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Your Ref:
Our Ref: DRH:2014/37
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Dear Sir/Madam

Mineral and Energy Resources (Common Provisions) Bill 2014

We act for a number of graziers and primary producers who are impacted by exploration, coal seam gas and mining projects.

The purpose of this letter is to express our concern, and the concern of our clients, with respect to the proposed changes to the area of law relating to mineral and energy resources by the bill referred to in this subject heading.

We have reviewed the Bill and Explanatory Notes. The Bill clearly removes a number of rights that landholders currently have under legislation and therefore leaves them in a worse position than is presently the case.

We provide the following opinions and concerns:

Restricted Land

The Bill would have the effect of removing stockyards, bores, dams and other key infrastructure from the definition of Restricted Land. This would result in landholders having no right to restrict access to those key areas of infrastructure. As you can appreciate, watering points, particularly for graziers, are the backbone of many primary producing enterprises – any loss or damage to those watering points can have a substantial and disastrous impact on their livelihoods.

The Bill would firstly remove this key infrastructure as Restricted Land and then remove the landholder's ability to veto access in certain circumstances. Clearly this benefits the resource industry but does not preserve individual rights that have been in existence for many years.

While the Bill suggests that appropriate compensation will be provided to landholders where that infrastructure is impacted, the Bill fails to change the current compensation regime in any way but rather preserves the conservative and restrictive heads of compensation that presently stands and which are favourable to resource companies.

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The present compensation regime does not account for the fact that in many respects a landholder is an unwilling Vendor and would not choose to be compensated at land values in a depressed market. Rather, if they were to sell their land, they would choose to do so in a more favourable market. The end result is that resource companies are able to take advantage of land values in a depressed market to obtain access to the resource. The current Restricted Land regime gave landholders an opportunity to bargain with resource companies to obtain more favourable land values on the basis they are an unwilling Vendor. The legislature would remove this bargaining power by implementing this Bill.

Allowing resource companies to also carry out low impact activities within close proximity of a residence is also denying individuals of their fundamental right to privacy and amenity. There must be a reasonable balance between the civil rights of individuals and their families and the statutory rights to explore and mine for resources. The Bill has gone too far and fails to achieve that balance.

In our opinion, there is a breach under the Legislative Standards Act 1992 as the legislation does not have sufficient regard to the rights and liberties of individuals and is removing key rights.

It is not adequate to say that these issues can be appropriately dealt with through the negotiation of a conduct and compensation agreement. That process is uncertain and complex, there is no means for taking into account that the landholder is an unwilling Vendor in many respects and should not be compensated at depressed property values, there is no certainty about the recovery of legal fees where a conduct and compensation agreement is not entered into (we comment on this point further below) and there is uncertainty about recovering business losses and other indirect and consequential losses under the heads of compensation.

We submit that the current Restricted Land regime is adequate and should be retained.

Legal Fees

With respect to the recovery of legal fees, we are aware that there are resource companies who take the view that the legislation does not require them to pay or reimburse legal fees until a conduct and compensation agreement is entered into by a landholder. This means that a landholder can incur substantial legal fees but be left in the position that they will not be paid by the resource company because the resource company has pulled out of the negotiations on the basis it has decided not to proceed with the project at this time. We are currently experiencing these arguments and unfortunately the legislation is unclear on when the obligation to pay legal fees arises – it should be from the time the resource company gives notice of its intent to negotiate a conduct and/or compensation agreement and payable regardless of when (and if) the agreement is executed.

Mining Applications

The Bill would remove established statue law rights for some individuals as it would remove the requirement for mining lease and environmental authority applications to be publicly notified.

The resource is a State resource but ultimately it is used or preserved for the public benefit. There is no good reason for not publicly notifying these applications. The public should have the right to be informed of the proposed use of these resources and their location. The present process ensures transparency and accountability.

There are other ways of streamlining the application and grant process and ensuring that only material objections to the applications are dealt with without removing public notification. Such ways could include for example:

1. Requiring public objectors to provide security for costs;
2. Implementing a fee for the lodgement of a public objection.

This alone would weed out who is seriously opposed to the grant of an application from those who are simply lodging objections in the hope of causing delay and inconvenience.

We ask that you give serious concern to our concerns and seek amendments to this Bill.

Yours faithfully
DONNIE HARRIS LAW

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