Mineral and Energy Resources and Other Legislation Amendment Bill 2024

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LOCK THE GATE ALLIANCE
AUSTRALIANS WORKING TOGETHER TO PROTECT OUR LAND, WATER, AND FUTURE

Environmental Defenders Office

Submission to the draft Mineral Resources and Other Legislation Amendment Bill 2024

10 May 2024

About EDO

EDO is a community legal centre specialising in public interest environmental law. We help people who want to protect the environment through law. Our reputation is built on:

Successful environmental outcomes using the law. With over 30 years' experience in environmental law, EDO has a proven track record in achieving positive environmental outcomes for the community.

Broad environmental expertise. EDO is the acknowledged expert when it comes to the law and how it applies to the environment. We help the community to solve environmental issues by providing legal and scientific advice, community legal education and proposals for better laws.

Independent and accessible services. As a non-government and not-for-profit legal centre, our services are provided without fear or favour. Anyone can contact us to get free initial legal advice about an environmental problem, with many of our services targeted at rural and regional communities.

Environmental Defenders Office is a legal centre dedicated to protecting the environment.

www.edo.org.au

About Lock the Gate

Lock the Gate (**LTG**) is a national grassroots organisation made up of over 120,000 supporters and almost 200 local groups who are concerned about risky coal mining, coal seam gas and fracking.

These group are located in all parts of Australia and include farmers, First Nations Peoples, conservationists and urban residents.

Our vision is of healthy, empowered communities which have fair, democratic processes available to them to protect their land and water and deliver sustainable solutions to food and energy needs.

The mission of Lock the Gate is to protect Australia's natural, cultural and agricultural resources from inappropriate mining and to educate and empower all Australian to demand sustainable solutions to food and energy production.

www.lockthegate.org.au

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Thank you for this opportunity to provide a submission to the Mineral and Energy Resources and Other Legislation Amendment Bill 2024 (Qld) for the Committee's consideration.

Given the very short time frame provided for submissions to this process, that no draft Bill was provided in advance to us and the capacity constraints we hold as a community legal centre, we have not been able to examine this Bill as closely as we would hope to for such important legislation. While we have had some consultation with the Department of Resources last year in the early development of this Bill, this consultation has not been continued with the EDO and so we were surprised to see this Bill introduced into Parliament. We hope that the Department will make efforts to proactively work more closely with the communities and civil society groups relevant to their areas of work going forward.

Where we are silent on any sections of the Bill in this submission, this should not be taken to be support for the section and may simply be a reflection of our capacity constraints in this short consultation.

Our submissions are as follows, with further explanation provided as required.

1. **The interests of First Nations is not reflected in the work of Coexistence Queensland nor through the other elements of this Bill. This should be rectified through specific reference to First Nations interests being considered, including particularly in the functions of Coexistence Queensland as well as in other decision-making bodies under the Bill.**

2. **Building trust with and supporting regional Queensland landholders and First Nations impacted by the resource sector should be the prime mandate of the Queensland Government through this work.**
    a. Revise the functions of Coexistence Queensland to focus more on supporting landholders and First Nations as those most in need of support in resource negotiations, and not impliedly assuming coexistence is possible (clause 16).
    b. The functions of voluntary provision of advice on any emerging issues and leading practice, and delivering educational resources and supporting knowledge around health and wellbeing issues around resource activities and renewables are supported. Clarification of the important voluntary advisory
    c. role in the Explanatory Note is needed.
    d. We encourage that consideration is given to splitting up sections of the work of Coexistence Queensland, to ensure that the work of supporting landholders and First Nations impacted by resource activities is not sidelined by the work of supporting those impacted by the renewable energy industry – where the latter sector has no right of access to land and negotiations are able to be entered in a more even footing.

We encourage the Queensland Government to make strong efforts to build trust with regional Queenslanders impacted particularly by resource projects to date or likely to be impacted by these projects going forward. We are aware of significant distrust of the Gasfields Commission being held by regional communities already impacted by gas activities, who have not felt supported or understood by the Commission in their struggles to work with the resources industries seeking to operate on their land. With the reconsideration of the Commission being undertaken, we strongly recommend deep thought is put into how

Coexistence Queensland can operate so as to build trust with regional Queensland landholders and First Nations and be a meaningful support for these stakeholders.

Landholders and First Nations impacted by resource projects wanting to operate on their land hold very little power in any negotiation around these impacts. This is particularly so where they have very limited rights to refuse entry on their land entirely, and so very limited negotiation power. Further, the agreements negotiated are often difficult to impossible to enforce on the information available to landholders, both through inadequate baseline testing prior to commencing operations, and broad terms of agreement that may not be enforceable. In addition, 'gag clauses' are often pushed for in the agreements by resource companies, which restrict landholders and First Nations from speaking about the terms of the agreement with their neighbours or any other party, which further puts these parties at a disadvantage in not being able to share knowledge and learnings with others. There can also be relatively short time frames imposed on these negotiations considering the complexity of the matters that need to be considered, and few community members are aware of the extensive information they can and should seek from a resource company to fully understand the potential impacts to their land and effectiveness of the terms of agreement prior to signing an agreement. These are just some of the issues that we are aware of through the current laws around landholder and First Nations negotiations with resource companies, which demonstrate why there is such a need for support for landholders and First Nations having to enter into negotiation with resource companies as the principle role of Coexistence Queensland and any like body.

Unfortunately a failure to adequately support landholders and First Nations in the past has led to the Queensland Government and the Gasfields Commission simply appearing to be focused on smoothing the way for resource activities to go ahead, rather than providing meaningful listening and support to those disadvantaged by resource projects impacting their land and Country.

While we support the provision of more education and support being provided to communities impacted by the renewable energy industry, given this industry does not have a right of access to land as the resource sector does, we recommend thought be given to the division of the functions and resources of Coexistence Queensland to ensure the latter is still adequately resourced.

3. **We support the public release of information around Greenhouse Gas Storage authorities (Clause 37) and suggest this could similarly be extended to all resource and development activities to increase transparency for affected and interested community members.**

4. **To meaningfully address the significant issues caused by subsidence, reference in the Bill should be to *mitigating and avoiding* the impacts of subsidence, for both CSG and mining, rather than only 'managing' impacts for CSG operations. (Part 8)**

5. **Changes to the definition of 'preliminary activity':**
    a. **Are supported where impacts to organic or bio-organic farming systems cannot be considered to be preliminary activity are supported, to ensure more oversight and protection of this land;**

b. **Should be amended to ensure that land that could be used for farming or agricultural operations is not included in application of the definition of preliminary activity, not just limiting the exclusion to land *currently* being used for intensive farming or broadacre agriculture.**

The definition of preliminary activity has ramifications for the rights of landholders and should only be carefully applied to truly low impact activities.

We note that this framework is focused on currently operating farms – rather than protecting Queensland's good quality agricultural land and landscapes more broadly from subsidence, regardless of the current use for the land. This may put in risk the availability of good quality agricultural land going forward, and jeoperdise our agricultural industry and future food security. This is a similarly shortsighted approach to Queensland's land management as has been taken with the 'make good' framework around water resource impacts. We caution against continuing to only consider short term interests in this precious land and water, to ensure Queensland enjoys viable water and land resources long into the future.

We strongly recommend this is rectified to ensure that whatever land happens to be used for now is not used as a meaningful indicator of the quality and value of land for protection.

6. **Subsidence framework:**
    a. **Landholders and any members of the community should have the formal power to request that the Office of Groundwater Impact Assessment (Office) and/or the relevant Department consider declaring an area to be a subsidence management area, and/or that a subsidence impact report or subsidence management direction be required.**

It has taken many years for landholders in the Darling Downs, prime agricultural area of Queensland, to get this action by the Queensland Government to take subsidence impacts from gas activities seriously .In this time many landholders and the broader landscape has suffered the impacts of subsidence already. It is clear that the community cannot await government interest and action alone, and therefore there must be a formal opportunity for community members to seek a declaration of a subsidence management area, and/or that a subsidence impact report or subsidence management direction be implemented. Landholders and community members living with or at threat from gas are typically the most informed and interested in these actions being taken, and therefore it makes sense to empower their input in these key decisions through the Bill.

    b. **Consultation on the subsidence impact report is strongly supported but could be improved, particularly by requiring that copies of the notice of consultation be given to potentially impacted landholders as well as the authority holders [Clause 87, s184CE]. Further:**

        i. A period of 30 business days at least for consultation would be more appropriate for community participation in this highly technical issue. We note that 30 business days has been provided to the Office for submissions under proposed s184CM(2)(c)(ii), this leniency of time should also be provided to the community such that they may engage

experts and any other assistance to provide meaningful submissions and protect their interests.

ii. The time submissions are due should be mentioned on the notice;

iii. Specific requirements for the notice should be stipulated in the Bill or associated Regulation for the amendments, ideally requiring that the notice be provided on a central Queensland Government website as well as being sent by mail to potentially impacted landholders. Ideally there should also be a process for signing up to email notifications as to the consultation process opening so that interested community members can ensure they do not miss this limited opportunity for comment.

iv. We recommend that public submissions also be allowed under clause 87 s184CM(2) such that the community can be heard on proposed changes to the subsidence impact report. This can occur at the same time as the consultation for the Office and therefore will not cause delays to the process but will assist in more accountability around this decision and natural justice for those interested and potentially impacted.

c. We strongly question and do not support the need for tabling of the subsidence impact report in Parliament [clause 87 s 184CQ].

Tabling the report appears unnecessary and may subject the report to parliamentary privilege such that it cannot be relied upon by landholders seeking to protect their interests in a court process.

d. Availability of monitoring information should be extended.

i. We support the power requiring holders to provide landholders with copies of the information obtained through land monitoring of agricultural land [clause 87, s184DF].

ii. We suggest that the period of time for production of this information could be reduced to 5 business days, where this information has already been prepared.

iii. We support that both the information prepared from the monitoring, and a simple explainer be required to be provided [clause 87, s184DF(2)].

iv. We suggest that the information could also be required to be provided to any potentially impacted landholder, rather than the landholder's needing to be aware of the information being prepared and then to need to ask for the information. At very least a notice should be sent to the potentially impacted landholders and placed visibly on the website of the holder to alert the public to the existence of this information and that it can be requested and provided. We suggest this right should not be limited to

landholders and instead be available to the general public, where there may be other interested community members, including First Nations and scientists, who would value this information.

e. **Baseline data is an essential part of the framework operating to mitigate or even just manage impacts of subsidence and therefore these provisions must be clear and certain.**
    i. The provision for 'reasonable excuse' exempting holders from not undertaking baseline data under clause 87 s184EC should be removed. This is not provided in other offence provisions and therefore should not be provided on this essential section. There is no guidance as to what may be considered a reasonable excuse. This element of the provision introduces uncertainty and vagueness which could be exploited by holders in a way that baseline data may not be obtained. This is unacceptable for such important data which assists in understanding if subsidence impacts do occur, the cause of the impacts and implementing remedies to mitigate impacts.

    ii. The requirement to provide the baseline data to potentially impacted landholders is strongly supported [clause 87 s184EF] however this should not be limited to only landholders who may be determined by the holder to be potentially impacted. There should be a power for landholders to nominate their land as potentially likely to be impacted also, such that they can also obtain the data.

7. **Farm field assessments should not be undertaken by holders where they inherently have a vested interest in the outcome of the assessment that is not in favour of the landholders interests.**

    We support the provision of a requirement of an audit of the assessment [clause 87 s 184FD]. This would still be beneficial as a peer review process on any other provider of the assessment. We recommend that these assessments be undertaken by OGIA, with resourcing provided by the holder, where OGIA is an independent agency. Alternatively it could be required to be undertaken by consultants from a pool of registered relevant consultants who are chosen randomly by the Queensland Government for each necessary assessment, at the cost of the holder.

8. **Negotiating agreements should rightly be at the cost of the holder and this requirement is supported in the Bill [clause 87 s184HK], however this should be extended to compensate also for lost income.**

    Consideration should be given to compensating landholders for lost income due to the time they require to engage with the holder around access to and impacts to their land, where there is no benefit to this process for landholders.

9. **The opportunity for landholders to apply to be recognised in a subsidence impact report such that they are subject to a farm field assessment is vital for landholders to address failures in holder initiated assessments [clause 87, s185KD].**

For a long time landholders have not had an opportunity to raise lack of recognition of potential impacts to them from resource holder assessments in a formal manner. This is an essential requirement so that landholders can raise issues with the assessment and seek to protect their rights and it is strongly supported.

10. **The power to raise critical consequences and seek mitigation of these impacts is an essential element of this framework [clause 87, s184KI]. However, this power to raise concern with respect to critical consequences should exist at the time of preparation of the subsidence management plan and/or farm field assessment, and should not be dependent on a subsidence management plan already being in place and demonstrating potential for critical consequences.**

We are gladdened to see that the framework proposed is not simply about documenting impacts but that landholders can take action to seek mitigation of impacts under the Bill. Where critical consequences become apparent at any stage of the process there should be the power for concerned people to raise this issue and seek for mitigating activities to be implemented, so that meaningful mitigation of impacts can occur. Once impacts are noticed it may already be too late, so early recognition and action to mitigate impacts is essential.

11. **Cumulative subsidence assessments and regional risk assessments are supported, and this information should feed into the decision-making frameworks around resource activities in Queensland. [Clause 90 s 4 and 5]**

Cumulative impact assessment and regional scale risk assessment are both important elements of understanding and mitigating impacts, and yet to date the project by project assessment frameworks of Queensland and Australia's development assessment laws has limited the ability for these assessments to be meaningfully undertaken. We suggest that the information in the cumulative subsidence assessments should be provided to all regulating resource decision makers and integrated into application assessments and decisions.