



AgForce Queensland Industrial Union of Employers

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Committee Secretary

Infrastructure, Planning and Natural Resources Committee

ipnrc@parliament.qld.gov.au

Parliament House

George Street

BRISBANE QLD 4000

Re: Land Access Ombudsman Bill 2017- Infrastructure, Planning and Natural Resources Committee

Dear Committee Secretary,

Thank you for the opportunity allowing AgForce Queensland to provide feedback, on behalf of our members, to the *Land Access Ombudsman Bill 2017*, as referred to the Infrastructure, Planning and Natural Resources Committee.

AgForce is the peak rural group representing the majority of beef, sheep & wool and grain producers in Queensland. The broadacre beef, sheep and grains industries in Queensland generated around \$5.7 billion in gross farm-gate value of production in 2014/15. AgForce exists to facilitate the long-term growth, viability, competitiveness and profitability of these industries. Our members provide high-quality food and fibre products to Australian and overseas consumers, manage around 40% of the Queensland agricultural landscape and contribute significantly to the social fabric of rural and remote communities.

In our submission provided to the Department of Natural Resources and Mines (DNRM) regarding the Draft Land Access Ombudsman Bill 2017, we acknowledged the importance of successfully managing interactions between the resources sector and agriculture, and indicated support for measures taken by the Queensland Government to assist landholders in their dealings with resource companies.

That submission outlined that we view the development of the Land Access Ombudsman as an opportunity to strike a better balance between these key industries and if implemented successfully, an effective pathway to resolving conduct and compensation agreement (CCA) and water resource make good disputes.

As outlined the purpose of the Bill is to:

- Establish an independent land access ombudsman with the jurisdiction to provide for a way to facilitate the timely resolution of disputes between parties to conduct and compensation agreements and parties to make good agreements; and
- Save transitional provision of the Mineral and Energy Resources (Common Provisions) Transitional Regulation 2016 that would otherwise expire in September 2017 and amend associated provisions.

Our submission will focus on the aspects relevant to the implementation of the Land Access Ombudsman.

The proposed functions and powers of the Ombudsman can be summarised as:

- To investigate and facilitate the timely resolution of land access and make good disputes;
- To refer or recommend to departments the investigation of possible breaches, relating to access to land, of resource authorities; and
- To identify, and advise government entities about, systemic issues arising from land access disputes.

To summarise our submission, AgForce are supportive of:

- The ability for the Ombudsman to hear matters related to make good disputes as well as land access disputes through Conduct and Compensation Agreements;
- That both parties must use reasonable endeavours to develop a solution to disputes, before matters are referred;
- Subject to managing privacy issues, developing a process maintaining transparency surrounding matters referred to the Ombudsman; such as reporting on the number of disputes, successful resolutions, de-identifying how disputes were resolved, what methods were used and outcomes sort;
- The broader powers/functions of the Ombudsman, and would like to work with the Department and all stakeholders regarding the development of a review process, after an appropriate period, to ensure the effectiveness of the Ombudsman and identify any changes or improvements required;
- The approach to include preliminary advice hearings as a precursor to matters being heard by the Ombudsman, and would like to work more with the Department about this process and the roles of parties included; and
- The requirement for annual reports from the Ombudsman and look forward to working with the Department regarding the content and timeframes for this reporting.

As outlined in our original submission in response to the 2016 Scott Review¹ and the Draft Land Access Ombudsman Bill², we maintain that there should be a role for the Land Access Ombudsman to have jurisdiction regarding dispute resolution in the negotiation of Conduct and Compensation Agreements (CCAs) and make good agreements and not be limited to post agreement disputes. We would encourage the Committee to support including this capacity.

¹ GasFields Commission Review Submission available: <http://statedevelopment.qld.gov.au/industry-development/gasfields-commission-review.html>

² Submission provided to DNRM 15/5/2017

AgForce are supportive of the steps taken in this Bill to develop an independent body that landholders can refer disputes regarding land access or make good agreements and would continue to encourage the enquiry to consider expanding the jurisdiction to include pre-agreement disputes. AgForce would also be supportive of measures to allow landholders that neighbour resource development and experiencing significant impacts, an opportunity to access dispute resolution options through an Ombudsman.

In relation to the ability of the Ombudsman to make recommendations to Government, AgForce would be supportive of expanding this ability to include make good agreements and the supporting framework. As identified by a recent survey of 227 landholders conducted by AgForce Projects, 70% of responding landholders continue to express high levels of concern regarding groundwater impacts and the effectiveness of the make good framework to mitigate impacts. We believe this continued concern should justify the ability for the Ombudsman to make recommendations to Government as identified through make good disputes.

Through earlier consultation, AgForce has been advised of the possibility to develop an arbitration process for dispute resolution as well as a 'case appraisal' process within the Queensland Land Court. Given the relatedness to this Bill and proposed functions of the Ombudsman, AgForce would like clarification regarding these proposals and how they would interact to do so effectively.

Noting the above comments and expanded below, AgForce reserves the right to raise other issues as this process continues.

Specific Comments:

1. Intention and purpose of the Bill

AgForce are supportive of the overarching statement of the Bill, being; *to provide for a land access ombudsman to investigate and facilitate the resolution of disputes about conduct and compensation agreements and make good agreements*. The purpose of this Act we believe is consistent with the original consultation and details outlined in AgForce's original submission.

2. Inclusion of make good dispute resolution

As outlined in our submission to the Draft Bill, AgForce are supportive of the inclusion of make good dispute resolution as a function of the Ombudsman. The ability for landholders to raise disputes regarding the effectiveness or adequacy of a make good agreement we believe will provide value to landholders and all parties involved. We look forward to working with the Department and stakeholders regarding the operational specifics of the process, inclusions and limitations of this function of the Land Access Ombudsman.

3. Functions and powers

AgForce are supportive of the proposed functions and powers of the Ombudsman particularly noting powers to;

- Investigate, and facilitate the resolution of, land access and make good disputes;
- Refer to government departments, or recommend to government departments the investigation of, possible offences or possible breaches of resource authorities; and
- To identify, and advise government agencies about, systemic issues arising from land access disputes.

AgForce would like to continue working with the Department and stakeholders regarding processes by which recommendations about systemic issues in the land access framework, are referred and reported to Government agencies to ensure transparency and robustness of this process. We would be supportive of developing a briefing/reporting group of key stakeholders this arena, including broadacre agriculture, in to hear and discuss recommendations from the Ombudsman. AgForce believes this 'sounding board process' will provide value to Government as well as increasing effective consultation.

As outlined above, under these functions and powers we believe there should also be an inclusion, in regards to make good dispute resolution, to make recommendations regarding improvements to the make good framework, under Chapter 3 of the Water Act (2000).

We believe this should include; process requirements of make good agreements as well as the roles of regulatory bodies, compliance and investigative procedures, and published materials supporting landholders. AgForce are willing to work with the Department to refine this process.

Consultation with AgForce members has identified a potential role for the Ombudsman that previously has not been identified. Members have expressed that landholders may be experiencing an impact from neighbouring resource development, who may or may not be subject to a conduct and compensation agreement. For example, neighbouring a mine or coal seam gas (CSG) production site.

In the instance that access to this site or associated activities has required a CCA to be developed, landholders will have access to the Ombudsman regarding disputes. However, what has been raised is the instance where a landholder neighbours this development, but is not subject to access requirements or a CCA but may be experiencing a significant impact. This situation may be associated with production sites for CSG or coal. Therefore, AgForce would propose that neighbouring landholders, not subject to a CCA but are experiencing a material impact, would benefit from access to the Ombudsman to hear disputes otherwise only resolved through Departmental investigation or a Land Court hearing.

4. S. 18 What the land access Ombudsman cannot deal with

Under Part 2, Section 18, subsection 1 (g) it states that:

The land access ombudsman can not accept a land access dispute referral about any of the following matters; (g) a matter that is, or has been, the subject of an investigation by a department.

AgForce would like to seek clarification regarding this section, as to whether it would preclude a landholder who has raised a dispute, regarding CCA compliance or Make Good agreements, with the CSG Compliance Unit or similar, as an investigative matter, from subsequently referring the matter to the Land Access Ombudsman.

We believe the function of the Ombudsman should be to allow landholders additional independent dispute resolution options, should a matter be unsuccessfully or unsatisfactorily resolved through existing avenues, such as referral to Department agencies.

Furthermore, under Part 2, Section 18, subsection 1 (d), it also excludes matters being referred to the Ombudsman that include the content of legislation or government policies. AgForce is of the opinion that the Ombudsman having the ability to hear matters regarding the effectiveness or adequacy of Government policies, such as the Land Access Code (2016) and the effectiveness of this policy to support land access dealings, would allow for recommendations and opinions to Government being based on actual disputes, and would result in improved polices for all stakeholders. At the very least these policy concerns should be documented in the Ombudsman public reporting.

5. Part 3- Referral and investigation of land access disputes



Part 3, Division 1, Section 32 (2) states that; *a party to a land access dispute may not refer the dispute unless the party has made a reasonable attempt to resolve the dispute with the other party to the dispute*. AgForce are supportive of this approach requiring parties to exhaust other options for dispute resolution, before proceeding to the Ombudsman. Following earlier consultation with the Department on the 2016 Scott Review and Draft Land Access Ombudsman Bill 2017, AgForce are of the understanding that there may be future changes in relation to the land access framework, particularly in relation to graduated dispute resolution and minimum timeframes.

AgForce are keen to understand how the determination of 'reasonable attempts to resolve the dispute' may be affected by any such changes. For example, whether a matter must be referred to the CSG Compliance Unit or Mining registrar, noting above our concerns regarding matters investigated being excluded from subsequently being raised with the Ombudsman, and what steps either party must show to satisfy reasonable steps taken to resolve disputes.

Thank you for the opportunity to provide feedback to this Bill, and we look forward to working with the Committee to expand on any issues identified and are available for further comment.

Please contact for further details in
regards to these comments.

Yours sincerely,


 Charles Burke
CEO
AgForce Queensland