Presentation to the Agriculture, Resources and Environment Committee Inquiry into the Mineral and Energy Resources (Common Provisions) Bill 2014

Toowoomba, Tuesday, August 19, 2014

Cotton Australia's Opening Statement

Cotton Australia is the peak body representing the interests of Australian cotton growers and ginners, and with approximately a third of the crop grown here in Queensland, the industry is a key part of Queensland's four pillar economy.

Commenting on this Bill poses a challenge for Cotton Australia. Like the resource and energy industry, we convert the State's resources, in our case water, sunlight and soil, into wealth for our growers, their employees, their community, their State and their Nation.

And also like the resource and energy industries, our activities are regulated to a greater or lesser extent by government, and there are certainly times that we would like government to ease the regulatory burden, and remove "red" and "green" tape.

To that extent we support in principle the government's intention consolidate the five resource acts into one, and streamline some processes for industry.

However, we cannot, as representatives of our landholding cotton growers support any provisions that reduce the rights of landholders, and I am concerned that many elements of the Bill do just that.

Cotton Australia welcomes the opportunity to present today, and congratulate the committee for extending the timeframe for this inquiry, and providing the opportunity for country hearings. However, it is somewhat disappointing that only two of the seven committee members are present.

We were disappointed that we, and indeed no landholder representative bodies, were invited to present to what was then going to be the only public hearing in Brisbane a fortnight ago.

In fact, Cotton Australia would like to express its disappointment in the level of consultation that has been afforded to landholders and their peak bodies during the development of this Bill.

While we did receive formal notification of the submission period, Government has not gone out of its way to ensure it could fully appreciate our concerns.

As an organisation with limited resources, and a deluge of legislation and reform papers to review, it can be extremely difficult for us to respond to all opportunities to comment on government proposals, with the level of detail and professionalism that we would like.

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With such a workload, and limited resources, we do rely heavily on committees and inquiries such as yours, to fully and impartially scrutinise these bills, and in cases of consolidation such as this one ensure that in consolidating the rights of landholders are not diminished.

Our democratic society flourishes because of "checks and balances" and this committee has an extremely important "check and balance" role.

Further, our organisation does not have any in-house legal expertise, and so we commend to you the submission from Shine Lawyers, which has gone into a great deal of detail into specific concerns and flaws in this Bill.

We have no current commercial relationship with Shine, but over the years we have developed a respect for their work in the area of landholder rights, and how they intersect with the resource and energy sectors.

I must also note, that to a large extent cotton growers due to the intensity of their cropping activity, and the nature of the soils that they farm, may well be afforded a higher level of protection than offered by this Bill through the Regional Planning Interest Act and associated regulations. An Act that the Government provided us with a great deal of opportunity for input, and one that we support.

However, to date regional plans only provide protection for our industry across the Darling Downs and the Central Highlands, so the provisions of this Bill remain very much of interest to us.

To the Bill itself, at the Brisbane hearing you were provided by the Environmental Defenders Office eight points, that represented the shared concerns of a number of organisations – Cotton Australia was one of those, and we stand by those concerns, but do not read into those shared concerns any alliance between us and the EDO, there are many other things that we do not agree with them on.

If we look as some of the key provisions of the Bill, we can congratulate the government on the initiative to broaden the role of the Land Court so it can take into account "conduct" , when hearing matters related to "Conduct and Compensation" – a positive move, and one that Cotton Australia has previously called for.

Also we support in principle the noting of CCAs on title, however, we believe that there are a number of practical elements that need to be further considered prior to finalising the Bill.

Shine's submission considers these in detail, but what does noting mean in a practical sense, will the contents of the agreements always pass with the sale of the land? What portion of land would the agreement attach to in the event of a subsequent subdivision? How would confidentiality clauses be upheld? ; To name just a few questions.

With regards to the "opt out" provisions regarding CCA's, we are concerned that this provision may be abused by the more unscrupulous resource companies. We have all heard the stories of resource companies turning up and expecting landholders to just sign a "standard CCA" because all their neighbours had. The opt out clause could be used in a similar manner, and if it is to remain in the Bill there must also be provision to ensure that all steps have been taken to ensure that the landholder fully understands his or her legal rights, and there is a significant "cooling-off" period allowed, so landholders can change their mind without loss of their legal rights.

Cotton Australia is very concerned about the Bill's changes to the restricted land provisions. Our concerns are at two broad levels. One; when consolidating Acts, a "golden rule" should be that the highest level of protection provided to landholders in in any one Act, should be the standard provided by the consolidated Act. This does not appear to be the case.

Two; in this case, we are being asked to support provisions, where the detail is not provided, and is promised to be included in the regulations. The Government Summary on the Bill talks about the "200 metre rule being the line in the sand", but the 200 metre is not in the Bill, and may or may not be the number in the regulation.

We have some sympathy for the Bill in regards to the remediation of legacy bore holes. There is no doubt that the legal framework needs to be in place to allow for emergency works, and a program is required to remediate abandoned bores.

However, Cotton Australia understands that in many cases these bores may either provide a landholder with water supplies, or remain an alternative supply point, so any non-emergency remediation should be done only with the full agreement of landholders.

The final two issues I would like to deal with, are not easy ones for Cotton Australia, but come back to the importance of checks and balances that I touched on earlier.

We like the resource industry often feel that the "world is against us", "regulations are restricting us", and we would like the heavy hand of government off our backs.

However, there is a role for government and the community to play to ensure industry excesses are curbed.

The challenge is getting the balance right, and Cotton Australia does not believe that the Bill in its current form has the balance right.

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We support the current two-part process giving stakeholders an opportunity to have their exemptions heard at both the Mining Lease stage and the Environmental Authority stage. It is part of the "checks and balances".

Cotton Australia is concerned that as an organisation it will be denied the right to object to developments on behalf of its membership, and that in many cases, landholders, within the overall impact footprint of a development may well be denied an opportunity to be heard.

We understand, and sometimes as an industry, we to are subjected to frivolous complaints and objections, that add time, cost and frustration to a process, but as a country we always need to be very careful when considering limitations on our democratic rights.

I urge the committee to consider other ways to manage the cost and frustration of frivolous claims.

Cotton Australia is also mindful about what some may see as the duplication between the current process of granting a mining lease and an environmental approval, but again I urge the committee to weigh up the importance of the "checks and balances", against the economic efficiency.

Cotton Australia faced a similar dilemma recently with the amendments to the Federal "Water Trigger" provisions in the Environment Protection and Biodiversity Act, where we were asked to trade direct Federal oversight for the sake of economic efficiency – in the end we provided our reluctant support, but only after securing additional safeguards.

Members of the committee, you have a difficult task, you must recommend changes to this Bill, that at the very least maintain landholder rights at a level equal to the highest level present in the five Acts being consolidated, while at the same stage ensuring that Queensland is "open for business".

From the evidence given here today, there is a clear need for further negotiation with landholders prior to the finalisation of the Bill, and I urge this committee to facilitate this additional consultation.

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