Mineral and Energy Resources and Other Legislation Amendment Bill 2024

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2 May 2024

Committee Secretary
Clean Economy Jobs, Resources & Transport Committee
Parliament House
George Street
Brisbane QLD 4000

By Email: cejrtc@parliament.qld.gov.au

Dear Sir/Madam

Re: Mineral & Resources and Other Legislation Amendment Bill 2024

AgForce Queensland Farmers Limited (AgForce) is a peak organisation representing Queensland's cane, cattle, grain and sheep, wool & goat producers. The cane, beef, broadacre cropping and sheep, wool & goat industries in Queensland generated around $10.4 billion in on-farm value of production in 2021-22. AgForce's purpose is to advance sustainable agribusiness and strives to ensure the long-term growth, viability, competitiveness and profitability of these industries. Over 6,000 farmers, individuals and businesses provide support to AgForce through membership. Our members own and manage around 55 million hectares, or a third of the state's land area. Queensland producers provide high-quality food and fibre to Australian and overseas consumers, contribute significantly to the social fabric of regional, rural and remote communities, as well as deliver stewardship of the state's natural environment.

Thank you for the opportunity to provide comment on the Mineral & Resources and Other Legislation Amendment Bill 2024.

AgForce has a strong policy position on representing members' interests in the protection of land use and is supportive of efforts by all authorities, at federal, state and local levels, that enable the effective coexistence of agriculture with other forms of land use. Please see Appendix 1 where the Land Use Protection Principles of AgForce members, as endorsed by the AgForce Queensland Farmers' Limited Board, are presented as an overall expectation of what broadacre agricultural industry commits to when seeking coexistence with other sectors.

PART 4 – AMENDMENT OF GASFIELDS COMMISSION ACT 2013

AgForce supports the functions listed in clause 16 in principle, but reiterates that sustainable coexistence is only achieved when each business is able to operate without harmful interference.

AgForce agrees with clause 18 to amend s 9A to diversify the expertise of members appointed to Coexistence Queensland, with reservations. AgForce would hope that the amendment to s 9A(2)(b)(i) would include landholders as someone who has "knowledge of, or experience with, the interests of landholders". In fact, AgForce would argue that anyone other than a landholder would not meet the required knowledge of their interests.

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AgForce agrees in principle with clause 19, amending section 10 to list the eligibility requirements of members. AgForce would expect that a landholder who have lived on the land for most of their life would be included as someone who has experience in the field of land management. AgForce would hope that the phrase "certain qualifications or experience … " should not be construed to exclude landholders who may not have any formal qualifications, from being considered. Landholders have more than adequate experience in land management.

In relation to both clauses 18 and 19, AgForce would argue that a lack of landholder representation within Coexistence Queensland would result in a lack of diversity within Coexistence Queensland and would lead to an inadequate representation of the interests of landholders, who are the most severely impacted stakeholder from gas and renewable energies.

In order to adequately represent landholders, there must be a diversification of landholders who run different businesses (graziers, farmers (intensive cropping and irrigators) from across the State who have experiences with both CSG and renewable energy as each will have common but varying interests in relation to achieving sustainable coexistence.

AgForce has concerns with the amendment of section 26(5)(a) to compel landholders to provide particular information or face a monetary penalty if the information is not provided to Coexistence Queensland. The concern is that landholders are compelled to spend time away from their business to obtain the requisite information without compensation. It is an unfair imposition as the other 'prescribed entities' do not bear this burden as they are able to pay staff for this task.

AgForce is disappointed that landholders are not include in section 29(2) as members of the community leader's council. The purpose of the council according to 29(1) is to assist Coexistence Queensland to identify issues affecting the coexistence of landholders, regional communities, the resources industry and renewable energy industry. However, if there is no landholder on the council, AgForce sees that their interest cannot be properly represented. This is concerning given that landholders are the main stakeholders impacted by resources and energy. AgForce submits that section 29(2) should expressly state that the community leader's council is to include landholders in order to be properly constituted.

PART 8 – AMENDMENT OF MINERAL AND ENERGY RESOURCES (COMMON PROVISIONS) ACT 2014

AgForce does not support clause 75, amending s 40 of the MERCP Act. AgForce reiterates its position as stated in its submission to the Improved Regulatory Framework in December 2023. AgForce strongly opposes the amendment to remove the requirement of entry notices for aerial surveying at or above 1,000 feet based upon the removal of this being considered an advanced activity.

The reasoning behind AgForce's position is that allowing aircraft to fly slowly at 1,000 feet over livestock for any other reason than for mustering done by experienced pilots, who are trained to work cattle from the air, unlike surveying pilots, is reckless from an animal welfare standard.

A surveying helicopter constantly going slow and coming back and forth is enough to 'start' livestock trotting, it is a similar action to mustering helicopters 'gridding' a paddock. Whilst stock in the south-east may not be as heavily impacted by this at a height of 1,000 feet, stock in the north and western Queensland are not as handled nor used to this type of interaction which means a larger distance between the stock and the helicopter could startle the stock. Without going into in-depth explanations of animal husbandry/welfare, in short graziers do not wish their stock to run unnecessarily as it causes weight loss and could cause welfare issues if livestock were to become spooked and run away from the actions of the above helicopter. There will be no stockperson on hand to 'pull them up', thus potentially leading to overheating and possibly death. During summer heat the death rate could be catastrophic and conflict with the Animal Welfare Act.[1]

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[1] https://www.legislation.qld.gov.au/view/html/inforce/current/act-2001-064#sec.18

Furthermore, if no entry notice is provided to landholders, scheduled mustering activities could be interfered with, causing loss of income. Additionally, interference to scheduled mustering conflicts with the duty to avoid interference in carrying out an authorised activity as to not unreasonably interfere with anyone else carrying out a lawful activity (mustering) under section 804 of the *Petroleum and Gas (Production and Safety) Act 2004*. To add further comment, AgForce foresees that calls into CASA querying hovering helicopters will also be increased.

AgForce recommends that an entry notice still be mandatory, as this will allow graziers to manage their activities as they see fit.

Chapter 5A - CSG-Induced Subsidence Management

AgForce supports the need for a CSG-Induced Subsidence Management Framework however, considers the Chapter proposed does not deliver the intention of the Bill and does not protect AgForce members' interests.

Some of the provisions are a major reduction of AgForce members' rights and are not compatible with AgForce Land Use Protection Principles. It is the view of AgForce that the Chapter must be significantly revised.

AgForce considers the extremely short time frame for consultation given the importance of the Chapter prevents meaningful consultation with the owners of the agricultural land it proposes to protect. This significantly increases the risk of unintended consequences and adverse outcomes for AgForce members.

AgForce is also greatly concerned that consultation on the Chapter is very limited because of its reliance on many regulations which have not yet been written.

AgForce supports the need for Division 4A of Chapter 3 however, does not support the Division as proposed.

- Division 4A allows the relevant holder to cross land that is reasonably necessary to cross in order to access private land that is outside of the authorised area. AgForce supports undertaking '*subsidence activities'* outside of the authorised area however, does not support that the crossing of the private land is not considered a subsidence activity under s 53B and therefore no entry notice is required.
- AgForce submits that s 53D(2) erroneously omits the power of the Chief Executive to impose conditions upon entry. Furthermore, under section 47 of the MERCP Act, an owner or occupier of the private land to be crossed ('access land') to access the authority area is entitled to an access agreement. Section 48(2) confers the right of the owner or occupier to impose reasonable and relevant conditions on the authority holder. However, section 53D(2) does not impose any consultation with the owner or occupier of the 'access land' regarding any conditions of entry upon the authority holder. AgForce sees this as an omission in section 53D(2).
- AgForce views that the principles of 'preliminary' activities and 'advanced activities' under sections 15B and 15A apply to private land whether it be 'access land' or authority area land.
- Concerningly, there is no consideration given to the legal liabilities imposed upon landholders by other legislation. Agricultural land is considered a workplace under Worksafe Queensland, thus imposing liability upon landholders to ensure a safe work environment. With large machinery being operated within these areas and mustering being conducted on grazing properties, it is essential that notification of specific dates, times, durations, locations is provided to the landholder and a Land Access Code for intensively cropped land, for subsidence activities, is written.
- There is no limitation of liability for landholders against a claim based in tort for damages relating to a person purportedly carrying out an authorised activity within a petroleum authority area as is provided by section 563A of the P*etroleum & Gas (Production & Safety) Act 2004*. AgForce would submit that a similar clause limiting liability for owners or occupiers of 'access land' is included within the amendments.

- Concerningly, Insurance Australia Group now limits farmers to farm public liability insurance if they have gas infrastructure on their property. Whilst an agreement between the authority holder and the landholder indemnifies the landholder for authorised activities, there is no such agreement in place with the landholder of the 'access land', leaving the 'access land' landholder open to liability to third parties.
- AgForce has concerns with the lack of penalty imposed by section 53E, which allows necessary damage to structure or works on the land. AgForce accepts the standard of reasonableness in law as what a reasonable person ought to have done/not have done in the circumstances, it is not a subjective test of the individual accessing the land. However, what damage is reasonable? If a contractor/employee comes across a wire gate they do not know how to open, would cutting the wire be reasonable in the circumstances? It is uncommon for people who live in town to come across these types of gates; is reasonableness assessed on the reasonable person who knows their way around a farm or a reasonable person who would not be expected to know such details? Landholders should not have to incur damage at the benefit of resource companies. AgForce would submit that a provision mandating consultation with the landholder prior to causing damage/inconvenience and a penalty provision for unreasonable damage and unnecessary inconvenience be inserted into section 53E.

AgForce has noted the insertion of a Tabling requirement for the Subsidence Impact Report under section 184CQ and would appreciate more information on the consequences to AgForce members of the report having Parliamentary Privilege.

AgForce supports the need for Chapter 5A however, does not support the Chapter as proposed. Due to the time constraints imposed by the Committee to provide a submission on the Amendment Bill, AgForce draws your attention to the following:

- In view of the degree of risk borne by landholders from CSG-induced subsidence and impact of CSG mining on groundwater, OGIA also requires a Board for adequate governance, accountability, transparency, and oversight.
- AgForce does not agree with the omission of agricultural dams from the framework because they can be hydraulically and structurally damaged by CSG-induced subsidence.
- AgForce is concerned by relevant holders in the interim undertaking work to 'best practice industry standards for carrying out work similar in nature to undertaking monitoring of agricultural land' when it is unclear as to whether that means 'in relation to agricultural land use' and 'agricultural dams', or something else.
- AgForce does not agree with the restriction on starting to produce CSG using 'particular petroleum wells' being able to be released by agreement with a landholder. CSG-induced subsidence extends beyond the farm boundary and where it occurs may impact neighbours and others in the area.
- AgForce believes that landholders must be compensated for time, costs, losses and damages in all stages of the CSG-induced subsidence management framework. Landholder time is no less valuable than that of the CSG mining industry and it should not be for landholders, who are forced by law to host resource activity, to fund the cost of not only land access but for baseline data, land monitoring, farm field assessment, subsidence management plan and subsidence compensation agreements which are all activities relating to the damage being caused, not the accessing of the land.
- AgForce objects to the landholder being excluded from any role in the oversight of farm field assessment, and to relevant holders being able to make agreement with landholders to not require audits.
- AgForce submits that the reference to 'qualified person' in section 184AB in relation to undertaking a farm field assessment, should be to qualified people as generally several experts in their relevant field are required to complete the farm field assessment.
- AgForce considers the subsidence management plan and subsidence compensation agreement stages to be fundamentally broken. The landholder is the principal stakeholder and primary participant in the making of a subsidence management plan and the year-in-year-out operation of that plan.

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Yet the landholder is unable to claim compensation for losses, costs and damages including time, until the subsidence compensation stage which is a one-off opportunity to prove and claim the entirety of all losses, past, present and into the future unless a 'material change of circumstances' can be proven by the landholder in Land Court.

- It is unclear how the effective limitation of a subsidence compensation agreement to one claim at one point in time will in practice work, when CSG-induced subsidence will occur for decades. Rectification in the same location may need to be repeated multiple times and different areas of the same land parcel may be damaged at different times potentially years apart.
- The reference to 'qualified person' in section 184AB in relation to undertaking a farm field assessment should be to 'qualified people', as generally several experts in their relevant field are required to complete the farm field assessment.
- AgForce recognises that overland, surface and flood flow of water are reported in the OGIA Underground Water Impact Report for the Surat Cumulative Management Area however, this is for regional environmental purposes. AgForce considers that the Subsidence Impact Report should include an assessment of CSG-induced subsidence impact to overland, surface and flood flow of water in relation to agricultural land.
- AgForce views that the confidentiality obligations imposed on the relevant holder by section 184LJ that information which is given must not be disclosed, is inadequate for the protection of member interests. They must be strengthened to prevent disclosure of information collected by the relevant holder while accessing private land.
- Finally, AgForce believes that landholders who have sufficient evidence that they have suffered critical consequences, should not be denied the right to apply for a critical consequences direction.

PART 10 AMENDMENT OF MINERAL RESOURCES ACT 1989

AgForce approves clause 135, amending section 276 of the *Mineral Resources Act* to impose a mandatory condition requiring mining lease holders to keep the surface area of the mining lease tidy.

AgForce thanks the Clean Economy Jobs, Resources & Transport Committee for the opportunity to provide feedback and looks forward to continued engagement to better practices for all stakeholders involved.

If you have any questions or require further information please contact Anna Fiskbek, Policy Advisor, by email: [redacted]

Yours faithfully

[redacted]

Michael Guerin
Chief Executive Officer

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APPENDICES

Appendix 1: AgForce Land use Protection Principles

As the body for agriculture, AgForce requires that alternative and potentially impacting land uses ensure:

1. There is recognition that natural capital has an inherent value
2. Human health and well-being must not be sacrificed
3. A precautionary approach that avoids negative legacy effects on natural resources including air, soil, water and biodiversity
4. There are no negative impacts on existing or future sustainable agricultural opportunities

Before:

- Recognize that resources are finite
- All projects are assessed on environmental, social and economic criteria
- There is a formal mechanism for agriculture to be involved in assessment
- Projects should not be assessed in isolation and cumulative impacts assessed
- Potential impacts need to be objectively, and accurately quantified rigorously and independently reviewed
- Agricultural landholders to have equal representation, available resources and bargaining power

During:

- All projects must have comprehensive monitoring and transparent reporting
- Non-compliance will trigger cease work
- Enforcement is primarily the responsibility of government, but landholders must have a right to compel action
- Industry and Government must proactively identify and manage cumulative impacts, both individual project cumulative impacts and multiple projects cumulative impacts

After:

- Land needs to be rehabilitated to be the pre-existing natural conditions
- Financial assurance needs to be adequate for rehabilitation

See: https://www.agforceqld.org.au/knowledgebase/article/AGF-01250/