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property rights australia

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Mineral and Other Legislation Amendment Bill 2016

Property Rights Australia (PRA) was formed in 2003 to provide a strong voice for landowners with regard to property rights issues. It aims to promote fair treatment of landowners in their dealings with government, businesses and the community.

Summary

Property Rights Australia welcomes aspects of this Bill. However resource operations and attendant legislation are still a significant abrogation of landowner rights for the benefit of resource operators.

Property Rights Australia welcomes the reinstatement of landowner objection rights to granting of a mining lease and the environmental authority process.

The amendments in this Bill give landowners control over their restricted areas and we welcome the reinclusion of major farm infrastructure into the restricted land provisions. It is however incongruous that water pipelines are not included and will render some systems inoperable while protecting the source infrastructure. It also overturns the Land Court's Xtrata decision that pipelines should be protected.
Also incongruous is that water storage facilities which were not connected to a water reticulation system at the time of grant of the resource authority are not protected and yet that may prove to be the only viable system if others are impinged upon by resource activity.

The introduction of a regulatory framework for entering land to identify mining boundaries without a mining tenement is welcomed and is long overdue. The previous regime simply required notification and offered no protection to landowners .It also gives the Chief Executive, not only the right to investigate complaints but the obligation to investigate landowner complaints and impose sanctions. There will be a right of appeal for the resources company and the ability for the Land Court to adjudicate on related actions.

Transitional provisions for the "600m rule" are welcomed but we reiterate our position that 600m should be the minimum distance for class A restricted areas anyway.

Opt out agreements offer very little protection to landowners and should not exist. In so far as they do exist there should be a cooling off period as there is with a CCA in the first instance.

We have no comments on overlapping tenure provisions.

Restricted Land

Our first statement on restricted land is that 200m from a residence or any sort of accommodation, including employee accommodation, or business premises is not sufficient and this clause should be changed to at least 600m or greater.

The concept of restricted land for all legislation is a step in the right direction but still fall short when experience has shown that even 600m is insufficient to ensure that noise, dust and other considerations do not encroach upon health, safety, amenity, privacy and the enjoyment of property.

It is also contrary to the tacit admission of lack of the above that a previous Labor Government made a commitment not to allow resources within 1km of a settlement of 500 or more people.

It is incongruous that the compulsory public and landowner notification process revolves around the grant of the mining lease and environmental authority whereas restricted land and "new" infrastructure for "make good" compensation are now tied to initial resource authorities which extends exclusion times back a considerable number of years. Such exclusions can be easily missed by the landowner. This needs to be returned to the grant of the mining lease so that new residences and infrastructure are not sited inappropriately.

Property Rights Australia would however, like to state our position, that any cut off time for restricted areas and for "new" infrastructure under "make good" provisions of the Water Act places all farm based businesses in a time warp and shows no regard or respect for many of the hard won assets of a farming business.

It limits all of the decisions which a farmer must make to remain viable and is a severe curtailment of flexibility, drought preparedness (water and fodder crops), productivity, environmental considerations (more watering points to spread grazing pressure more evenly), expansion into more intensive industries, alternate grazing (cell grazing) and on farm tourism. The impacts of these clauses cannot be overestimated and will result in some serious social problems in the future.

The legislation, in specifying a "permanent" building for restricted areas fails to recognise that, due to financial constraints, many buildings of a non-permanent nature are used for residences, businesses, accommodation (including employee accommodation), home schooling and public schools. They nevertheless involve considerable amounts of infrastructure which would need to be replaced if the building were to be moved.

The specification that artificial water storage must be connected to a water supply in order to become a restricted area is to devalue reserve and drought preparedness water supplies. This is unacceptable and all assets should be recognised as such including temporary pipelines from primary and reserve supplies.

Transitional Arrangements

We welcome the transitional arrangements that cover the 600M rule for CSG companies under s 219. However, the case has been put many times by many landowners including by landowners who live with CSG, mining and related infrastructure that even that is not enough

and that 200M is woefully inadequate to ensure the privacy, amenity and enjoyment of their properties to which landowners are entitled. There is also the widely reported negative health effects of living in close proximity to resources. Governments avoiding doing robust and complete studies and denigrating those that have been done is not a good excuse for ignoring this issue.

Framework for entering land to identify mining boundaries without a mining tenement

PRA welcomes the extra provisions beyond notification relating to entry to land to identify mining boundaries without a mining tenement.

That the Land Court can adjudicate on restricted areas is welcome but resources of the Land Court need to be improved. Many landowners are waiting an inordinate period for decisions and are significantly out of pocket.

Conferences

Because MOLA reverses many of the concepts of the MERCP the default is the original MRA and P & G Act. We object strongly in any and all circumstances, to landowners having to attend a conference (under the P & G Act) which is intended to result in a signed agreement without a lawyer. Almost every single politician who oversaw this suggestion will have had legal advice for a contract at some point in their lives. For such an important document which goes on title, is virtually unchangeable and binds successors and assigns this is unacceptable and should be amended as soon as possible. There should also be a cooling off period as there is for a CCA negotiated as a result of a notice to negotiate.

Access

> ***S 7 clause 43(d) is an applicant or respondent to an*** *application relating to the land made to the Land Court under section 94 of the P & G Act.*

This clause should never apply. Entry should not be allowed while parties are in the Land Court and has been used by some companies as a very effective bullying tool. It is contrary to the provisions of the Mineral Resources Act 1989 and that is what should apply to all resources activity.

There absolutely should be no entry until a Conduct and Compensation Agreement is in place where that is usually allowed for in the legislation.

Pipelines

That installation of underground pipeline or cable is not a "prescribed activity" if the installation excluding preliminary work, such as surveying is completed within 30 days of commencement of installation and there fore not subject to the restricted land provisions is unacceptable.

There is no time frame for the preliminary activities which raises safety issues, health issues, noise and dust issues.

The activity itself and maintenance of the infrastructure raises all of the above issues as well as the risk of subsidence which is a particular danger to children within 200m of a residence. There have also been instances where landowners have been advised to stay within their homes for a period of time for health and safety reasons.

Recommendations

Conduct and Compensation

- No binding agreements should be made without access to legal advice including at conferences or other dispute resolution processes. A cooling off period should be allowed for all contracts.
- All expenses including those relating to conferences and ADRs and associated legal advice should be paid by resources companies. It has been too easily forgotten that landowners are unwilling participants in all of these processes.
- No entry should be allowed, under any resources legislation, where a conduct and compensation agreement is usually required, until such agreement is made including where the parties are in Land Court in order to have the Land Court rule on this matter.

Restricted Land

- That the distance for a class A restricted area be 1000m. 200m is woefully inadequate for class A restricted land and there has been plenty of testimony that even 600m is inadequate.
- That restricted area infrastructure should include pipes and watering infrastructure.
- That artificial water storages not connected to a water distribution system be included in the list of infrastructure covered by class B restricted infrastructure.
- That exclusions for restricted land that date back to the granting of an original resource authority is too long a time frame and landowners will not generally be aware that their "new" infrastructure will not be covered by restricted land.
- Property Rights Australia does not believe that any infrastructure should be excluded from restricted land provisions.
- That installation of underground pipelines and cables as per s 67 (b)(i) and (ii) be a prescribed activity and subject to restricted land provisions.

Access Code

- It is highly undesirable that legislation is presented without knowing the associated regulation. This is particularly important when it has the impact of the Land Access Code. It has been our unfortunate experience that landowner rights are usually diminished by such regulation.

- A breach of a CCA is a breach of a resources lease.

Joanne Rea

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