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Parliament of Queensland

Infrastructure, Planning and Natural Resources Committee

SUBMISSIONS

Minerals and Other Legislation Amendment Bill
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Submitter:

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I commend the Minister's introduction of the Mineral and Other Legislation Amendment Bill and strongly support its repeal of specified parts of the MERCP Act. Those repeals will for the most part reinstate the pre-2014 rights of landowners and the public in respect of exploration and mining.

The Bill will, if proclaimed, go a long way to restoring a sensible balance to the interface between resource operators and landowners, as well as the public who are affected by or concerned about the impacts of exploration and mining.

As an experienced practitioner representing landholders, I believe that without the repeals Queensland would in future experience serious conflict between landholders and resource operators, especially when access to private land for exploration and mining returns to more normal levels. Most individual landowners would not have a detailed knowledge now of how the MERCP Act would have affected them, but if it isn't amended and they find out the hard way they will react very strongly.

However, two important components of the application and approval framework remain distorted by the MERCP Act because the Bill does not address them:

a. marking out of mining claim and mining lease applications, and

b. issue of the certificate of public notice for mining leases.

I submit –

1. **Due process and natural justice (and fairness) for affected landholders require that every owner whose land is affected by a mining lease application be promptly notified within a short time (eg. two weeks) of the lodgement of a mining lease application, and the details of it.**

2. **Physical and readily visible markers at all corners of a mining claim or mining lease application area are essential so that affected owners and their associates as well as miners may recognise the boundaries by sight**

Notice to Affected Landowners

The Mineral Resources Act (MR Act) as it currently stands continues long-standing provisions designed to give owners of affected land timely notice that someone has marked out and lodged a mining lease application on their land. Neither the fact that a mining lease application has been lodged, nor the identity of the applicant, should ever be a secret known only to the applicant and the department.

Certificate of Application

The current mechanism for giving that timely notice - the certificate of application - is wholly repealed by the MERCP Act (section 436) and not reinstated by the Bill – and in fact the department has routinely breached the requirements of the MR Act by not issuing it promptly as required.

Section 252 of the MR Act at present requires issue of the certificate of application, and service of it on the owner of the land, as soon as the department is satisfied the applicant is eligible and has complied with the Act in respect of the application – obviously those two steps shouldn't take long. But for the best part of two decades the department has flouted the law and only issued the certificate of application much later, coinciding with its issue of a certificate of public notice signalling the objection period – by which time it is utterly pointless.

And to further aggravate the risk that landowners will be kept in the dark, the marking out provisions for both mining claims and mining leases are also abolished by the MERCP Act and not reinstated by the Bill - as further explained below.

These timely notice provisions are both a courtesy – ie. the State letting an owner know it has permitted a person to begin an application aimed at taking land for mining purposes – and an essential and necessary form of notice which equips the owner, should it be necessary, to tell lending institutions and any business or private partners whose interests are potentially affected.

Just one of the reasons why early notice is vital is that a landholder typically has one or more mortgages and must comply with the terms of loan. From the day it is lodged a mining lease application can materially affect the value of the property, such that the owner's compliance with loan terms may be in question. It is obviously vital – and an obligatory part of due process - that the owner be the first to learn that the land is affected by a lease application, thereby having the opportunity to inform the mortgagee rather than the mortgagee finding out by other means.

And depending on its size and location on the property, the lease application may potentially threaten significant interference with land management, productivity and income and therefore need to be factored in to the owner's business planning.

Yet the department has pointedly ignored the real purpose of the notice – I have personally appealed to it on numerous occasions to do its duty, and once or twice this resulted in fairly prompt action.

Restricted Land

A landholder could be intending to, or be in the process of constructing major and costly improvements such as water facilities, fencing, yards or buildings on the land the subject of the application. By section 238 of the MR Act, land carrying a certain class of improvement (such as residence, artificial water facility etc) is only restricted land if the improvements were in place at the time the lease application was lodged. A landholder who has not been notified of a lease application could spend money and time building improvements which will not be covered by compensation in the event the lease is granted.

Due Process

Lease applications are posted on the department's website when lodged - though its highly unlikely a landholder will even know that, let alone be keeping watch. But others who may be able to profit, at the owner's expense, from knowledge of an otherwise undisclosed lease application affecting that land may learn of it.

A landholder may at some point learn of the lease application indirectly, for example by being notified or consulted in the environmental authority application process – but that is no excuse or substitute for timely official notice.

Mining lease applications – especially for large and complex projects where an EIS or a major environmental management plan process is required – can stand by for lengthy periods such as four years following lodgement, awaiting issue of a draft environmental authority. How can the State justify failing to ensure that those who own and work the land are properly notified ?

The department is now compounding its blatant and sustained breach of the Act by acting to eliminate the certificate of application (along with the marking out of application areas). It is not providing any replacement form of notice. That is unjust, a denial of natural justice, a failure to ensure due process and unbecoming of a body which is meant to be the impartial regulator.

Marking Out Claim and Lease Applications

The Bill leaves the MERCP Act sections 445, 452, 455, 459, 460 in place. And the Bill, Clause 101, combines with the above sections to introduce very complicated new provisions concerning entry to private land for supplementary or enhanced marking out, as directed by the chief executive.

As of now, a would-be miner needs no separate authority to enter for marking out. The miner, while on the land under the exploration permit or prospecting permit will mark out the lease or claim with white posts standing 1 metre above ground for everybody to see. That's a reasonable requirement for someone who is proposing to take another person's land for mining – and its reasonable that if that simple task isn't performed properly, the lease or claim application can be ruled invalid as is the case now.

These new entry provisions - which will be acutely bothersome to landholders and their associates - are only needed because miners are being given a second or subsequent opportunity if their description of the land to be taken is at some stage ruled not satisfactory by the chief executive.

The traditional reasons for requiring marking out using clearly visible posts at each corner of an application area remain valid notwithstanding the ready availability of GPS coordinates and other related innovations.

Landholders would rightly ask why we now have to pander to the miners, allowing them to qualify with less onerous but also less effective methods. Only marking by clearly visible posts will pass the ground truthing test for affected people such as the land's owner. And what justification is there for giving miners the added privilege of revisiting the marking if their first effort is unacceptable to the chief executive.

The department displays its lack of practical understanding of what happens on the ground by sponsoring these changes.

From the day a claim or lease application begins everyone going on the land, including not just the owner but the owner's family or staff and any visitor, contactor or adviser such as a valuer or engineer or land improvement contractor etc. - or another miner - needs to be able to see the application boundaries right there on the ground by visual markers which are compliant with the Act.

Such people will generally not have the coordinates or the like with them – the only source of that data for the landholder is likely to be a certificate of application, but that is being abolished. Even if they did have access to the coordinates and a GPS they would probably only be useful as the basis

for landholders locating corner positions and placing their own markers. The need for them to do that is an imposition on the landholders and a waste of their valuable time.

From my own experience, I know that where a proponent has failed to place physical markers, for example on a proposed rail corridor, the only practicable solution for the landholder and advisers is to get hold of the coordinates and locate and physically mark the corners – ie. the landholder has to do what the proponent should have been required to do.

Where mining claims or mining leases adjoin other claims or leases – as they often do – even the miners and their staff, contractors etc. need the physical markers.

The proposal to do away with physical marking of the boundaries of mining claims and mining leases is an aberration – it demonstrates that the department has conceived this change for the unwarranted benefit of the miners and without regard for the owner and others disadvantaged by the change. I ask the Committee to recommend the current requirements of the MR Act for marking out be reinstated.

George Houen

8 March 2016