

AO:JH

28th August, 2014.

The Research Director,
AREC,
Mineral and Energy Resources (Common Provisions) Bill 2014.

Dear Sir/Madam,

Re: Submission

We advise that our firm has acted for landholders for the best part of forty years assisting them with negotiations with resource companies. On the 20th May I (Tony Olsen) attended the committee hearing held in Mackay with Allan and Jeanette Williams.

It was very unfortunate that we were only made aware of this meeting the day before and therefore couldn't digest the Bill and prepare a submission for the meeting.

Allan and Jeanette Williams have asked us to pass on their concerns in this submission along with some points we will make from our experience.

It should be noted that the Williams family live at [REDACTED] Bowen basin. They have a large aggregation to manage. They are a sixth generation family business. They have some 45 years experience of dealing daily with resource companies – some nine coal companies and two gas companies, several powerlines, railways, gas pipelines, water pipelines etc. They have a wealth of experience with working as harmoniously as possible with resource companies.

The important point with the Williams family (and several other clients of ours) is that they have chosen to keep ownership of their land and live with the resource companies. Landholder frustration with dealing with resource companies has resulted in the majority of negotiations to end with a sale of the properties to resource companies rather than surface right negotiations. We do not consider this to be for the long term good of the agricultural industry. A far better outcome in our opinion is for the resource companies and the landowners to be able to coexist for the life of the resource activity and the agricultural operation to continue indefinitely.

For this to happen, goodwill is required between the resource companies and landowners in their dealings. This is one of the desired outcomes the government is hoping to achieve.

We raise the following points for discussion which we and our clients have observed from our experiences:

..2/

Time and cost

- Landowners find that much of their time is occupied with dealing with resource activities. This comes at a great cost and is very hard to recuperate and arrange for the continuous working of their operations.
- Much time and professional costs can be incurred with dealing with new and ongoing resource company enquiries. Often landowners can incur several thousand dollars in costs. These are generally recoverable if negotiations proceed to a compensation settlement however in many cases the resource company “goes quiet” leaving the landowner with the bills to pay.
- We propose a form of bond be paid to “cover costs” by any resource company on commencing discussions or negotiations regarding access to protect the landowner.
- Day to day disruption. Landholders can find their time being consumed by dealing with day to day issues from resource activities. To give you some insight we provide the following comments from Allan and Jeanette Williams regarding their experiences:

“On any given day during the recent resource boom, we could have 500 people and 300 vehicles on our property. 90% could be exploration related. People from all over the world and some with very little understanding of English.

“We have developed a 32 point access agreement and induction which has come about through the negative experiences with resource company employees. Some resource companies who have E.P.Cs said it was their land to do as they pleased and we had no right to stop them. As landowners all we wanted was respect and common courtesy. We are constantly being approached from resource companies wanting meetings. They turn up sometimes bringing eight or more people. These people are all being paid for their time. It takes up so much of our time and we don’t get paid for it. The disruption it causes to our productivity and efficiency of our operation is very costly.

“Our land has many access points and these resource companies come from all directions often without following proper process. We want to know who is on our land at any time which is not too much to ask.

“In 2010 Allan was not expected to live after a major accident. We were in intensive care for 24 hours. I (Jeanette) had one resource company obtain my mobile(which is not listed and only for family)and call me at 9:30pm wanting to come on and start drilling. He was well aware of our circumstances.

“Our internal roads are built for our amount of traffic. It seems resource companies will be able to go rain hail or sunshine where ever they wish.

“The management of resource companies are not on site and are very distant to their people on the ground”. Allan and Jeanette Williams.

- Choosing to continue the agricultural operation and work “harmoniously” with the resource companies comes at a great ongoing cost and frustration.

..3/

Restricted land

We and our clients are very concerned about the proposed change to the 600 metre rule being reduced to 200 or 50 metres. It is appreciated that it is intended to make the new restricted land areas more concrete however we believe the 600 metre rule was put in place for a reason and any reduction on this is unacceptable.

"We have over 110 stock watering points and 12 sets of stockyards and an extensive lane way system to each yard. In our access agreements we stipulate the distances off our infrastructure we require as a buffer and the resource companies have agreed to this. We do not want this to be jeopardised by the proposed changes to access.

The serenity of a watering point and its surrounds aid in the quality and quantity of beef produced and productivity of a breeding herd. Gas companies burn flames 24/7, fracking 24/7. When fracking 10 acres or more of activity with many vehicles and up to 50 – 80 people." Allan and Jeanette Williams.

Landowner rights – Land court

- Resource companies have significant amounts of money to throw at developing their projects.
- Landowners have very limited funds and time available to defend and protect their rights. Agricultural businesses provide very low returns on investment.
- The proposed expanding of the Jurisdiction of the Land Court could aid and protect Landowners. **However we really want to stress the point** that the costs of going to the Land Court scare most land owners and this fear is used as a tactic of resource companies to intimidate landowners. Very few landowners can afford to take the risk of incurring such costs and the time involved in advising on a defence of often misinformed assertions by Miners or their Advisors. We note in the old days of the Land Courts, The Commissioners always advised the Court "the most expert witness on these land matters in the court today is the Property Owner". This has been replaced by Legal Representation today which is a tragedy.
- **We propose that measures be put in place to protect Landowners from the costs of preparing for and attending the Land Court. Such costs should always be born by the Resource Company regardless of the outcome.**
- At the Committee Hearing in Mackay the Hon Ian Rickuss several times suggested mediation as a means to help with disagreements. In our view this would create a further hurdle to jump and additional costs and would more often than not result in the matters going to the Land Court.
- The enforceability of CCA agreements is a concern. These are often being breached. The cost and process of enforcing the resource company to comply is prohibitive.

"We have been to the Lands Court and the Judge ruled in our favour but unfortunately the costs are so high. Even if the resource company has to pay for it the matter can take many years to resolve.

..4/

"On the ABC (22/8/14) a landowner in the Dalby area has been fighting QGC for two years. He found them slashing with no wash down certificate. He now has an African Lovegrass infestation.

"Previously a mining company had cut off our access. In a court of law we were given a gazetted road by a mining company for access. Another mining company has dug through it. So two mining companies go to court. This started in 2006. End result we travel an extra 40 kms to run our business.

"With the opening of new mines they need quarry products. The heads of mining companies usually have no idea where this is coming from and literally the land owner gets run over often without compensation.

"Power lines greatly impact the running and safety of Personnel of our business especially single lines used by gas companies as we use helicopters to muster. Gas companies have an alternative to overhead powerlines. Why isn't it enforced?" Allan and Jeanette Williams.

- When land owners such as the Williams receive their land back after the resource companies vacate, who will be responsible for the non-rehabilitated areas (voids etc) or delayed subsidence, erosion etc.? This issue needs to be addressed better by the Government as there should be no reason why if properly rehabilitated some form of agricultural activity could recommence.
- We mention that our firm lobbied hard many years ago to have it recognised in the act, that a loading needed to be provided in any compensation agreement to provide for "The unwilling vendor" factor, and to provide a "buffer for all the unforeseen circumstances" that always emerged as a result of mining operations. The government of the day to their credit recognised this and included a 10% add on. With the passage of time this allowance at 10% is no longer adequate due to the intensity of mining activities increasing over the years. From our figures in recent years it is apparent that this percentage should be increased to at least 20%. This would create a fairer outcome and will aid harmony between the parties and avoid the landowner having to try to raise all possible future events at the time of the negotiations. Many problems only emerge after operations, but the landowner is bound by the agreement. We strongly recommend this provision be lifted to 20%.

Summary

The Government is very clear on its desire to have mining and agriculture coexist harmoniously. The Williams family is an example of a large long term family operation who have chosen to attempt to do this. So many land owners are now choosing to sell as it is seen as too hard to work alongside the resource companies. This is not in the long term best interest of the State or agricultural industry.

The Williams family extend an invitation to the committee to meet with them on their property to examine the matter further. Your committee would be hard pressed to find a better case study to examine with the wealth of experience the Williams family have. We highly recommend your committee take up this generous offer of their time.

Yours faithfully,
FLOR-HANLY

Tony Olsen