

31 October 2006

Dr Ian Holland  
Secretary  
Senate Environment, Communications, IT and the Arts Committee  
Department of the Senate  
PO Box 6100  
Parliament House  
Canberra ACT 2600

### **Inquiry into the Environment and Heritage Legislation Amendment Bill (No.1) 2006**

Dear Dr Holland

The Minerals Council of Australia (MCA) welcomes the opportunity to provide a submission on the proposed amendments to the Environment Protection and Biodiversity Conservation Act 1999 (the EPBC Act). Members of the MCA, representing over 85% of minerals production in Australia, have a long-standing commitment to environmental stewardship and the application of co-regulatory measures to provide effective protection for significant aspects of the environment.

The MCA strongly advocates the principle of minimum effective regulation – that the development of good regulatory process should be informed by the following principles:

- > regulatory approaches should not be used unless a clear case for action exists, including an evaluation of why existing measures are not sufficient to deal with the issue;
- > a range of policy options (including self-regulatory and co-regulatory approaches) have been assessed and found wanting;
- > the regulation represents the greatest net benefit to the community;
- > the regulation developed is the most efficient means of achieving the desired outcome at least cost to industry;
- > effective guidance is provided for both regulators and stakeholders to ensure that the regulations are correctly implemented and monitored;
- > mechanisms such as sunset clauses or periodic reviews are built into the legislation to ensure that the regulations remain relevant over time; and
- > there is effective consultation with stakeholders at key stages of the development and implementation of the regulation.

The MCA does not seek a diminution of measures to protect the environment, but rather promotes improvements to the efficiency and co-ordination of legislation within and between jurisdictions. In this context, the MCA supports the majority of the proposed amendments as an improvement in the efficient operation of the EPBC Act, but has concerns that some of the amendments may be perceived by some stakeholders as providing for a lessening of protection and public participation.

## Assessment and approvals

The MCA welcomes the proposed changes to the assessment and approval provisions under the EPBC Act in bringing the Act closer to achieving its primary objectives of certainty and efficiency of administrative processes to protect matters of national environmental significance.

Specifically, the MCA welcomes and supports the following proposed reforms:

- > the establishment of processes for rapid decisions on straightforward proposals;
- > clarification of what constitutes an indirect impact, with a project now needing to be the “substantial cause” or to “facilitate in a major way” any indirect impacts before these become a relevant consideration;
- > greater flexibility to change proposals during the assessment and approval process;
- > increased capacity to rely on conditions of approval imposed by other Ministers (including State/Territory Ministers); and
- > formal processes for consulting with proponents in advance of approval decisions.

With reference to the proposed provisions ensuring that existing approvals are not affected by new listings of threatened species, ecological communities and national heritage places, the MCA is concerned that this may not meet the legitimate expectations of the community for companies to manage and mitigate any relevant risks arising from project development.

Many MCA members currently implement environmental management measures that go beyond strict compliance, including acting on new information on threatened species, ecological communities and heritage places as this becomes available. Accordingly, the MCA recommends that should this change be accepted, that additional processes be put in place in other industry sectors, in line with the minerals industry’s approach as articulated in *Enduring Value*, to encourage proponents to manage for new listings as a beyond compliance measure.

## Compliance and enforcement

The MCA recognises that several of the changes to the compliance and enforcement provisions under the proposed amendments are in response to operational experience enforcing the Act. All MCA members have made a commitment to meeting, and in many cases exceeding, regulatory requirements as part of their commitment to *Enduring Value – The Australian Minerals Industry Framework for Sustainable Development*.

However, the proposed extension of liability to employers (including employers of contractors) and for landowners is of concern. The minerals industry is both the employer of a large and diverse workforce and a significant owner of land, and as such is seeking clarification of its obligations should these changes be implemented.

The MCA considers that these extensions of liability have the potential for significant unintended consequences if the administration and implementation of these provisions are not properly managed. Importantly, the MCA considers that such measures should include a ‘gross negligence test’ to ensure that there is a legitimate basis to assign responsibility for any deleterious actions and that such measures are applied in accordance with principles of natural justice.

## Departmental resourcing

While many of the proposed amendments to the EPBC Act will improve the efficiency and effectiveness of its administration by the Department of Environment and Heritage, the MCA also recognises that a number of the proposed changes will require significant additional resources. Specifically, the provisions for the extension of liability to employers and landowners, have the potential to significantly affect the Australian minerals industry, and should they be accepted, will require a program of policy development and stakeholder engagement to ensure that they do not result in unintended consequences.

The MCA has previously raised concerns that the administration of the Act is significantly under-resourced as it is currently structured. Accordingly, the MCA strongly advocates a significant injection of additional resources into the Department to ensure the effective implementation of the proposed changes and to enhance their ongoing administration.

The MCA welcomes the opportunity to provide submission to the Senate Environment, Communications, IT and the Arts Committee Inquiry into the Environment and Heritage Legislation Amendment Bill (No.1) 2006.

Subject to satisfactory resolution of issues relating to new listings and compliance provisions, the MCA supports the proposed package of amendments as a worthwhile step towards improving the efficiency and effectiveness of protection for matters of National Environmental Significance. Should you require clarification of any of the points raised in this submission, please contact me directly, or Mr Cormac Farrell – Policy Officer Environment, who has carriage of this matter in the MCA Secretariat.

Yours sincerely

**MITCHELL H HOOKE**  
**CHIEF EXECUTIVE**