



HopgoodGanim

LAWYERS

8 August 2012

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Queensland Parliament
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Our ref: - Gavin Batcheler

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Dear Rob

Submissions in relation to Mines Legislation (Streamlining) Amendment Bill 2012

Further to the invitation from the Agricultural Resources and Environment Committee to make a submission in relation to the *Mines Legislation (Streamlining) Amendment Bill 2012* we make the following comments.

In making these comments we have followed the headings in the explanatory note for the proposed legislation.

1. Compulsory Acquisition

1.1 ***Circumstances upon which the resource interest is resumed*** - There are concerns that the general resumption laws do not allow for the resumption of resource interests. The legislation will work to clarify this however it is noted that in certain circumstances the resource interest will still be resumed (**s.10AAA(3)**) where the relevant Minister is satisfied that the resource interest is incompatible with the purpose for which the land is being taken).

- (a) what is the authority on which the legislation is based to allow for the resumption of the resources interest on this basis?; and
- (b) criteria should be considered to for determine what is "*is incompatible with the purpose for which the land is being taken*". We note extinguishment of all interest in the land, including native title, are grounds for resumption of the resource interest (**s.10AAA(4)**). What exactly does this mean and is it intended that the relevant Minister will have total discretion in this regard?

1.2 ***Fair assessment of compensation (s.10AAD)*** – the compensation provisions relating to the resumption of a mining tenement (resource interest) are not clear. Further clarification needs to be provided to industry on how the compensation payments will be calculated and what factors will be taken into consideration, given the proposed legislation will act retrospectively. Specifically:

- (a) will capital contributions made in relation to the mining tenement be taken into consideration (specifically capital work program expenses)?

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8 August 2012

- (b) in excluding the value of the resource interest known or supposed to be known on or below the surface of the land (**s.10AAD(2)**) substantially reduces the value of the compensation payment and makes the compensation provisions of little or no value to existing resource interest holders.
- (1) does this apply to all tenements holders including mining lease holders? or only mining tenement prior to production?
- (2) Consideration should be given to how to accommodate for compensation for lost opportunity, even if it is capped or limited.
- (c) Are the granting of mining tenements under **s.10AAC(1)** considered part of the compensation payments under **s.10AAD**? Consideration could be given to providing a priority application as compensation for acquired land.

1.3 **Risk assessment** – depending on how the law is used there is a risk assessment that a resource company must undertake in assessing the viability of a project. Beyond the obvious resumption of the resource, if there has been a resumption of land that bisects the resource, isolates the resource or prevents the resource from being developed then this will have a considerable impact on the project and could make it completely unviable. This should be further considered in the context of compensation payments.

1.4 The same comments above apply to the amendments to the *Petroleum and Gas (Production and Safety Act) 2004 (s.30AA – s.30AD)* and related amendments as they relate to petroleum tenements.

2. Streamlining

2.1 **Dealings** - The new provisions relating to the transfer and registering of interests in mining and petroleum tenements state that the Minister may as a condition of the transfer require the transferee to provide security for the transfer. It is unclear how this provisions will work and how it relates to security provided by the transferor. There needs to be greater certainty around the financial security that is required and how this is calculated (see: **Part 7AAB, Part 6N and Chapter 5 Part 10**)

The new provisions do not apply to the transfer of an interest in an application for an exploration permit or authority to prospect (however applications for mining leases do fall within the new regime). We recommend that the scope of the new provisions are broadened to regulate and allow for the transfer of an interest in an application. This would provide efficiency where proponents are seeking to transfer its interest in an application.

The matters that fall within the definition of a 'non-assessable' transfer need to be clarified. For example can one registered holder transfer its total interest in a tenement to another registered holder as a 'non assessable transfer' or is it only a partial transfer that falls within that definition?

3. Health and Safety

3.1 **Pipelines for transporting produced water** – The exclusion of pipelines for transporting produced water from the safety regime under the *Petroleum and Gas (Production and Safety Act) 2004* is inconsistent with one of the purposes of the bill, namely to streamline the approvals process for resource tenements. This will result in two separate safety regimes, the *Petroleum and Gas (Production and Safety Act) 2004* and the *Work Health and Safety Act 2011* applying to practically the same geographical locations.



8 August 2012

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- 3.2 **Specified P&G Act authorised activity** - The definition of "specified P&G Act authorised activity" in clause 124 is incorrect and uncertain. It applies to an authorised activity mentioned in s 670(6) of the *Petroleum and Gas (Production and Safety Act) 2004* "that is not operating plant under the P&G Act, because of section 670(7)(b) of that Act". However, s 670(7)(b) does not limit the definition of "operating plant", as it provides whether certain activities are either jointly or severally considered "operating plant" rather than limiting the definition of "operating plant".

Yours faithfully

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