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Sub # 0118

28 October, 2013

Mr Ian Rickuss MP
The Chairperson
Agriculture, Resources and Environment Committee Parliament House
George St
Brisbane 4000

BY EMAIL

Dear Mr Rickuss,

Submission on the North Stradbroke Island Protection and Sustainability and Another Act Amendment Bill 2013

I write to you on behalf of Dale Ruska, a Goorumpul sovereign original owner, a member of the Quandamooka people and long term resident of Dunwich on North Stradbroke Island. Mr Ruska also wishes to address the committee at the public hearing this Wednesday, 30 October, 2013.

The committee's webpage concerning parliament's 17 October referral of the Bill to the committee states:-

"The committee will examine the policies the Bill seeks to give effect to, the Bill's lawfulness, and the application of fundamental legislative principles, as set out in section 4 of the Legislative Standards Act 1992".

This submission will address each of the three issues being examined by the committee as far as they relate to the proposed amendments to the sand mining provisions of the current North Stradbroke Act.

1. **The state government's policy on sand mining – Mr Newman's promise to restore rights**

The Premier and other members of the government have claimed that there is a mandate for the proposed amendments, relying on the results at the 2012 State election on North Stradbroke (but ignoring the recent Federal election results which largely reversed the outcome on the Island). In any case, the claimed State election mandate does not stand up to scrutiny. Prior to the State election in March,2012, the Premier announced on ABC radio his policy on sand mining. This sand mining issue received significant media coverage prior to the election. Examples can be found here http://www.news.com.au/search-results?q=sibelco. Sibelco had also previously run an expensive media campaign, with the assistance of a well know lobbyist firm.

In the lead up to the Premier's policy announcement, it was unclear what the LNP's policy on North Stradbroke Island was. On 20 January, 2012 during an ABC radio interview with Steve Austin the Premier was asked by a caller whether he would extend sand mining either... 'in terms of the number of years or the area to be mined'.

QUEENSLAND LAW SOCIETY ACCREDITED SPECIALIST * Brisbane

Mr Newman very clearly stated that the mining company would not be given anything it was not entitled to previously…*" We will allow, we will allow the mine to proceed in the way that it was originally allowed to prior to the actions of the last 18 months….* ***the premise has been put to me as though we're giving something more than was originally there and that is not the case.*** *We would be restoring rights of the community and the company to continue so that the mine ultimately can progress orderly to a, in an orderly way to a shut down. That's what we're saying. Now that isn't weasel words, the premise was put to me that in some way we'd be extending – that's not the case, the community and the mining company had certain rights which Anna Bligh and labor took away last year. There's a huge difference there."*

The restoration of Sibelco's and the community's rights

Mr Newman's promise that he would not give the mining company any additional rights was clearly stated more than once. His policy was based upon his restoring Sibelco's and the community's rights in relation to expired mining leases.

It is important to distinguish what the Premier promised from the result he (and some others) may have believed would result from implementation of his promise. The reality was that there was no automatic right to renewal of an expired mining lease. There were established requirements for renewal set out in the Mineral Resources Act. There were also legal precedents for judicial challenges to decisions on applications to renew – both by mining companies in failed applications and opponents to renewal when applications were successful. A recent example is Wright and Bright v Minister for Mines -http://archive.sclqld.org.au/qjudgment/2012/QSC12- 112.pdf

Prior to the former government's intervention referred to by Mr Newman in the radio interview, a number of mining leases had expired. The law relating to expired mining leases is clearly set out in the State's Mineral Resources Act 1989(MRA). An application for renewal is to be lodged before expiry (s.286) but mining can continue until the application is decided (s.286C).

It is convenient to primarily address expired lease ML 1117, however the law applied equally to other expired leases, such as ML 1120, also the subject of this Bill. But continued mining at Enterprise mine depended upon the renewal of ML 1117.

Despite misleading claims to the contrary, under the MRA there is no legal power to renew an expired mining lease unless the Minister is satisfied of each factor set out in section 286A (copy attached). An interested party with sufficient standing who is dissatisfied with the decision under s.286A can apply for judicial review of the decision. Mr Ruska (and many others) objected to the renewal of the expired leases including ML 1117. Mr Ruska had a significant interest in the outcome. Had the pre-existing applications been decided under the MRA and approved, Mr Ruska was entitled to apply for judicial review as he was and remains opposed to the destructive nature of sand mining. Counsel's opinion had been obtained indicating good prospects of over-turning renewals on the basis that, in the special circumstances existing on North Stradbroke, no minister could be genuinely satisfied of all of the factors listed in s.286A of the MRA, in particular s.286A (1)(d):-

. (d) having regard to the current and prospective uses of the area of the lease, the operations to be carried on during the renewed term of the lease—

(i) are an appropriate land use; and

(ii) will conform with sound land use management;

This Bill does not restore Mr Ruska's rights or those of other members of the community who oppose further sand mining. If the Bill is passed, the Premier will have broken his promise to the electorate to restore rights – the central plank of his publicly announced pre-election policy.

Mr Ruska's rights and the rights of others opposed to the renewal of expired mining leases were acknowledged and confirmed in a legal opinion from The Honourable Tim Carmody SC dated 4 April, 2012. A copy of his opinion is attached. Mr Carmody (now Judge Carmody, Chief Magistrate of Queensland), concluded in relation to the 2011 Bill, that the explanatory notes and the submission of the Queensland Law Society in particular were "seriously deficient and unbalanced" in favour of Sibelco. He also concluded that Sibelco gained a significant benefit from the legislative renewal of ML1117 while significant detriment was suffered by indigenous owners and others opposed to renewal because their right to challenge renewal made under the MRA in accordance with pre-existing applications, was extinguished. The objections to renewal had been conveyed to the Minister by Mr Ruska and others.

On 4 July, 2012 the Queensland Law Society, as recommended at the conclusion of Mr Carmody's opinion, sent a letter to the relevant parliamentary office correcting its March 2011 submission by referring to the breaches of fundamental legislative principles not mentioned in its 30 March 2011 submission to parliament. The correction was in the same terms as had been agreed in December 2011 – well before the State election. The delay in sending it was due to opposition from the committee responsible for the original submission, whose chair was in a position of significant conflict. A copy of the Law Society's correcting letter is **attached,** together with correspondence concerning this issue which I forwarded to your committee last year.

The premier's policy announcement, as has already been discussed, was fundamentally based upon the restoration of rights, with nothing more to be given to Sibelco. This Bill will, if passed, result in a broken promise by the Premier in two respects. First, it does not restore rights taken away by the former government, as the Mr Newman very clearly promised. Second, it provides benefits to Sibelco which are far beyond any prior right held by the company, which Mr Newman promised would not occur.

Sibelco had a right to a decision on its applications to renew expired mining leases and a similar right to Mr Ruska to challenge an unfavourable decision in the courts, in accordance with the Judicial Review Act. That was the extent of its rights. Sibelco's application to renew the key expired lease, ML 1117 was for only 21 years from the date of expiry which was 31 October, 2007. The effect of the Bill is to hand Sibelco an extension totalling 28 years, while at the same time denying Mr Ruska and others their right to challenge the renewal, as a direct the result of Mr Newman failing to honour his election promise to restore rights. As Mr Carmody and the corrected Law Society submission point out, the restriction on rights to challenge renewals does not exist anywhere else in Queensland. Elsewhere, judicial review is available. If the Bill is passed, the cumulative effect of Mr Newman's broken promise will be substantial.

2. The Bill's Lawfulness

It is submitted that the Bill is unlawful because it conflicts with the native title rights of the Quandamooka people as set out in the judgement of Dowsett J of the Federal Court of Australia.

http://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2011/2011fca0741

Under the Federal Court's orders, native title rights were recognised, including over non-exclusive areas covered by mining leases, including ML 1117. The material provided on notice to the committee last Friday contains maps of the native title areas covering most of the Island. The native title rights attaching to the land under mining lease at the date of the Federal court orders, are exercisable upon the expiry of the mining leases. The State of Queensland and Sibelco, via subsidiary companies which hold the mining leases, consented to the orders. The Bill's proposed extension of the terms of mining leases is in conflict with the exercise of native title rights under the Federal Court's orders and breaches the State of Queensland's and Sibelco's agreement with the orders, because it proposes to postpone the exercise of native title rights for 20 years and will involve substantial damage to the land mined as well as putting at risk off-lease areas including protected wetlands and the island's substantial aquifer.

The proposed Bill extends the total area permitted to be cleared of vegetation for sand mining at the so-called Enterprise mine, to approximately 14 square kilometres. Dredge mining takes place up to a depth of 100 metres, often below the water table. The area includes old growth forests, the habitat of many plants and animals, including threatened species. This is confirmed in the mining company's own Environmental Studies Report 2003, which was provided to the committee last Friday. It is noted that this report states that it was prepared for only the first stage of mining at this mine ie up to 2012 - see section 1.2 of the main report (Volume 1) titled "Purpose of this Report". The second last paragraph of the introduction 1.1, also makes it clear that the second half of the Enterprise mine (ie 2013 onwards) is subject to further "…environmental assessment". Of course, it was also subject to renewal of expired mining leases.

Although some of this land within the Enterprise mine area was mined decades ago, this was done in patches using the dry mining method, not to be compared with current dredge mining which consumes sand dunes up to 300,000 years old down to a depth of up to 100 metres. The company's ESR contains maps which show the patchy nature of the previous sand mining and the large areas which have never been mined (eg Main Report – Volume 1, Figure 3-13).

The extension of sand mining would obviously conflict with native title rights and interests and therefore the Federal Court orders. For that reason it is submitted that those parts of the Bill which propose the extension of sand mining are unlawful.

Other concerns relating to the Bill's lawfulness

(a) The Enterprise mine does not have federal approval and may be unlawful

Mr Ruska also has concerns that the Enterprise mine, which borders RAMSAR protected wetlands, was not subjected to commonwealth government scrutiny under the Environment Protection and Biodiversity Conservation Act (EPBC Act) 2000 before sand mining commenced at this mine in 2004. The commonwealth department is currently investigating whether the mine is lawful under commonwealth law and, if not, what the consequences should be. Consideration of the Bill should be suspended until the commonwealth department completes its investigation.

(b) The unresolved criminal charges against Sibelco

Sibelco, then called Unimin, was charged with offences in 2009. The trial of two charges is scheduled to continue in the Brisbane Magistrates Court on Wednesday, 30 October, following last month's Supreme Court decision refusing Sibelco's application to stop the trial:-

http://archive.sclqld.org.au/qjudgment/2013/QSC13-270.pdf

The extraordinary delays in the trial coming to a conclusion are primarily due to numerous applications made by Sibelco to stop the trial. Earlier this year the magistrate ordered Sibelco pay an unprecedented amount in costs (in excess of $250,000) relating to a number of failed applications before the magistrate - http://archive.sclqld.org.au/qjudgment/2013/QMC13-003.pdf

It would be an extraordinary step for the government to proceed with the proposed Bill to gift the accused company, Sibelco, $ 1.5 Billion in revenue, according to forecasts in the committee's material, before the trial concludes.

[redacted]

The Supreme Court and Court of Appeal held that the non-mineral silica sand could not be removed and sold for landscaping and construction purposes unless the required permits were obtained, but the company's criminal responsibility was not decided by those courts because the proceedings were civil in nature. Sibelco was charged with summary criminal offences shortly after the initial Supreme Court decision.

[redacted]

3. The Bill's interference with Mr Ruska's rights and liberties in breach of fundamental legislative principles

The Legislative Standards Act (LSA) defines fundamental legislative principles in section 4(1) as being "the principles relating to legislation that underlie a parliamentary democracy based on the rule of law".

As section 4(2) states, "the principles include requiring that legislation has sufficient regard to—

. (a) rights and liberties of individuals; " Section 4(3) LSA provides examples of whether legislation has sufficient regard to the rights and liberties of individuals.

Mr Newman promised to restore rights of Sibelco and the community. He also promised not to give Sibelco "more than was originally there". What Sibelco and the community had before was a right to have the Mineral Resources Act applied to the expired leases on Stradbroke Island.

A fundamental principle of the rule of law is that all citizens should be treated equally under the law. In other words, the same law should apply to all citizens. This means that if a mining lease expires in central Queensland and an application is made to renew it, the same law should apply as applies elsewhere in Queensland, so that everyone – the mining company and opponents to renewal – know where they stand and have the same rights to challenge the decision in the Supreme Court. This Bill breaches that fundamental principle again. It does so because Mr Newman has broken his promise to restore rights. But he has gone much further than Anna Bligh. She took away Mr Ruska's right to challenge the decision to renew ML 1117 – the lease critical to whether Enterprise mine could continue. Mr Newman proposes to put in place a mechanism whereby Sibelco can apply to renew ML 1117 and two other leases – in 2019 (see clause 9, s.11C of the Bill). The minister, in effect, must renew the lease (Clause 9, s.11D) and the decision cannot be challenged in court by Mr Ruska or anyone else opposed to its renewal. (s. 11F) unless there is 'jurisdictional error' which would be virtually impossible to show in these circumstances.

In addition to the Bill seriously breaching fundamental aspects of the rule of law, Mr Ruska, by reference to s.4(3) of the Legislative Standards Act, also submits that the Bill breaches the fundamental legislative principles because there is insufficient regard (in fact no regard) for Mr Ruska's right to natural justice (s.4 (3) (b)).The rights enjoyed by Queenslanders elsewhere to be heard on the question of an expired lease renewal have been again denied – with the extinguishment of his natural justice rights having an even greater impact than the current North Stradbroke Act.

The Bill extends the retrospective adverse impact on his judicial review rights to challenge the renewal of the expired mining leases – in breach of s. 4(3)(g). For example, Mr Ruska had objected to the renewal of ML 1117 when the application was being considered by the former minister. He expected a decision to be made. He had the right to challenge the decision in the Supreme Court, as has already been explained. The current Act renewed ML 1117 to 31 December, 2019, extinguishing Mr Ruska's rights. This Bill proposes to, in effect, extend the renewal period to 2035 for mining purposes. This will result in a substantial aggravation of the retrospective loss of Mr Ruska's right to challenge the renewals in court.

In relation to ML 1120, the condition preventing mining is to be removed (Clause 9, s.11A) and then renewal is to be allowed for mining to 2035, in the same way as applies to ML 1117. The renewal of ML 1120 (for non-winning purposes) in 2011 by the current Act was puzzling, as the lease is a long way north of the restricted mine path. However its renewal in 2011 could not be said to result in destruction of any land the subject of Mr Ruska's land rights because the wining of minerals was prohibited. Now, the situation has been reversed, with the land on this lease to be subjected to sand mining. Mr Ruska cannot challenge this decision to renew the lease for mining purposes, as he could have done if he were sufficiently affected by a renewal of an expired mining lease for example, in

Ipswich, where the decision would have been made under the MRA. This is a reference to the Wright and Bright case referred to earlier, which involved a mine at Ipswich.

Finally, it is apparent that the Bill has no regard whatsoever for aboriginal tradition and custom – s. 4(3)(j). It seeks to permit major, permanent damage to aboriginal land and to suspend the exercise of native title rights to that land for 20 years. Under this proposal, when finally handed back, it will obviously be in a significantly degraded state.

Conclusion

Mr Ruska's rights will be severely impacted by this Bill, if it is enacted. The Bill is in stark contrast to the result which would follow if Mr Newman's pre-election promise to restore the community's rights is honoured. Mr Ruska calls upon the committee to recommend the suspension of consideration of the Bill until:-

1. Mr Newman gives further consideration to honouring his pre-election promises to restore rights and not to give Sibelco anything they were not previously entitled to:
2. [redacted]
3. The criminal trial in the Magistrates Court is concluded or, [redacted] those proceedings have concluded
4. The commonwealth completes its investigation under the EPBC Act into the Enterprise mine;

Yours faithfully
CAREW LAWYERS

RICHARD CAREW
Partner

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Sub # 0118

14 August, 2012

Mr Ian Rickuss MP
Chair
Agriculture, Resources and Environment Committee
Queensland Parliament
By email c/- robert.hansen@parliament.qld.gov.au

Dear Mr Rickuss,

The requested tabling of the Queensland Law Society's correction of its submission on the *North Stradbroke Island Protection and Sustainability Bill 2011*

I refer to my letter to the Committee Office Manager, Mr Finnimore, dated 10 July, 2012 and its attachments, particularly the 4 April, 2012 opinion of Mr Tim Carmody SC. I also refer to the letter from the Clerk of the Parliament, dated 24 July, 2012, which was copied to me.

I would have preferred to address these issues to the relevant committee in the previous parliament. However, despite my efforts, the Law Society did not correct its parliamentary submission until last month.

The Law Society's role in making parliamentary submissions on Bills

As confirmed by the 2011 President, the Law Society endeavours to point out all potential breaches of the fundamental legislative principles (*Legislative Standards Act 1992*, s.4) in its submissions on parliamentary Bills.

In a letter in July last year concerning the Planning and Environment committee's North Stradbroke Bill submission, the 2011 President stated:-

"The committee reviews all Bills relating to planning or environmental issues for any breaches of legislative principles and regularly makes submissions (either to the relevant Minister or to the relevant parliamentary committee) drawing attention to any breaches...It is important to draw breaches of legislative standards to the attention of government if those standards that government imposes on itself are to have any practical meaning..."

A copy of the letter will be provided upon request.

The submission was "seriously deficient and unbalanced" – Tim Carmody SC

Mr Carmody SC, in effect, concluded that the submission was biased in favour of Sibelco's interests because its assessment of the Bill's compliance with the FLP's did not refer to the impact of the s.11 renewals (of expired mining lease ML 1117 in particular) on the rights and liberties of the opponents to the renewals.

Mr Carmody SC also concluded that "*The NSI Act more than compensated Sibelco for early lease termination by automatically renewing the lapsed ML 1117 to 2020*". In other words, the real victims of the Legislation were those opposed to the expired lease renewals, whose pre-existing rights were extinguished by the Legislation.

FLP breaches not referred to in the submission or the explanatory notes

Mr Carmody referred to the retrospective breach of natural justice rights involved in the Act's renewal of already expired leases, rather than subjecting them to the same criteria for renewal as expired leases at any other Queensland mine. The criteria for renewal is set out

in s.286A of the *Mineral Resources Act*. Section 11 of the Stradbroke Act bypassed that criteria and renewed the key expired lease ML 1117 to 2020. Without that renewal, Sibelco's Enterprise mine, its major interest, would have had to close (Exp. Notes p.6, line 15). The lease expired in 2007. A process had begun. An application had been made to renew it. My clients had objected to the renewal. They had met with mining departmental officers. They had been informed, in writing, by the Minister that their views would be taken into account in the decision. That correspondence will be forwarded upon request.

Secondly, as Mr Carmody indicated, renewal under the MRA was subject to judicial review by aggrieved persons, such as the Stradbroke environment groups and traditional owners opposed to the extension of sand mining. That is, the Supreme Court adjudicates on whether renewal of an expired mining lease is justified in the particular circumstances eg Wright & Bright v Minister for Employment, Skills and Mining. http://archive.sclqld.org.au/qjudgment/2012/QSC12-112.pdf

While parliament has the power to interfere with or even extinguish pre-existing rights and liberties, the *Legislative Standards Act* requires this to be done transparently (s.23), particularly when it involves serious consequences, such as extinguishing the Supreme Court's role in adjudicating issues and more particularly when this is done in such a selective manner ie only expired mining leases on Stradbroke. Incredibly, the extinguishment of these rights was not even mentioned in the explanatory notes or in the parliamentary debate.

Law Society's delay in correcting its submission

The correction was delayed because of the refusal of the Planning and Environment Committee to agree to any correction of its submission.

When the first refusal occurred in July, 2011, I requested that the issue be referred to the elected governing body, the Law Society Council, for an independent review. However, with the approval of the former President, Bruce Doyle, that move was deflected to a meeting with the Chair of the Planning and Environment Committee, Leanne Bowie, to attempt to resolve the matter without the Council's involvement.

After long delays without a meeting taking place, I discovered that the Chair of the Committee was in a position of conflict.

The Chair's position of conflict

On 9 November, 2011 I drew to the Society's attention the Planning and Environment Committee Chair's position of conflict, given the cumulative effect of the following information from the Leanne Bowie Lawyers website :-

- She was a member of the Queensland Resources Council;
- She acted as a legal advisor to the Queensland Resources Council;
- Her firm, which she formed in August 2010, prepared or assisted with the preparation of the Queensland Resources Council's submission in relation to " *Sovereign risk issues as a result of special legislation which retrospectively severely restricted tenements and sand mining operations at North Stradbroke island*" (this information from her website has since been removed);
- She was the chair of the Law Society's Planning and Environment Committee ;

I **attach** copies of the relevant pages from the website.

In effect, my complaint was that the Law Society's submission was biased in favour of her client, the Queensland Resources Council, and a fellow member of the QRC, Sibelco. The Society conceded the same day, 9 November, 2011, that it was inappropriate for the Chair to be involved in representing the Society and its members on this issue. In her place, the Society appointed its principal policy lawyer, Matt Dunn to discuss a resolution.

In referring to the QRC submission, I make no criticism of the Resources Council for robustly representing the interests of its member, Sibelco. The parliament was no doubt fully aware of Sibelco's membership of the QRC and the role of the QRC in representing its members' interests. The QRC was in a completely different position to the Queensland Law Society, whose members' views on sand mining on North Stradbroke would vary widely. The Society would be expected to be balanced and unbiased in its legal assessments.

The Law Society submission correction was agreed to in December, 2011

The Society's correcting letter of 4 July, 2012 was actually agreed to in December, 2011, after Matt Dunn, the Society's principal policy lawyer, agreed that the submission should be corrected. However, the former President would not sign the letter because it had not been approved by the Planning and Environment Committee.

Although relying on this committee was a case of Caesar judging Caesar, the Society in 2012 again acted on that committee's refusal to agree to a correction.

The opinion of Tim Carmody SC and the special general meeting requisition

The opinion of Tim Carmody, Senior Counsel was then obtained. Ultimately, with the support of other senior members of the Society, I requisitioned the Law Society's Council to call a special general meeting of members to debate the issue. The Society promptly agreed to correct the submission in the same terms as agreed to in December, 2011. The requisition for the special general meeting was withdrawn following the letter of 4 July being dispatched to the Scrutiny of Legislation Secretariat.

The need to correct the public record

I have endeavoured to explain the delays and trust that the committee now appreciates why it is being requested to cause the correcting letter of 4 July to be tabled.

I submit that a submission to the parliament is an important document. The Law Society's submission dated 30 March 2011 was referred to in the former Scrutiny of Legislation Committee's report to parliament on the relevant Bill. The Society's submission was tabled. Additionally it was reported in the media.

It is not surprising that the Law Society has not itself requested the 4 July, 2012 correction to be tabled. It has not even notified its own members of the correction. It has simply placed it on the Society's website. The correction is obviously a professional embarrassment to those associated with the original submission. But that should have no impact on determining the public interest in tabling it in the parliament.

I submit that it is in the public interest and the parliament's interest for the correction to be tabled, to ensure that the public record contains the Law Society's balanced and unbiased analysis of the Bill's compliance with the Legislative Standards Act's fundamental legislative principles. Tabling the correction will also assist to undo some of the damage resulting from its "*seriously deficient and unbalanced*" submission, which misled the parliament and contributed to two myths – that Sibelco was the victim of the legislation and that the legislation was pro-environment.

I request an opportunity to address the committee if it takes the preliminary view that it should not take steps to ensure that the Law Society's correction is tabled in the parliament.

In the meantime, please let me know if you or committee members have any queries.

Yours faithfully

CAREW LAWYERS

RICHARD CAREW

Sub # 0118

Leanne Bowie LAWYERS

Current and recent projects

Queensland Resources Council

The Queensland Resources Council is the peak industry group for the Queensland mining and resources industries. Since August 2010, we have prepared (or assisted with preparation of) submissions on behalf of the QRC in relation to:

- The Queensland Flood Inquiry;
- Sovereign risk issues as a result of special legislation which retrospectively severely restricted tenements and sand mining operations at North Stradbroke Island;
- Protection of strategic cropping land;
- Water quality and regulated dams conditions;
- 'Greentape reduction';
- Environmental notification requirements; and
- Transitional arrangements for exploration and mineral development land access changes.

Anglo American Metallurgical Coal Pty Ltd

Anglo American's metallurgical coal business is one of Australia's leading metallurgical coal producers with extensive coal mining interests in Queensland and New South Wales.

- Worked with Anglo American on a discussion paper prepared for the Queensland Resources Council, which has subsequently been accepted by the Department of Environment and Resource Management, in relation to important reforms to water quality conditions for coal mines in central Queensland (known as the 'Fitzroy conditions'), as part of a review process following the heavy wet season experienced in 2010/11;
- Advice on EIS, environmental management plan and conditions for the Grosvenor coal mining project, located in central Queensland;
- Assisted Anglo American in its consultation with the State Government involved in removal of an exemption for mines under special agreement Acts, in relation to the Dawson North and Central coal mines, near Moura in central Queensland;
- Environmental advice for the Callide Mine, which has recently been placed on the market; and associated vendor environmental due diligence, in cooperation with Minter Ellison Lawyers;
- Dams and levee project assistance for the Foxleigh coal mine in central Queensland.

QER Pty Ltd

Established in Australia in 2004, QER is an integrated resources and energy company committed to building a safe, economically viable and sustainable shale to liquids industry in Queensland that will help supply Australia's oil requirements well into the next century.

QER holds mining and other tenement rights to several of the largest and potentially most productive oil shale deposits in Australia. These deposits contain an oil production potential three times bigger than Bass Strait, to date the largest single oil field discovered in Australia.

Other current clients/projects include:

- Holcim Australia (formerly Rinker/Cemex – an extractive industry company with numerous current projects);
- Sucrogen Australia (formerly CSR – sugar milling);

Recognition

At the forefront of environmental and climate change law

(Australian Legal Business 2008)

Bankable legal advice for major Queensland & Australian projects

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Sub # 0118

Leanne Bowie LAWYERS

Industry & Professional Links

Leanne Bowie is currently chair of the Planning & Environment Committee of the Queensland Law Society and also acts as both a legal advisor and service member of the Queensland Resources Council. All of our senior lawyers are also involved in the Queensland Environmental Law Association.

Our experience on behalf of these (and other) peak industry groups, combined with Leanne's long history of advising the Queensland Government on legislative and policy changes, is particularly relevant to the firm's recognition at the 'cutting edge'.

Leanne has lectured the environmental law component of the mining and petroleum law subject for the University of Queensland in 2007 and 2009, and was previously Queensland editor of the *National Environmental Law Review* (the publication of the National Environmental Law Association) for over 6 years.

Recognition

Very practical, innovative and thorough
(Chambers Global and Chambers Asia-Pacific 2011)

Bankable legal advice for major Queensland & Australian projects

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Queensland Law Society

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Office of the President

Your Ref:

Quote in reply: *22000175:212180*

4 July 2012

Scrutiny of Legislation Secretariat
C/- Parliament House
George Street
BRISBANE QLD 4000

Dear Sir/Madam

North Stradbroke Island Protection and Sustainability Bill 2011 (the Bill)

The Queensland Law Society writes to you concerning its submission to the then Parliamentary Scrutiny of Legislation Committee on the *North Stradbroke Island Protection and Sustainability Bill 2011 (the Bill)*. A copy of the Society's submission dated 30 March, 2011 is attached. We note that the Bill was passed without amendment and commenced on 14 April (the Act).

We have become aware of some controversy concerning the Society's submission on North Stradbroke Island sand mining, following media coverage of it.

The concern raised in our submission was whether some aspects of the Bill complied with the *Legislative Standards Act 1992* – in particular the fundamental legislative principles that underlie a parliamentary democracy based on the rule of law (s.4). However, given the time constraints and available resources, the QLS submission was based only upon an examination of the legal drafting aspects of the Bill.

At that stage the only breach of fundamental legislative principles identified was s. 6 (no compensation) and its association with Part 2, Division 2, provisions curtailing some existing mining interests.

Our submission referred only to mining company interests being adversely affected by the Bill. This had the potential to mislead as several expired mining leases were also to be renewed by s.11, providing a benefit to the miner.

Also, our submission did not refer to s.6 impacting upon traditional owners opposed to sand mining continuing. Section 6 may preclude them from claiming compensation for the impact upon their native title rights and interests arising from the renewal of expired mining leases.

In fairness to all involved in the political debate on the continuance of sand mining on North Stradbroke Island we acknowledge that there are other aspects of the Bill which affect the rights and liberties of individuals which were not included in the Society's submission.

It is a fundamental element of the rule of law that laws should have general application and be applied equally to all. The Act breached this principle because it created a special law dealing with expired mining leases in one geographical area, North Stradbroke Island, instead of applying the general process under s.286A of the Mineral Resources Act 1989 (MRA)which applies elsewhere.

The effect of dealing with these expired mining leases outside of the general process under s.286A of the MRA, is that the Minister was not required to be satisfied of all the required statutory renewal factors set out in 286A(1)(a) to (h) and also parties aggrieved by the s.11 renewals do not have any right of judicial review of the decision. This impacts upon the rights and liberties of individuals, including traditional owners and environmental stakeholders.

In conclusion, because of the way the Society's submission has been interpreted we considered that, in fairness and in the public interest, we would write to you and other interested parties. We do so to acknowledge that there are arguments on both sides but to make it clear that we do not support any side in the debate over sand mining on North Stradbroke Island. That is not our role as a professional body.

Yours faithfully

Dr John de Groot
President

cc

Hon Andrew Powell MP
Member for Glass House
Minister for Environment and Heritage Protection
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5/4/11

Your Ref: Scrutiny of Legislation Committee

Quote in reply: Planning and Environment Law Committee

30 March 2011

SCRUTINY OF
30 MAR 2011
LEGISLATION COMMITTEE

B5.11

Ms Julie Copley
The Research Director
Scrutiny of Legislation Committee
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scrutiny@parliament.qld.gov.au

Dear Ms Copley

NORTH STRADBROKE ISLAND PROTECTION AND SUSTAINABILITY BILL 2011

The Queensland Law Society wishes to raise some concern with aspects of the *North Stradbroke Island Protection and Sustainability Bill 2011* (the Bill) which breaches fundamental legislative principles.

The Society has no comments on Government's stated policy with respect to mining on North Stradbroke Island and acknowledges the right of Government to settle and implement its own policy position. The Society merely raises concern with aspects of the drafting of the Bill which would appear not to have sufficient regard to the rights and liberties of individuals.

The *Legislative Standards Act 1992* sets fundamental legislative principles which underlie a parliamentary democracy based on the rule of law. The principles require that legislation must have sufficient regard to the rights and liberties of individuals.

In the Bill a number of lawful mining interests are terminated unilaterally on various future dates. These terminations are subject to clause 6 of the Bill which denies any 'compensation, reimbursement or otherwise' to any person by the State due to the operation of the Bill. This effectively denies a party who presently lawfully enjoys use of one of the affected mining interests a portion of their legitimate expectation without recourse to any form of compensation or review of the decision.

The concern of the Society is that clause 6 breaches the fundamental legislative principle of having sufficient regard to the rights and liberties of individuals, as it denies compensation to a party whose lawful tenements have been extinguished by the State.

Thank you for providing us the opportunity to put these views to the Committee.

Yours faithfully

Bruce Doyle
President

TRANSCRIPT OF RADIO INTERVIEW BETWEEN STEVE AUSTIN
& CAMPBELL NEWMAN (CALLER: JAN)
ON 20 JANUARY 2012

JAN: Hello Mr Newman

CN: Hello Jan

JAN: My question is will you be looking to increase sand mining on North Stradbroke Island in terms of the number of years or the area to be mined. At the moment there's specific dates legislated for when mining is to end and are you going to change it?

CN: Well look, this is the way that we feel about Stradbroke Island. Um, unlike um Anna Bligh and my opponent in Ashgrove, Kate Jones, I care about the people on Stradbroke Island who actually are seeing their livelihoods, um their business, um their jobs trashed. Now sand mining has to come to an end on Stradbroke Island let's be very very clear about that, we want to see ultimately a wonderful national park there, we want to see the island remediated, ah we want to see it ultimately to be all about um tourism, eco-tourism and the like. But where we differ from the government is we care about people, that mine is important currently and we're saying that the government shouldn't have, in a unilateral and a very capricious way, come in in the last 12 months and it was all about green preferences, come in and actually curtail mining in terms of what was originally permitted under the leases. We believe that there should be a proper orderly run out of those leases requiring the company to remediate to the highest environmental standards and allowing the island the proper time to transition to a new economy. It's got to happen eventually

SA So you may increase the sand mining leases

CN: Well, well

SA: Or extend them or allow them to be extended?

CN: No no hang on, we would go, we would go back to where we were before the government came in and chopped everyone off at the kneecaps. This is about family Steve, this isn't just about a big mining company. This is about people who've seen you know their whole means of support, their income ripped out from underneath them and there's a lot of very unhappy people on Stradbroke Island and I think

it's about time we listened to them and not just the political messages from Anna Bligh and Kate Jones and others

SA: But how, but Kate Jones hasn't said anything about Stradbroke

CN: No she has

SA: No

CN: No hang on she was the minister for the environment and she's my opponent in Ashgrove and this is a decision where she has hurt people and you know I think what I'm saying is reasonable, I think it's a long-term best interest of the environment and the community we adopt approach

SA: But Jan's question was will you increase sand mining on North Stradbroke Island. So will you adjust the leases

CN: Well

SA: Will you give the mining company more latitude to

CN: We will allow, we will allow the mine to proceed in the way that it was originally allowed to prior to the actions of the last 18 months

SA: In my mind that's a yes

CN: yeah well the premise has been put to me as though we're giving something more than was originally there and that is not the case. We would be restoring rights of the community and the company to continue so that the mine ultimately can progress orderly to a, in an orderly way to a shut down. That's what we're saying. Now that isn't weasel words, the premise was put to me that in some way we'd be extending – that's not the case, the community and the mining company had certain rights which Anna Bligh and labour took away last year. There's a huge difference there.

SA: 20 past 9 across South-East Queensland, this is 612 ABC Brisbane, at ABC digital my name's Steve Austin and Campbell Newman is my guest.