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QELA, a not for profit organisation, consults with and educates interested professionals and government representatives about planning, development and environmental laws which apply, or are proposed to apply in Queensland. QELA provides a collegiate forum for multi-disciplinary interaction and collaboration.

21 June 2017

Committee Secretary
Infrastructure, Planning and Natural Resources Committee
Parliament House
George St Brisbane 4000

Email: ipnrc@parliament.qld.gov.au

Submission about the Land Access Ombudsman Bill 2017 – June 2017

Dear Committee Secretary,

Thank you for the opportunity for the Queensland Environmental Law Association (QELA) to make a submission about the Land Access Ombudsman Bill 2017 (**the Bill**).

QELA is a non-profit, multi-disciplinary association. Its members include lawyers, town planners, and a broad range of consultants who represent and advise a miscellany of participants in the development industry.

The Infrastructure, Planning and Natural Resources Committee should be congratulated on what is overall a clearly worded Bill with a clear purpose demonstrated in its terms and in its simple application.

The proposal to implement an independent venue for dispute resolution for parties that are the subject of certain agreements under the various resources legislation is likely to be of great value to those parties so as to avoid the costs and time associated with litigation.

QELA has some concerns about the practical application of some of the provisions of the Bill, including ensuring the independence of the Ombudsman. Detail about these concerns is contained in the **annexed** table.

We thank you for the opportunity to make a submission about the Bill. We would welcome the opportunity to assist the Committee further, if required.

Yours sincerely

Leisa Sinclair

President

Queensland Environmental Law Association



Comments on Land Access Ombudsman Bill 2017

Clause	Comment
Land Access Ombudsman Bill 2017	
17	<p>The Bill includes a requirement for the Ombudsman to act independently and impartially. In order to maintain this intended independence and impartiality of the Ombudsman, QELA is of the view that authorised officers of the Department and the Gasfields Commission should be ineligible from being appointed as the Ombudsman as they are likely to be involved in investigating and dealing with the parties in the disputes. QELA is concerned that if those officers were to be eligible for appointment that there may be conflicts of interest as well as significant potential for administrative review on grounds of bias (actual bias or the appearance of bias), particularly when the Ombudsman's powers include making recommendations about possible offences and breaches to the Department.</p>
18(1)	<p>The Bill does not permit the Ombudsman to deal with a dispute during the minimum negotiation period/cooling-off period for certain agreements under the various resources legislation. It does permit the Ombudsman to deal with disputes during the usual statutory negotiation process. However, as part of the statutory negotiation process a party may elect to/apply to have the matter before the Land Court. This would have the result of terminating the ability of the Ombudsman to continue to deal with the dispute as the Bill does not permit the Ombudsman to deal with a dispute that is the subject of a proceeding. QELA is concerned the parties may be well advanced in the dispute resolution process with the Ombudsman when that process is terminated due to the relevant time limits in the statutory negotiation processes in the various resources legislation. QELA recommends consideration be given to imposing a stay on those relevant time limits in those statutory negotiation processes where a dispute has already been referred to the Ombudsman (e.g. the time period for an election notice, the time period for an application to the Land Court after the expiry of the election notice, the time period for the application for a Part 5 permission etc).</p>
42 and 43	<p>The Bill provides the Ombudsman with the power to require a party to a dispute to give the Ombudsman information and/or access to documentation related to the investigation of the dispute. It is not clear from the current drafting whether that power extends to requiring the production of information or documents by authorised officers of the Department and Gasfields Commission who for many disputes may hold information related to land access disputes. QELA recommends the power to require a party to provide information and documents relevant to the dispute should extend to authorised officers of the Department and Gasfields Commission.</p> <p>The Bill also provides the Ombudsman with the power to require a party to a dispute to attend a meeting at a stated time and answer questions in relation to the dispute and the investigation of that dispute. For the same reasons as above, QELA recommends the power to require a party's attendance should also extend to authorised officers of the Department and Gasfields Commission.</p>
42 and 43	<p>The Bill provides for penalties to apply if a party fails to comply with a direction from the Ombudsman to provide information or documents or attend a meeting and answer questions. The Bill does not provide any review or appeal provisions. Is the intention that any review of a decision to impose a penalty would be dealt with under the normal administrative/ judicial review avenues? Alternatively, consideration may want to be given to including review provisions given that parties to referred disputes may not be legally represented and may be unfamiliar with, or unaware of, penalty provisions for failure to comply with directions.</p>