

23 June 2017

Committee Secretary
Infrastructure, Planning and Natural Resources Committee
Parliament House
George Street
BRISBANE QLD 4000

Email: ipnrc@parliament.qld.gov.au

Dear Sir/Madam,

Re: Land Access Ombudsman Bill 2017

I am writing to provide comment on the above Bill.

APPEA supports the establishment of a Land Access Ombudsman with appropriate powers to assist in dispute resolution for active make good and conduct and compensation agreements.

We also consider the policy intent should also be that the Ombudsman's powers:

- do not overlap or duplicate those of other regulators
- include reasonable information gathering powers while avoiding the disclosure of information to parties not ordinarily entitled to receive such information, and
- encourage parties to first attempt to resolve disputes themselves before seeking the Ombudsman's assistance.

Detailed comments on the Bill are provided in the **Attachment**. We consider that in some important respects the Bill deviates from the above policy intent.

We acknowledge that a number of provisions of the Bill are intended to be further defined by the Ombudsman rather than in legislation. These provisions should be defined in close consultation with all stakeholders that support productive coexistence between resource activities and other land uses.

We would also like to acknowledge the positive and proactive consultation process undertaken by DNRM in developing this Bill. While we believe the Bill would benefit from a longer consultation process, we appreciate the effort made to ensure early and meaningful discussion with all stakeholders on the Bill's provisions.



We would welcome the opportunity to discuss this submission with the Committee.

Regards,

Matthew Paul
Policy Director - Queensland

Land Access Ombudsman Bill 2017 - Detailed comments

Section	Issue	Comment
Overall comment	Complexity of the dispute resolution framework	<p>The establishment of an Ombudsman adds complexity to the dispute resolution framework. It is important that clear information is available to landholders to enable them to successfully navigate the framework.</p> <p>In the medium term we suggest it would be beneficial to rationalise and simplify the framework.</p>
Several	Frivolous and vexatious complaints	<p>The Bill generally appears to be drafted to review the behaviour of authority holders and not landholders. There appears to be avenues for a landholder to raise issues with the behaviour of the authority holder with little or no risk to the landholder if the claim is frivolous or misleading.</p> <p>We submit this is not the policy intent of the Bill, and suggest that consultation be undertaken by the Ombudsman in further defining the operation of s36(3)(a)(i) in this regard.</p> <p>Further, we suggest that consideration be given to establish a threshold for disputes that can be referred to the Ombudsman. For example, it is unlikely to be a productive use of the Ombudsman to consider very minor breaches such as a single instance of a gate left open.</p>
Several	Rules of evidence	<p>The investigation is not bound by the rules of evidence however the Ombudsman must give the parties a notice of the outcome of the investigation which may include advice, recommendations, reasons and presumably</p>

		<p>information obtained in the course of the investigation. This notice may then be admitted as evidence in a Land Court proceeding notwithstanding how the information in the notice was obtained.</p> <p>We suggest that either the Ombudsman be bound by the rules of evidence, or notices not include information obtained other than in accordance with the rules of evidence, or the Land Court should not be allowed to admit information other than that obtained in accordance with the rules of evidence.</p>
s.35(1)	LAO's reasonable and necessary inquiries	More information will be needed on the operation of this provision. We seek close consultation from the Land Access Ombudsman in defining its operation.
s.36(4)	"Attempted to use"	<p>These words should be removed.</p> <p>Parties should be required to take the first step in the dispute resolution process under a CCA or MGA (which is usually formal notification of a dispute).</p> <p>Alternatively, parties should at least be required to provide formal notification or a dispute to the other party including the nature of the dispute, the action sought as rectification, and provide a reasonable timeframe for the other party to respond and resolve the issue.</p>
41	Investigation procedure	<p>There is little definition or structure around the type of investigation the Ombudsman may make, noting it may take the form of ADR and this is not defined.</p> <p>This leaves open the potential for a form of arbitration or mini-trial occurring rather than a negotiation between the parties. In this regard, though the notice of outcome of investigation is not binding on the parties it will provide a strong precedent for the parties therefore it is</p>

		important the investigation occur in a structured manner and any meeting of the parties does not attempt to impose a pseudo court process.
s.42(4)	Reasonable excuse for power to require information	<p>Similar provisions to the EPA should be inserted so that a person does not commit an offence against the section if the information sought by the LAO is not in fact relevant to the investigation.</p> <p>There should also be a mechanism for how the information is requested, a reasonable timeframe for provision of the information, a statement of why it is required (see s.451 of the EPA).</p>
53(6)(a) 54(6)(a) 55(6)(a)	Referral powers	<p>The Ombudsman has the ability to refer a possible offence under a Resource Act or the Environmental Protection Act to the chief executive and the Ombudsman may disclose information obtained in the course of the investigation. This could result in referral of possible yet not actual offences as well as disclosure of information to the chief executive which they may not be ordinarily entitled to in their independent investigations.</p> <p>The Ombudsman's powers in this regard should be limited to only referring information the chief executive would ordinarily be entitled to.</p>
59	Confidentiality requests	<p>Much of the information that the Ombudsman has the power to acquire will be confidential in nature and therefore this section is problematic.</p> <p>In particular, it is concerning that there are no obligations on the Ombudsman with regard to the treatment of confidential information or any requirement to keep such information in confidence. This should be rectified.</p>

s.60(3)	Secrecy	The disclosure carve out is too broad. "In performance of the person's functions under this Act" could include disclosure under s56, for example.
s.67	Regulation-making power	The Bill envisages the ability for Regulations to be made under the Act. We would appreciate advice from DNRM on the type of matters that may be addressed by Regulation.