property rights australia

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Water Legislation Amendment Bill 2015

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.
Our philosophy is that if the community (or business) wants our resource for any other purpose such as environmental protection then the community must pay fair and unsterilised value for it.
Most of our members are in Queensland but we have members in all States.

Purpose of the Water Act

Property Rights Australia is pleased to see "sustainability" returned as one of the purposes of the Water Act.

Right to take and interfere with unlimited quantities of water

It is perplexing however how "sustainability" can be guaranteed when the ability to take or interfere with unlimited and unlicensed quantities of water by resources companies has not been ruled out.
Property Rights Australia has grave concerns with this situation and believes that water licenses should be reintroduced.

Unresolved issues from the WROLA Act

We would like to reiterate our position on the, as yet, not proclaimed, Water Reform and Other Legislation Amendment Bill 2014 (WROLA) and re-state some of the submission we made at the time.

Extracts from previous submission

Summary

A) The Bill has confirmed that the mining tenement holders will also be the "water monitoring authority."

A) The "water monitoring authority" will have the power to construct and plug bores. It will also have the power to investigate landowner bores. s334ZQ(1) It will also be able to obtain authority to carry out these activities outside the area of its mining tenement.

B) The "water monitoring authority" will be the owner of the "water monitoring bore." s334ZZJ

C) No-one will be allowed to interfere with a "water monitoring bore" without the authorisation of the owner. Severe penalties apply. S334ZZK(1)

D) Baseline testing for a "water monitoring bore" will not be required.

E) In the event of a dispute provision is made for 30 days negotiation, followed by 30 days for Alternative Dispute Resolution.

F) If no resolution occurs either party can go to the Land Court. The decision of the Land Court is binding on both parties.

G) The grounds that the Land Court can consider are very limited.

Discussion

A) If the mining tenement holder is to be the "water monitoring authority" then it is imperative that provision be made in the legislation for independent verification of their results including by Government agencies, landowners and their independent experts. The legislation seems to be written to exclude landowner involvement and the Government seems to be an unwilling participant.

A) The "water monitoring authority" has the unqualified power to plug a monitoring bore with no qualifications such as safety and no requirement to notify anyone including affected landowners and Government. This will be a most unsatisfactory result if it is done to cover or delay knowledge of a drop in quantity or quality of water.

B) This is an unwelcome reversal of the usual rules of ownership.

C) This section appears to be a discouragement to landowners to conduct their own independent tests and as with the rest of the Bill penalties for offences most likely to be committed by landowners or their experts are at least in the order of magnitude of those imposed for offences most likely to be committed by resources companies or their agents.

D) That baseline testing for water monitoring bores is not required is extraordinary. The most basic requirement for measuring or recording **anything** is that there be a measured baseline. This is a requirement of the most basic kind and reflects the undue influence of resources companies on Government. What is also extraordinary and unacceptable are those matters raised by [previous] Minister Cripps 11/9/14 when he introduced the Bill. He states that *"The regulatory burden on existing tenures would also be minimised through an exemption from the requirement to produce a baseline assessment plan or an underground water impact report if they are located in an area where the take of underground water is presently unregulated or if they already hold a licence or permit to take."*

E) In the event of a dispute over "make good" provisions and whether a resources company is responsible or not 60 days could become a severe animal welfare problem if a landowner is unable to provide alternative water. All costs and losses should be compensated for in a timely fashion.

F) Considering that the Land Court decision is binding on both parties, the number of issues considered by the land court is limited. If there is any possibility that any landowner is likely to have a cataclysmic water loss, and it is possible, the number of grounds that the Land Court can cover and the orders that it can make needs to be deepened and widened. The same applies to access to monitoring information and hydrology where landowners seem to be excluded from any timely and detailed information. The "water monitoring authority "will be the keeper of the up to date information with respect to water monitoring bores which makes them judge, jury and expert witness in the event of a dispute with little available to the landowner in the form of access to independent information. This issue alone could be the subject of yet another parliamentary inquiry.

G) There should be no limitations on what matters the Land Court can cover. Considering the importance of the water resource to landowners the Court should be able to obtain any evidence and make decisions on any grounds that it sees fit for a fair and proper outcome.

Property Rights Australia sincerely hopes that a Government of any colour will respond promptly to calls by landowners to have "make good" provisions tightened by legislation. It is our belief that not all possibilities are covered and time will expose many weaknesses in the legislation which will leave some landowners without sufficient protection to continue their businesses in an acceptable and profitable manner.

Currently landowners are required to prove that their water bore was affected by the resources company with no presumption in landowner's favour. Not only has the type of proof required for such an exercise beyond the pockets of most landowners but the ability to access the data necessary has been put even further out of reach by this legislation. The Government likes to forget that resources companies are usually uninvited and unwelcome on landowners property and agreements have precious little in common with "commercial arrangements." Landowners bear much of the uncounted cost of the resources boom in both personal and financial costs, can often be put to great uncompensated expense by the actions of resources companies. Opportunity costs do not even get a Guernsey.

Landowners have been left high and dry by Government when it comes to any protection of their most necessary resource. If water is to be affected there should be built in unequivocal legislative protections and compensation without having to jump through hoops when they have been left without the minimum amount of data to safeguard their businesses.

An ongoing problem for landowners has been the length of time taken by resources companies to drill "make good" bores and some try to get landowners to accept the inferior option of cash compensation. The timeframes to action "make good" provisions should be legislated.

The change of date from when a resources lease was granted to when it was applied for as the cut-off date for "new" infrastructure is one that should never have been made. In fact to have a cut off for "new" infrastructure which will not be covered by "make good" arrangements at all is to deny the rights of the landowner to a profit making business. Over the say 30 year life of a resources project there will be an ever increasing pool of landowners with fewer and fewer viable water options for their business and with fewer and fewer of them covered by "make good" agreements.

Landowners should also be warned that to accept cash compensation for a water bore which will be constructed by a third party (not the resources company) brings that bore into the category of "new" infrastructure and may not be covered by future "make good" provisions.

Make Good and the Land Court

S 436(2) outlines what the court may give compensation for.

This legislation and remedies offered is unequal to the task of dealing with significant water loss. It is also possible to envisage a situation where a property has several bores which become unfit for purpose over a period of say 10 -20 years and owners are given monetary compensation from time to time. When this property becomes unviable presumably it should be bought in its entirety. There is no provision for such event in the legislation.

However there is allowance in the legislation for account to be taken of what a company has spent on "make good" **whether the attempts were successful or not**. Presumably this would be a deduction. This is not indemnifying landowners against losses caused by resources companies, which is presumably the aim of make good. It is in fact an externalisation of costs from one sector to another.

If it is to regain some integrity, this legislation needs to be robust in its writing and practical and fair in its application with recognition of the property rights of agricultural landholders.

It is vital that the Land Court have no restrictions on what it can consider in "make good" cases if that Court is binding on both parties.

Stock Water

Property Rights Australia would also like to make the point that the lack of past regulation of stock water was based on sound philosophy. The ability to regulate stock water in times of shortage or contamination could mean at almost any time and an unknowing Government could too easily do it causing an animal welfare problem and the necessity to destock. If the last two and a half years has taught us anything it is that the necessity to destock can have dire consequences with respect to stock prices and animal welfare.

Water Monitoring Authority

Property Rights Australia has also noted that the Deputy Premier and Member for South Brisbane Ms Jackie Trad, in her dissenting report to the Water Reform and Other Legislation Amendment Bill 2014, shared our concerns and the concerns of the Bowen Basin Sustainability Alliance that if the water monitoring authority is to be a holder of a mining tenement then there must be proper regulatory oversight.
Property Rights Australia can see no reference to this in these amendments and sincerely hopes that the situation is addressed in future amendments.