LANDHOLDER SERVICES

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Research Director
Agriculture, Resources and Environment Committee
Parliament House
George Street
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Dear Sir,

SUBMISSION ON MINERALS & ENERGY (Common Provisions) BILL 2014

Restricted Land

There are many clauses of the Bill which bear on the proposed restricted land scheme – they are fragmented, at times conflicting and ambiguous to an extent where (despite decades of familiarity with the legislation) I cannot be confident of understanding the meaning. The Bill creates a jigsaw puzzle which ordinary, busy landholders and resource operators will find it extremely difficult to solve.

And, this Bill is a further example of a manipulative administration opting to make something as fundamental as the distance of restriction or buffer zone a matter for regulations. It is a clear case where there is no good reason not to specify the distance in the Act and by hiding the decision from public scrutiny the Government invites doubts about its trustworthiness.

I can't establish whether, where land classed as restricted is retrospectively included in a lease under clause 832, the lease holder must first have a compensation agreement with the landowner before entering it. For starters, the agreement under section 279 referred to in subclause (3) would have been reached on the basis that the restricted land was excluded from the lease. This part of the Bill seems to say that the owner with a pre-existing agreement would have no claim for further compensation – a land grab, in other words; or else there may be a thought that the owner can use section 283B to have the Court review the compensation. Spare a thought for the farmer whose time and money for legal fees would be gobbled up on that mission – the costs would probably exceed the compensation gained.

The Explanatory Memorandum, page 10, is factually wrong as to the present restricted land system as it affects mining lease applications, ie. an important part of the justification it advances for the change is invalid because:

a. while the mining lease applicant is obliged by section 245(1)(g) of the MR Act to identify 'improvements' referred to in s. 238(1) and failure to fully comply may be an issue for objections and may possibly lead to rulings by the Court, identification of restricted land is not normally considered by the Court unless raised by objection, nor will it be addressed as a matter of course in the Court's decision, nor will it be specified or surveyed in any way in the instrument of lease.

b. restricted land is as defined in the Act and a dispute over identification of it is within the Land Court's existing routine jurisdiction – s. 363.

c. in my experience, lease applicants whose listing of restricted land is incorrect have just not bothered to prepare it with proper care (that seems to be the class of miners for whose benefit these changes overall are proposed).

Stockyards and artificial water facilities would cease to be 'improvements' which constitute restricted land. The Department claims that the need to protect those stock management and movement sites from disturbance is better dealt with in conduct and compensation agreements – that is wrong and shows a lack of practical understanding:

a. Conduct and compensation agreements are not required for preliminary activities, thus under the Department's proposed regime a prospector (whose activities are 'preliminary' anyway) or an explorer entering for *preliminary activities* is free to disturb the stock with impunity, for example camp on the bank of the dam or beside the water trough or in front of the entry gate to the stockyards.

b. In any event, every landholder would justifiably prefer this fundamental protection against stock disturbance to remain a universal condition in the Act. The department's claim it can be addressed in conduct and compensation agreements is unrealistic even when an agreement is required. Compared to the present universal protection of the Act, some landholders will find it difficult to identify and secure the acceptance of those areas as restricted in an agreement. Even for those well equipped for formulation of agreements would face the unwelcome and time consuming complication of specifying the sensitive areas every time they enter into an agreement.

c. Stockyards and water points were classed as restricted for very good practical reasons and the existing provision has served both sides well for nearly 25 years.

d. Clause 68 defining restricted land puts the extraordinary proposition (as far as exploration permits are concerned) that only improvements in use at the date of grant of the resource authority are eligible as restricted land.

   I conducted a completely random sample of coal exploration permits in the Bowen Basin. Of 19 EPC's sampled their dates of grant were in 1 case 21 years ago, in 2 cases 15 years ago and 1, the youngest, 4 years ago. The authors of the Bill seem to be unaware that literally thousands of rural properties are the subject of exploration permits. The existence of such permits has no bearing on land use unless and until the tenement holder enters for activities.

   As far as exploration permits are concerned, it is completely irrelevant how long the improvements constituting restricted land have been in place – the purpose of restricted land is to minimise temporary disruption to the owner's lawful land use on the day. In respect of exploration, a building or water trough completed yesterday deserves that consideration just as much as one installed 21 years ago. It is entirely different when it comes to grant of a mining lease – then permanent alienation and compensation are involved and there has to be a cut-off date (date of the application) on improvements.

The proposal as it stands penalises owners who develop and improve their properties, to the extent that over virtually the whole of the State wherever exploration permits of one kind or another exist, nothing the landowner has built since grant of the relevant tenement will be classed as restricted land. Nothing built in future will be so classed, either, unless on an exploration permit which happens to expire or be terminated, then replaced. Improvements built on tenements which go on being renewed will never have restricted land protection.

The most unacceptable aspect of the department's proposal is that the explorer and the landowner would somehow have to establish both the age of each improvement (which in many cases would be difficult if not impossible) and the original date of grant of the tenement to know whether it enjoys restricted land status.

Section 252 – Issue of Mining Lease Notice

The drafting has not dealt with my earlier complaint that the department's mining registrars have for years failed to issue the certificate of application on time, thus denying landowners the right to be given timely formal notice that someone has made application for a mining lease over their land. I pointed out the registrars are denying the landowners' right by only issuing this notice simultaneously with the certificate of public notice. By which time (eg. where an EIS is required) the owner's property may have been encumbered by a lease application for four years or so. The existence and details including the identity of the applicant haven't been notified to the owner, but can be discovered by a potential buyer or any member of the public via the department's website.

To force the department to do its job, the proposed new section 252 should include a time period commencing on the day of lodgement within which the notice must be issued, failing which the application lapses.

Section 260 – Objection

The Government's action in stripping away the right of any person to object clearly demonstrates it is prepared to sweep away basic rights for the benefit of mining interests, in a way and with such intent that it ranks as openly anti-landholder.

A mining proposal is typically far more threatening to adjoining or nearby landholders than to those whose land is directly affected because they stand to either be bought out or compensated. A clear example is the recent Alpha Coal case, where nearby landholders whose critically important groundwater supplies will almost certainly be adversely affected by the mining. Three of those owners objected, represented themselves and had their objections found valid by the Court. They were rewarded by a judgement in their favour, where the Court found the lease applicant and relevant government agencies had failed to properly assess the groundwater impacts – a responsible reform planning group would have acknowledged that perfect example and dropped its plan to banish the public from the objection process.

Besides the threat to groundwater, adjoining or nearby or downstream owners potentially face a long list of other threats and risks from a mining project, including:

- Impacts on surface water – stream diversions, reduced flow, degraded quality, loss of catchment for water storages
- Emissions of dust, noise, blasting vibration, fugitive light
- Disturbance to intensive animal ventures such as feedlots, piggeries, laying sheds
- Loss of road access, etc.

I find it almost unbelievable that the Government proposes to strip such landholders of their right to object. It seems that officers have been given free rein to make wholesale changes from the miner's wish list, while the respective Ministers and other Members have sat by and not bothered to insist on reasoned, balanced, constructive change.

The Government hasn't so far disclosed an intention to also stop such adjoining or nearby landholders from objecting to the environmental authority application, but given the Government's behaviour so far it is realistic to expect such action is pending.

Section 260 – Grounds of Objection

Nowhere do we find a better example of the bias and lack of understanding behind this 'reform' than section 260(4) where the scope for an affected landowner's objection is restricted to just four of the issues upon which the Court must report to the Minister, being:

a. compliance with provisions of the Act (which is pointless anyway because the Court will not go behind the actions of such officers as the registrar, as numerous judgement show);
b. does mining this land constitute sound land use management (a rather academic issue)
c. is the mining appropriate land use (I've never seen any constructive outcome on that)
d. are impacts of the operations on land surface and affected persons appropriate (a similarly abstract argument).

At present, grounds of objection are not restricted to parameters which the Court must report on to the Minister (as these proposed new grounds are) and in fact there are no specific restrictions on the grounds of objection. But if needed there are adequate checks and balances to weed out any irresponsible choice of grounds including the right of lease applicants to apply for strike-out of objections, to request further and better particulars and ultimately to apply for costs if an objector pursues grounds which are meaningless, irrelevant, vexatious etc.

Those four proposed grounds are quite OK as topics for the Court's report to the Minister, but have little merit as grounds of objection. I don't see how an objector could adduce evidence to sustain any of them as grounds of objection. It is likely that anyone who did lodge objection on those grounds would be at risk of a costs order against them.

Real issues which are provable, such as the lease applicant's past performance, or whether the shape and size and area of the proposed lease are justified, or whether the land is mineralised, will no longer be permitted as grounds of objection. In my view these regimented but inconsequential grounds, which are near impossible to support with evidence, would deter a properly informed landholder – even one directly affected – from lodging an objection to a mining lease application.

Small Mining

The last of the above points – whether the land is mineralised – is a crucial question especially in respect of small mining. Landholders in recognised mining areas for gold, opal, gemstones, tin etc, are increasingly disadvantaged because the department continues to grant mining leases or mining claims to anyone who applies. Even the Court and its predecessor bodies have never, to my knowledge, accepted objections based on lack of proof of mineralisation – they certainly haven't been willing to recommend against such applications.

The fact it is a recognised or historic mining field is all it takes. Applicants' claims that viable minerals are present are universally accepted without proof and objections universally dismissed. A

responsible administration would be doing something about that gross misuse of the mining laws as part of these reforms.

Increasing numbers of people are living (and often have been living for many years) on small mining leases and mining claims without even any pretence at mining, and certainly without paying any royalties. The residents are not necessarily the lease holders. They pay the Government rents that are a fraction of the rent they would pay in town. Many live in makeshift accommodation amongst rubbish and abandoned mining gear and unrehabilitated land disturbance. Hundreds of leases and claims are in this category.

Clients of mine have spent much time on complaints and representations, including through their local Member, to absolutely no avail. They justifiably feel aggrieved that successive governments have failed to recognise or put an end to such fraudulent and discriminatory practices.

Many keep dogs which are a constant nuisance causing disturbance to the landowner's stock - one even fenced their lease to run recreational horses and when challenged obtained a Land and Resources Tribunal judgement approving their actions as authorised under the Act. Often there is unauthorised use of the landowner's water. The disturbance to stock and disruption to grazing is significant. The intrusion and loss of privacy for the landowner is often excruciating. The visual impact can be awful. The market value of the property can be reduced to effectively unsaleable.

Another fraudulent small mining action going on - and tolerated by the department - is to obtain mining leases ostensibly for, say silica to be used for its chemical properties (when it is classed as a mineral) when there is no reliable evidence it has those chemical properties. In fact the real purpose is to extract it as gravel or crushed rock (which is not a mineral).

It is bad enough that the department presides over such a corrupt and unfair system, providing benefits to such people at the expense of the landholders – to add insult to injury, the owners of the land in future won't even be able to object on the grounds of lack of proof of mineralisation any more.

Notice and Objection

The Government proposes to restrict notification of environmental authority applications, and the right to object, to the high-impact site-specific applications – ie. every other application will be classed as standard and will proceed on standard conditions. Its justification is that the standard conditions are set after public consultation – completely overlooking the fact that Government officers will decide a project's eligibility for the standard treatment. In my view, DEH and DNRM are more biased in their administration of mining than at any time since I was first involved in it in 1980.

It is an incredibly blinkered view that there need be no provision for objections because an application is classed as standard. People should be able to challenge the validity of the department's classification, and to submit that additional conditions are required, and if relevant to submit evidence that the applicant's past performance as holder of an authority was unsatisfactory.

Legacy Boreholes

The Government had acted to recognise and make some provision for dealing with open boreholes which emit gas. That may be a useful start if I am correct in thinking that the massive dewatering that is occurring to liberate CSG will not only cause significantly greater incidence of gas escaping from disused open holes, but will affect water bores.

Of much greater economic importance, I believe, is that the gas liberated by dewatering is increasingly finding pathways into water bores not previously affected by gas and reducing or eliminating their sustainable water yield.

But the scariest point is that over recent decades governments have simply stood by while coal and mineral exploration crews walked away from innumerable 'legacy boreholes', leaving any inter-aquifer connections open with disastrous consequences wherever this allows water to escape or mix with water from other aquifers.

There are tens of thousands of such legacy boreholes, concentrated in the Bowen Basin and Surat Basin but also found wherever there has been significant exploration by drilling. Even since the EPA (now DEH) took over environmental management of mining and environmental authorities were applied to exploration more than a decade ago, explorers generally (with some current exceptions) have left their holes open in blatant breach of their environmental authority conditions.

EPA (now DEH) generally takes no action even when landholders make consistent complaints – I'm informed one officer told the landholder he would lose his job if he did. Continued lack of action by the Government on the breaches as well as the legacy boreholes is irresponsible – the groundwater on which landholders and domestic users are so dependent is being damaged every minute of every day by these open boreholes.

Yours faithfully

G.T. Houen
Landholder Services Pty Ltd
9th July 2014