

4 November 2011

The Research Director
Environment, Agriculture, Environment, Resources and Energy Committee
Parliament House
George Street
BRISBANE QLD 4000

By email: earec@parliament.qld.gov.au

Dear Research Director

EDO Qld Submission on Strategic Cropping Land Bill 2011

This is the submission of the Environmental Defender's Office Queensland ("EDO") on the Strategic Cropping Land Bill 2011 (**SCL Bill**).

The EDO is a community legal centre which specialises in public interest environmental law in Queensland. The primary goal of the EDO is to protect and enhance the environment in the public interest through the use of the law, by and on behalf of the community. The EDO is active in law reform.

We welcome the opportunity to make these preliminary comments on the Bill.

KEY RECOMMENDATIONS FOR SCL BILL AMENDMENTS

Minor amendments are needed to strengthen transparency and accountability under the Bill. In particular:

1. Access to information and public participation provisions need to be improved

- For applications made under the Bill, such as proposed amendments to zone maps under Chapter 2, Part 1, applications under Chapter 2, Part 2 to validate SCL lands and, applications under Chapter 4 that determine whether exceptional circumstances exist, public

notice requirements fall short of best practice. First and foremost, the owners of land to which the SCL relates, as well as adjoining landowners, must be given written notice of applications that affect their rights under the Bill. Second, the way in which applications are publicly advertised, need to reflect local conditions. We were instructed by a client from the Mackay region that circulation in a local newspaper does not guarantee information will come to attention of all interested stakeholders in timely way. Some landowners only get mail once a week. Time frames for making submissions need to be long enough to allow an interested person the opportunity to consider the application, engage experts to provide advice on any technical matters, and produce an appropriate submission.

- Notice of decisions made under the Bill, need to be given to all interested and affected parties – this includes landowners, adjoining landowners, any other person or entity that made a submission during a relevant public notification period as well as applicants. In respect to exceptional circumstance decisions, clause 129 only requires a notice to be given to the applicant. Yet an applicant need not be the owner of the land affected. An exceptional circumstance decision is extremely powerful and it must be directly communicated to all interested and affected parties. Clause 71(b), which deals with validation decisions, requires a decision notice to be given to “any other eligible person the Chief Executive ought reasonably to be aware of”. While it goes further than clause 129, it is unclear who is entitled – and can therefore expect – to receive notification of the decision. Clauses 129 and 71(b) should be amended to clearly state that copies of decisions be given to, at a minimum:

- The applicant;
- The owner or owners of the land;
- The owner or owners of all adjoining land;
- The relevant local government authority; and
- Any person or persons that made a submission during the public notification period.

- Rights to appeal decisions, such as validation or exceptional circumstance decisions, in the Queensland Planning and Environment Court and Land Court of Queensland should be extended to submitters. This approach is consistent with third party rights under the *Sustainable Planning Act 2009*, and, to a degree, in Queensland’s resource laws. There is no evidence that submitter appeal rights open the ‘floodgates’ in terms of litigation. Costs provisions in those Courts already exist to minimise frivolous or vexatious conduct.

2. Potential for future cropping activities must be a relevant consideration in classifying land in the Management Area as SCL

- The Committee will note that the failure to demonstrate the required cropping history, as it is defined in clause 49, requires a validation decision that the land is non-SCL.

3. Time limit in clause 14(1)(a) be amended to the length of tenure for the resource activity that is first applied for or, in the alternative, no more than 30 years

- The identification of permanent and temporary impacts on SCL or potential SCL is the heart of this Bill. We support the definition of permanent impact on SCL or potential SCL in clause 14(1)(b) and (c). We are concerned by the 50 year time period in clause 14(1)(a). We recommend that the time limit here be amended to the length of tenure for the resource activity that is first applied for or, in the alternative, no more than 30 years. The Committee will be aware that it is highly unusual for resource tenures to extend beyond 30 years. Why evaluate the permanence of impacts on SCL against some longer time period? Further, we note that resource tenures may be extended by the applicant at some unknown time in the future. If the 50 year period has been determined to account for post-operation efforts to rehabilitate SCL, as clause 14(1)(a) is currently drafted there is an unacceptable risk that what began as a temporary impact (with conditions requiring rehabilitation) becomes permanent following a successful application to extend the tenure. We cannot know the future business decisions of resource companies. We can only evaluate the impacts on SCL against a timeframe fixed to the length of the resource tenure first applied for or, as an alternative, no more than 30 years.

4. We support clause 266

5. Political lobby groups must not be allowed to appoint scientists to the Science and Technical Implementation Committee

- We refer to the statement by Hon. Rachel Nolan of 24 August 2011 advising that the Queensland Resources Council and Queensland Farmers Federation will be appointing scientists to this committee. The independence and legitimacy of the Science and Technical Implementation Committee will be questioned if political lobby groups are entitled to appoint members.

CONCLUSION

If you wish to discuss any aspect of this advice please contact EDO Qld. We are available to appear before the Committee to provide oral submissions if required.

Yours faithfully,

Environmental Defenders Office (Qld) Inc

A handwritten signature in blue ink, appearing to read "S. Sellwood".

Scott Sellwood

Solicitor

Environmental Defenders Office (Qld) Inc

To provide feedback on EDO services, write to us at the above address.