Mineral and Energy Resources (Common Provisions) Bill 2014
Submission by C Dalton
30 June 2014

"*With evolving Australian attitudes towards the way land is valued, and recognising the growth potential of the resources industry, reforming legislation is duty bound to anticipate emerging issues in order to minimise the scope for future legislation becoming complex and onerous.*"

The objective of modernising and harmonising Queensland's resource legislation through the Modernising Queensland's Resources Acts Program (MQRA Program) is laudable. This has the potential to lead to a reduction in costly bureaucratic and legislative overlaps, the introduction of administrative and operational efficiencies, and the facilitation of substantial economic benefits to Queenslanders.

Notwithstanding such welcome benefits, the proposed legislation has shortcomings, including the absence of any consideration of the interests of the land, the very source of such benefits. The legislation covers matters relating to the rights of, and consultation with, landowners; it is the view of this Submission that such considerations should also include the interests of the land.

This Submission puts the case that (i) the land should be recognised as an interested party in resource development proposals; (ii) the intrinsic interests of the land need to be addressed in the legislation; (iii) the Queensland Government has responsibility for securing those interests; and (iv) the Commonwealth Government's preparation of White Papers on the Energy and Agricultural sectors needs to be taken into account.

Land – an interested party

In my Submission to the Australian Government's *Agricultural Competitiveness Issues Paper*, I suggested that the proposed White Paper on Australia's agricultural industry should take into account evolving attitudes to the land that have emerged since the days of our rural pioneers[1].

This is particularly pertinent as page 49 of the Explanatory Notes to the Bill claims that *"(i)n many ways, Queensland is the national leader in terms of land access policy and legislation, particularly in terms of CSG exploration and development. It is likely that other States experiencing similar issues may follow Queensland's lead*".

In the context of this perception by the Queensland Government of its trail-blazing role in reforming resource development legislation, it is particularly important that the legislation reflects 21st century attitudes within Australia towards the land. In this regard my Submission on Agricultural Competitiveness makes the case that land has become an integral part of the Australian psyche and should be treated as an entity with its own intrinsic interests, rather than as a *Magic Pudding* that loves to be continually consumed by us, provided we 'protect' it (see Norman Lindsay's classic Australian children's story).

[1] A copy can be found at http://agriculturalcompetitiveness.dpmc.gov.au/sites/default/files/public-submissions/ip134_chris_dalton.pdf

Australia is a very different nation to that which existed in the early days of European settlement in the 19th century. It is now a multi-cultural, multi-faith, post-secular society, and our attitudes to the land have changed. Early explorers saw it as a 'God-forsaken' country, now we find a deep spirituality in the land; Uluru, as much as the Opera House. Is an iconic image of Australia; sacred places are respected; traditional owners of the land are acknowledged; landowners speak of their identity being intimately connected with the land; and we "*love a sunburnt country*".

Even artwork in the Australian Parliament House in Canberra reflects on the centrality of land in Australian politics. For instance, Australian Parliament House Notes describe Sir Arthur Boyd's tapestry *Untitled (Shoalhaven landscape), 1984*, which hangs in the Great Hall of Parliament House, within the following context:

> *The architectural vision for the Great Hall was that it would convey a sense of the Australian land, emphasising the importance of the physical environment in shaping Australian values.*

If the Queensland Parliament is to enact legislation that reforms resource management practices and provides progressive leadership for other state governments, it should embrace evolving attitudes towards the land and accommodate land's intrinsic interests.

Representing the interests of the land

There is an implicit assumption in the Bill that existing environmental protection legislation is adequate as there is no discussion of the impact of the proposed new legislation on the environment. Contrasting with this, however, the Explanatory Notes pay considerable attention to how the interests of landowners and equity considerations with regard to miners are addressed (see, for instance, the discussion headed "*Whether legislation has sufficient regard to the rights and liberties of individuals*", pp 34 – 39).

This Submission advocates that the intrinsic interests of the land should be addressed in the same way. As a minimum, the assumption that existing environmental protection legislation is adequate needs to be tested. It may be argued that this lies beyond the scope of the MQRA Program, and would be better addressed through a review of the *Environmental Protection Act 1994*. This would be a very short-sighted approach, however, given the enormous growth potential of the resources sector[2], its importance to the Queensland economy, extensive and continuing environmental concerns, and the inability of governments to update legislation to match the speed of developments in the resources sector[3].

[2] For example, APPEA estimated that in 2012 the Surat and Bowen basins produced 97.8% and the Sydney Basin 2.2% of all CSG in Australia, with annual production being 258.1 PJ, up 10.8% in just 12 months http://www.naturalcsg.com.au/coal-seam-gas/the-industry. This represents, however a mere 0.1% of Australia's potential in-ground CSG reserves of 258,888 PJ (John Williams Scientific Services Pty Ltd (October 2012): The Australian Council of Environmental Deans and Directors, p 12).

[3] See, for instance, the 2011 Interim Report of the Senate Rural Affairs and Transport Committee Inquiry into the management of the Murray Darling Basin: *public anxiety has grown dramatically … leading to a sense that regulators are playing 'catch up', responding to issues once they emerge, rather than anticipating them* (pp 6, 7), and the 2012 NSW Parliament Inquiry into Coal Seam Gas commenting on industry development outpacing the ability of Government to regulate it (pp xii, xiv).

As stated in the Explanatory Notes, the current Queensland legislative framework for the resources sectors contains "*some of the most complex and lengthy resources legislation in Australia*" (p1). This reflects the dynamic growth and importance of the resources sector, and a desire to have in place appropriate regulation to address the environmental concerns that attend this dynamic growth.

Regulatory reform is needed, however, even though resource industries such as Coal Seam Gas (CSG) are still in their infancy. As at 2012, just 0.1% of Australia's potential in-ground CSG reserves had been mined (see footnote 2). With this huge growth potential and evolving Australian attitudes towards the way land is valued, reforming legislation is duty bound to anticipate such emerging issues to minimise the scope for future legislation becoming complex and onerous. Deferring questions about environmental issues to some later review of the *Environmental Protection Act 1994* would be inconsistent with the MQRA Program's aim of modernising and harmonising resources legislation.

The Queensland Government as the land's advocate

The object of the *Environmental Protection Act 199*4, as stated in Section 3, is:

> *To protect Queensland's environment while allowing for development that improves the total quality of life, both now and in the future, in a way that maintains the ecological processes on which life depends.*

This Submission assumes that "*total quality of life*" encompasses the whole ecological environment, including humans who live within it, and is not limited to human life. This defines the values framework within which any new legislation should be considered.

How, then, does the Bill give effect to "*improving the total quality of life*"? And who advocates the land's interests in this regard? In reality, the Bill reduces the scope for consideration of the rights of interested parties. For example, Queensland Conservation comments that through the Bill "*the Queensland Government proposes to remove public notification and community rights to object to the Queensland Court for in effect 90% of proposed mines (coal, bauxite, gold, uranium, etc)*" and that "*only 'affected persons' will be able to object to the decision to grant a mining lease.*"[4]

In limiting those who can object to the granting of a mining lease, there is no guarantee that the '*affected persons*' who are allowed to object will comment on the interests of the land. This will lead to less well-informed decision-making with regard to mining lease applications, as environmental organisations such as Queensland Conservation are better resourced and informed than '*affected persons*' on such matters and thus better placed to provide informed comment.

If, by such legislative action, the Queensland Government sets in place a process that limits who can represent the interests of the land then, pursuant to honouring the object of the *Environmental Protection Act 1994*, it should itself address how the granting of a mining lease improves "*total quality of life*". Further to this, equity is raised as a relevant

[4] See, for instance, comments by Queensland Conservation: http://qldconservation.org.au/queensland-government-proposal-to-remove-our-rights-to-object-to-mines/

issue in the context of the interests of miners and landowners, but not with regard to the land's interests. There are accountability issues here that the Bill fails to address.

In recognition of the need to address such accountability shortcomings, this Submission advocates that in the assessment of any application for a mining lease, the Queensland Land Court should include an analysis of how granting a mining lease will "*improve the total quality of life*", as provided for in the *Environmental Protection Act 1994*.

Australian Government initiatives

The Australian Government is developing White Papers on Australia's Agricultural and Energy sectors. Given the scope for competition between these two sectors, particularly with regard to access to land, there is a need to ensure regulatory consistency between these two sectors, and across Australia. The Energy Issues Paper, for instance, notes that, even with the adoption of a multiple land use framework and a harmonised framework for CSG regulation, there is not a nationally consistent framework for land access (p 21).

It would be very unfortunate if the Bill put in place measures that further exacerbated such problems. This would conflict with the MQRA Program's objective of harmonising resource legislation (national harmonisation is assumed; to limit harmonisation to Queensland legislation would merely lay the foundations for more legislative complexity and overlap at some point in the future). There is no evidence in the Explanatory Notes, however, of any consultation with the Australian Government on the Bill in the context of the development of these White Papers.

This Submission advocates that, as a minimum, the review of this Bill should include a report on Queensland Government consultations with the Australian Government on its provisions, given the importance both attach to mineral and energy resources.

Summary

This Submission notes accountability shortcomings in the Bill relating to the lack of consideration of the intrinsic interests of the land. In view of the huge growth potential of the natural resources industry, significantly changing attitudes within Australian society towards the land, and the MQRA Program's objective of modernising and harmonising resource legislation, this Submission concludes that it is time for the intrinsic interests of the land to be explicitly recognised in the regulation of natural resource development.

As a first step, this Submission advocates that any assessment of an application for a mining lease should address how granting a mining lease will lead to an improvement in "*total quality of life*", an objective of Queensland's *Environmental Protection Act 1994*.

Further, this Submission advocates that the Committee should include in its report the outcome of consultations with the Australian Government on the Bill, with the aim of securing a harmonised national legislative framework for resource development.

Chris Dalton, 28 June 2014