property rights australia

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PRA submission on the Mineral, Water and Other Legislation Amendment Bill

Property Rights Australia was formed in 2003 to protect the rights of property owners from the unfair actions of government, business and others who contravene their property rights. Our philosophy is that if anyone wants to impinge on our property rights we expect full and fair compensation paid.

One of the principles that Government should work to in approaching all legislation where landowners and resource companies are required by legislation to "co-exist" is to recognise that it is mostly a forced partnership where all impacts whether they are cost impacts, environmental impacts or impacts on amenity have been imposed on the landowners.

There are points in the legislation where if a landowner does not easily come to agreement, they start to incur costs. The legislation is designed to ease the path for resources companies. These negotiations at any level are not of the landowner's choosing.

Any attempt to restrict their access to costs and paid assistance or to try to restrict compensation to those who are on the footprint is cynical in the extreme.
There are some worthwhile aspects to this Bill. However, failure to mention a particular section does not imply agreement.
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Arbitration

S91A(3)(c)
Not allowing access to the Land Court if parties have agreed to arbitration is an unacceptable restriction of landowner rights. Many landowners will be unaware of this and its implications in spite of the necessity to inform them and will often depend on how the message is delivered. Through sheer experience, resources companies will know what arbitrators they prefer and what conditions they will be able to impose.

A landowner will have no knowledge of the skill or expertise of an arbitrator nor of his level of impartiality. However, if the result is unsatisfactory, there is no appeal.

S91C Legal representation for landowners is permitted only under certain conditions while resources companies can send whoever they please.

This is an unacceptable and a clear violation of landowner rights. Agreements reached are attached to title and are binding on successors and assigns.

This principle applies not only to Conduct and Compensation Agreements (CCA) but to Make Good Agreements under the Water Act 2000 (Subdivision 3a Arbitration) which is, if it is possible, an even more delicate negotiation than a CCA. Water goes to the heart of whether a landowner can operate or not and clearly legal advice and a hydrographer is a necessity. This is not a job for even a well-briefed amateur. This agreement is also binding on successors and assigns and no other such important agreement would be made by a responsible business person without legal advice.

No responsible government should force people into this position-EVER. Access to legal advice is a basic right to anyone who is signing a contract in this country-or at least it should be.

No-one would buy a house without legal advice. Why should a landowner be expected to negotiate an agreement which is perpetually binding on successors and assigns, goes on land title and ultimately will have an economic impact far greater than the cost of a house?

No parliamentarian would advise their children to enter into a significant contract without legal advice. Why should they impose it on landowners?

All of S91A (arbitration) has subsections which will prove difficult for landowners.

There are time constraints, knowledge and experience constraints as well as constraints on expertise and all without any recourse to appeal.

S91F says that the arbitrator's decision is final with no review or appeal and loss of access to the Land Court and all without legal advice. What sort of arranged marriage is this?

S101A (1) (b)

Property Rights Australia has long campaigned about a binding opt-out agreement being available and particularly attached to title and binding on successors and assigns.

It is also obvious that potential buyers of property must be aware of content of all agreements and decisions of Land Court and arbitrators.

How will that information be made available?

Compensatable Effect

The narrowing of the definition of compensatable effects to only apply to the land subject to a resource authority and not neighbouring properties shows the lack of responsibility of government in addressing effects on neighbouring properties who can certainly suffer economic loss and environmental impact. We object to these provisions in the strongest terms. Landowners should

not be collateral damage to an industry which reaps rich rewards for governments and resources companies.

S81 needs strengthening rather than engineering a decrease in liability for resources companies.

Environmental impact and economic impact, it must be noted can extend beyond property and resource authority boundaries.

Declaration of Underground Water as Overland Flow

With reference to Clause 269 proposing to insert new Section 1006A to the Water Act 2000 as follows:

Clause 269 **Insertion of new s 1006A**
After section 1006—
insert—

1006A Underground water may be declared to be overland flow water
(1) A regulation or a water plan may declare particular underground water to be overland flow water.
(2) Underground water declared to be overland flow water is not underground water.

This is a very general declaration of what underground water or aquifers may be declared overland flow, without the requirement for the water so declared to be under, or adjacent to a watercourse and is a severe abrogation of landowner rights.

It is unfair and unreasonable and strips some of the rights and protections that are enjoyed by underground water users away from them and is so general as to allow the declaration of any bore. This may or may not be the intention but that is what is stated by the legislation.

If that is outside the intention, Property Rights Australia requests that the wording changed to more closely reflect the intention. As always property Rights Australia is prepared to appear before a parliamentary inquiry and expand on its views.

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Yours sincerely

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Chairman
Property Rights Australia