



BOTTOMS ENGLISH LAWYERS

Incorporating AMR Legal

Our Ref: Anne English 18107
Your Ref:

3 August 2012

Government Land Tenure Inquiry

By Email: SDIIC@parliament.qld.gov.au

Dear Sir/Madam

**RE: SUBMISSION FROM DIANNE WILSON-STRUBER &
STEPHEN STRUBER, PALMERVILLE STATION,
PALMERVILLE**

TOR

1. Ensuring Pastoral Industries are viable into the Future
3. Ongoing and Sustainable Resource Development

We refer to the above two elements of the TOR for the review.

Palmerville Station occupies 500 square mile of mainly undulating clay soil country along both banks of the Palmer River and for about 25 kilometres south to the adjoining properties of Bellevue Station/Mulgrave and Karma Waters/ Bonny Glen.

The Chillagoe/Laura Road runs in part along its western boundary. Resources Reserve No. R16 sits in the middle of the property on the northern boundary and contains the historic old gold rush town of Maytown.

The tenure is Pastoral Holding with no purpose defined, a term of 50 years commencing on 1/7/1985. The Strubers operate a cattle grazing business on the property and it has been a cattle station for the past 50 years at least. Mrs Wilson-Struber has lived on the property all her life.

Conflict of Land Use Tenures

There are currently about 23 mining leases or mining lease applications over the property. The overlapping mining tenures create the following real problems for the landholders in terms of running their cattle business:

1. Arrogance of exploration and mining lease holders and fossickers

Cairns Office:

P.O. Box 5196
63 Mulgrave Road
Cairns Queensland 4870

Telephone:

(07) 4051 5388

Facsimile:

(07) 4051 5206

Atherton Branch:

P.O. Box 101
Suite 3, Level 1,
7 Herberton Road
Atherton Queensland 4883

Telephone:

(07) 4091 5388

Facsimile:

(07) 4091 5205

Email:

bottomslaw@belaw.com.au

Website:

www.bottomsenglishlawyers.com

Principals:

John Bottoms,
B.A., LL.B.

Anne English,
B.A., LL.B.

Consultant:

Sandra Sinclair
LL.B.

with no respect for the landholders rights:

- (a) failure to properly notify the landholder of entry to the land under the exploration permits;
 - (b) failure to comply with environmental Code of Compliance in Mining Operations causing pollution of stream, massive siltation problems, destabilization of fragile soils, severe soil erosion, water holes filled up with sand;
 - (c) no consideration for property owner's need to retain grass and pasture when fossickers and miners light fires on the country to clear areas for metal detection and/or camp areas. Fires reduce pasture for cattle/raise feed costs. Landholder loses valuable time and incur costs fighting fires to preserve grass and vegetation when they should be attending to work much as musters.
2. Inability of EPA and DERM to properly police compliance of mining operations due to lack of resources and remote location.
 3. Failure of relevant government departments to action remediation of contamination of land from old abandoned mining sites which reduces the productivity of lands/access to clean water for cattle.
 4. Major flaws in so called "stream-lined" environmental authority and mining lease application process, eg. Landholder has the right to object to issue of draft EA on mining lease application but no obligation on miner to give landholder a copy of draft EA.
 5. Landholder/Miner objection and resolution process is too costly and time-consuming for the landholder particularly where the land is subject to multiple applications. The landholder directs time, money and energy to responding to mining tenure applications. There is no compensation to the landholder for that time and cost thrown away on a third party's application of no benefit to landholder. For example, the Strubers had to deal with 27 mining related applications over the land over the past 2 years. Costs were over \$150,000 in legal, environmental and valuation consultancy fees. This only for one miner.
 6. Government should restrict the number of mining tenures that intrude on pastoral holdings at any one time. Some miners do the right thing and the Strubers have amicable arrangements with those miners who do.
 7. Proximity of Resources Reserve R16 attracts public and fossickers who treat adjacent pastoral tenure as if it also is public land. Fossickers do not seek permission from landholders to come onto land and are trespassers. Remoteness of location results in little or no enforcement action against fossickers with no landholder permission. Government should consider scheme for fossicking in remote locations whereby a property owner who does not want fossickers on the property is able to notify issuing authority that fossickers are not wanted and p[roperty should be specifically excluded on foss permit.

Such a scheme is not an administrative burden. Property owner would notify the department of no permission once, and until notified to the contrary, there is a standard

exclusion nominating that property on the permit itself in relation to the relevant Mining Region. Metal detection using prospecting permits which permit only pegging of mining leases is a ruse used by fossickers to gain access for metal detection. There is no enforcement of this unlawful practice. Exclusion of right to use prospecting permit for fossicking should appear on the face of the prospecting permit issued for pegging only.

8. Signage on the R16 Reserve/Maytown advising Fossicking Permits do not authorise activity on adjoining properties without consent of owner would assist.
9. Cumulative impact of multiple mining tenures on both value and workability of underlying pastoral holding not properly understood or addressed in current compensation or objection system for remote areas on Cape York. One size fits all system for assessment of environmental authorities for Level 2 Mining Activities without recognition of special environmental conditions that may apply (and automatic application of standard conditions of Code of Environmental Compliance) results in substantial disadvantage to landholders who then have the onus of showing why standard conditions/compliance is not appropriate at landholder's cost.

If landholder has reasonable grounds for concern about standard conditions – onus and costs should be on miner to demonstrate standard conditions are satisfactory. Government should consider grant of right to landholder to require/negotiate from the miner special conditions for grant of environmental authorities that suit that particular property.

10. Current mining compensation regime focuses on monetary compensation without giving landholder any right to review EA conditions and seek additional protection in that process without having to go through costly and time wasting objection Land Court processes.
11. If landholders had the legal right to negotiate environmental conditions then the bargaining positions of landholder and miner in regard to environmental issues would be leveled. At present landholders are at a severe disadvantage.
12. Poor resourcing of EPA compliance of mining operations in remote areas can be addressed by placing more power to control environmental conditions in the hands of landholder who has not only a duty of care but also commercial imperative to look after and preserve the environment.

Conflict between Landholder's duty of care and Miner's right to mine under mining tenures

There is a potential conflict between landholder's duty of care conditioned by legislation and renewal lease conditions and mining activities conducted under a mining lease. The adverse impacts of alluvial mining in streams can migrate downstream and outside of the mining tenure onto the underlying pastoral tenure, for example:

- Discoloured/polluted water;
- Siltation of water holes;

- Migration of silt and sand off mining tenure that encourages growth of weeds and congestion, vegetation in stream bed;
- Change of natural flow pattern that cause corrosion;
- Long term changes to land productivity;
- Reduction of accessible water for livestock;
- Interference and sometimes blockages to normal stream flows causing landholder extra dozer work to maintain road crossings downstream of the mine site.

None of these adverse impacts (which are not exhaustive) are ameliorated by wet season storm floods that do not have the same affect produced by excavation of binding fines as well as larger material that results from mining stream bed and banks.

During overlapping land and mining tenures, EPA should be monitoring compliance of miner to ensure land is satisfactory and as near pre-mining state as possible. This doesn't happen and puts landholder at a disadvantage.

Furthermore, during contested objections hearings in Land Court EPA should take a more supportive or proactive role where landholder has environmental concerns and seeks to mitigate impacts on land. At the very least EPA should be neutral where miner would have onus of addressing environmental concerns of landholder. Experience suggests in remote areas EPA are supportive of miner against landholder.

Flaws in legislation on Rehabilitation Conditions effectively permit significant stream disturbance longitudinally. Level 2 Mining Conditions restrict area of disturbance to 5 hectares but when applied to in-stream mining which can operate on a 20 metre width, this results in 2.5km of stream disturbance at any one time which results in very adverse environmental impacts on the land. Government policy should enshrine circumstances where pastoral lease holders that have significant mining lease numbers affecting property over many years, are not penalized or prejudiced thereby at lease renewal.

Yours faithfully

BOTTOMS ENGLISH LAWYERS

Per: 

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