating and making recommendations or in recommending effective remedies to Government.

- Given the duration of the EEMAG dispute and our representations to every conceivable avenue, it is clear that there are barriers that deny our access to administrative justice. EEMAG has irrefutable evidence that these barriers have their origin in a covert "minimum compliance strategy" agreement between the Queensland Government and the East End mine which<sup>1</sup> "controls socio-environmental community demands and equally important, minimises legal exposure" i.e. that Government covertly deemed that the economic benefit / profits of the project outweighed adversely affected stakeholders' rights and interests.
- We are alleging that we have been offered only "ineffective remedies" as solutions to the dispute.

<sup>1</sup>*Above quote from Page 9.23 of Doctoral Thesis “Industry/ Community Relationships in Critical Industrial Developments” (Hoppe 2006), undertaken under stringent guidelines of Griffith University. The Thesis is a comparative study between the Holcim owned mine at East End in Queensland and FEKLHAS, the Holcim owned quarries in Switzerland.*

Over the years EEMAG has taken our issues, which flow into administration of Water Reform and the National Water Initiative through the Calliope River Water Resources Plan, to all available State and various Federal levels of government. We found that the administrative systems of both levels of Government protected the unofficial policy of “minimum compliance”, the use of inaccurate hydrology reports shaped to fit the political agreement and the non-enforcement of stated environmental standards – i.e. an unofficial policy of the “public good” weighted in favour of economic development overriding “private rights”. (We now understand that under COAG Agreements on Water Reform and the National Water Initiative mining can be exempted from compliance while farmers must comply.)

The Government’s commitment to minimum compliance for the End mine amounts to an involuntary subsidy being levied on landowners adversely affected by the mine’s operations. Since damages to the properties/livelihoods of affected landholders are not recognised nor redressed by the Company, they are not factored into the Company’s production costs. By default, this cost is imposed on the various landholders affected by the mine’s operations, contrary to the principles National Competition Policy.

NONE of the Government bodies we liaised with / approached since 1995 advised us of the minimum compliance strategy for East End Mine. Despite our accumulating evidence indicating this situation, we only received final confirmation of minimum compliance in 2006 with the release of “Industry/Community Relationships in Critical Industrial Developments”.

- A key element in denying EEMAG members’ access to administrative justice is that Government regulators use only their own, and mine generated technical reports for decision making, and dismiss dissenting views. The views of the four highly qualified limestone hydrogeologists providing Reports to EEMAG were/are consistently disregarded in Departmental consultations / decision-making. The long-term local knowledge (empirical evidence) of landholders obtained from day to day management of the land and its resources, is likewise disregarded.
- In Queensland, there is no process to appeal the merit of Departmental decisions / technical assessments even when there is robust evidence that their assessments are wrong.

These matters and other regulatory related evidence were brought to the attention of the Productivity Commission in EEMAG’s submissions to Major Project Development processes (link <http://www.pc.gov.au/projects/study/major-projects/submissions>, Refer Submissions 035, 038 and DR068). We respectfully request the Commission to treat the submissions to Major Project Development Processes as part of this submission in your considerations on access to justice, as they detail evidence that ALL the administrative, regulatory and review processes we participated in (initially in good faith) acted in conformity with the “minimum compliance strategy”, and that regulatory processes denied/circumvented our opportunity to participate in public objection processes. These previous submissions are essential to the whole of information base for this submission.

The Productivity Commission’s August 2013 Draft Report into Major Projects shows the Commission omitted to visit, interview and report on people suffering from regulatory failure

from mining and gas extraction projects etc, and observe for themselves what is occurring on the ground, (or to investigate cumulative failure to rehabilitate mining projects).

Thoroughness of investigation is absolutely essential to the adequacy and even-handedness of the Commission's study, and to consideration / recommendations on the adequacy and effectiveness of regulatory processes which affected stakeholders rely on to access administrative justice. Our Submission DR068 details our considerable disappointment with the adequacy of the Commission's investigations.

(In 2004 we lodged submissions to the Review of National Competition Policy Arrangements (Submissions No 9, 81, DR136, DR 175, DR 246) and in 2003 to the inquiry into Impacts of Native Vegetation and Biodiversity Regulations (Submissions 16, 102, DR239, DR 292 and Public Hearing Transcript Brisbane.)

From the tragic administration of the Wittenoom asbestos mine etc to our own experiences, we consider that there is a evidence of Government culture for development and approval of projects that focuses on economic benefits and disregards / offers only token remedies for potential adverse impacts. From our own experience individuals / groups are sometimes denigrated when seeking to safeguard their rights, interests and environment.

We conclude that Queensland's recent axing of Social Impacts from EIS requirements, NSW's proposals for planning assessments to be more heavily weighed to economic development, the Federal Government's intention to move to State controlled one shop approval processes, together with the labelling of some opponents of coal seam gas projects as "anarchists" by the Federal Industry Minister (article in the Sydney Morning Herald 27 September 2013 and the Land website 27 September 2013) signals this culture is becoming even more entrenched by influential policy makers.

We respectfully appeal to the Productivity Commission to fully, frankly and fearlessly investigate the extent of regulatory failure to ensure fair and equitable administrative justice for landholders/others affected by negative impacts from projects, and to recommend an effective remedy to the situation.

Note: EEMAG was advised by a friend that the Productivity Commission was undertaking a study into Major Development Assessment Processes and an Inquiry into Access to Justice Arrangements. We did not see them advertised anywhere.

Thank you for accepting EEMAG's Submission.

Yours sincerely,

Heather Lucke  
Assistant Secretary