

Mr Ted Malone,
Chair, State Development, Infrastructure and Industry Committee,
Parliament House
George St
Brisbane

Inquiry into the future and continued relevance of Government land tenure across Queensland

Private Submission by: Michael Jubow.

Dear Mr Malone,

I would like to thank you and this government for the opportunity to have some input into the subject of Queensland's land tenure system. I believe this is a great chance for correcting some of the more glaring inequities in our current system and making it fairer for all.

I have reviewed the private submissions and some of the corporate ones and there seem to be some common threads needing attention and for which I would like to lend my support.

Mr Jeff Seeney is quoted in the Queensland Country Life newspaper (21st June 2012) as saying, "Secure property rights are essential for sound investment decisions and are a basic essential for State development". It is in this spirit, with which I concur wholeheartedly, that I would like to elucidate further.

Leasehold land

Many of the submissions have cited the onerous governmental rent rises for leasehold brought in by the previous government as being a major obstruction to profitability and the base valuations as being an artificial premise on which the rents are based. Many seem in favour of converting to freehold provided that the terms are affordable and security of tenure is presumed. Several suggest that rent tied to the earning capacity (maybe carrying capacity?) would be a more viable situation.

Freeholding leasehold land

Where submissions have been made regarding freehold land, one of the most important of the common threads mentioned by others so far is the subject of freehold property rights. Freehold property rights can be looked at under the following categories;

1. Freehold property owners' rights in relation to the Mining Act.
2. Rights in relation to the timber on the property and the Vegetation Management Act.

Freehold property rights and the Mining Act

The Mining Act was written and amended over the years to allow for an orderly and balanced resource development in which the Crown claimed the ownership of the minerals on behalf of the citizens of the State. The mining royalties currently support a large part of government programmes of which, every citizen gains a benefit.

Unfortunately, when the Act was written, no-one conceived of the massive demand for coal and gas, which this century would see. Nor could the authors of the Act have envisaged the development of the massive and highly efficient equipment that would be used to get the coal out of the ground by the millions of tonnes per annum, as it is today.

Consequently, with the miners being allowed, under the Act, to go virtually anywhere to mine at will, there has developed in the farming community, a lot of resentment and anger, where their land is virtually forcibly taken out of the freeholders hands against his will. The landholder doesn't even have the right to object to a mineral development on his land.

Under these circumstances, it becomes difficult to assess "Fair Compensation". Either the land owner sells property to the miner at "Market" price or leases it to the miner and consequently contracts the size of his operation. Market Price is a tenuous subject, often undervaluing a property due to the fact that it is very difficult to establish a fair price for land that is facing a mining claim. This in itself devalues a property. Rarely is the farmer completely willing to give his land over to another business which will wreck the land and remove the land's capacity to be productive forever.

Added to the anger and resentment, is the impact of the Vegetation Management Act which precludes the farmer from fully developing his property and yet, a coal miner can strip all the vegetation from the land with impunity. The modern farmer is committed to the sustainable development of his land so that future generations can still enjoy the productivity forever.

For any freeholder, there is increased land tenure insecurity in the Bowen, Galilee and Surat basins. Why would a leaseholder risk converting his tenure to freehold when his property could be taken and ruined by a miner at any time. In this case, freeholding is definitely not a secure investment.

In comparison, land held under Native Title seems to have more rights than other freeholders do. A case in point was in the news earlier this year where Native Title holders in West Australia were allowed to veto a mining development on their land because it would have disrupted their culture and sacred sites which they hold dearly. I have no problem with this as it is well appreciated that the First Australians are highly attached to the land. However, this disregards the fact that it is not only the Aboriginals who have a deep attachment to the land. Many rural land owners have a similar attachment to their land and once this is understood, it becomes obvious why the same rights should apply to freehold land. In fact, it can be clearly seen that it is discriminatory

that two segments of our population (i.e. Native Title holders and Miners) have more rights than the freeholder.

Personally, I identify with those who have a deep attachment to the land where they were raised. My father drew one of the Soldier Settlement blocks at Wandoan in 1954 and I spent my formative years there learning to farm the land. We started with a raw Brigalow block, and cleared it with the ring barking axe and fenced it with crow bars, shovels and a cross-cut saw. It was hard, grinding work for the whole family but the rewards were there when we started to see the results of our sweat. Recently, we travelled throughout the Wandoan district and everywhere we looked, there were chest high improved pastures, glorious fat cattle and vibrant crops. To see that and to know that it will be ripped up and ruined for coal is heart breaking for one who contributed to the development of the district.

Yes, we do have an attachment to the land, and that attachment is no less than that expressed by our Aboriginal brethren toward their ancestral land. What value is there in the impersonal destruction of the land where we know it will never be returned to the state it was, where we could breed fat cattle and sheep, where we grew some of the finest crops when it rained? What value will the land be to succeeding generations when it will at best only grow the sparsest of grass and never ever fatten a beast again?

Another noteworthy piece of news in relation to the variable rights we have to our land titles was broadcast by ABC news recently. An aboriginal community on Cape York is re-negotiating the royalties with a silica sand miner on their land. Apparently, the contractual agreement for the royalties paid to the community had expired and negotiations have started to re-new the contract.

Again, this is something that the ordinary freeholder has no rights to, royalties!

The real problem is that all rights are heavily weighted in favour of the miners and the freeholder is completely marginalised. So much so, that even getting expert legal representation is virtually impossible. In a Qld Country Life article written by Matthew Cawood on 15th Aug 2012, quoted Peter Shannon, a Dalby lawyer representing farmers, as saying that it is almost impossible to get senior counsel due to the fact that the miners have retained almost all of the big law firms which means that they have a conflict of interest now and can't represent farmers. Mr Shannon also said, "Queensland's erosion of landholder property rights has been more extreme than in NSW. In Queensland, even the government portrays anyone with legitimate concerns as either a ratbag or a greenie".

Mr Shannon went on to tell a Cotton Conference recently that "While *Co-existence* was the buzz word, for a lawyer like himself, it was all about the impact on property rights". (QCL 15th Aug 2012)

James Boulderstone from the CSG producer, Santos, agreed that it was important to develop a positive business relationship with landholders. "We have to be able to come

back onto the properties to service the wells, etc, and that relationship is not going to work if the Landholder is looking daggers at you all the time”. (QCL 15th Aug 2012)

However, while the audience agreed that mining had to give something back to the community, statements from the floor indicated that despite the reassuring words of the resource companies, the reality was that the energy sector was negatively impacting on the community.

This conflict between miners and farmers has even been noticed and commented on by the Longreach Regional Council.

The statement by our current politicians that, “The minerals in the ground belong to all Queenslanders,” just doesn’t hold water any more, as a justification for removing a freeholders land rights. If this is so, why does the property owner have no say in whom or indeed if anyone should mine it. Surely, the landowner must have some equity in the possession of the minerals as a common level of justice and property rights would have it?

Department of Natural Resources and Mines Handbook of Resource Planning Guideline states “Common law developed two-way protection. To protect a right to enjoy property it developed the parallel principle that a person may not exercise what would otherwise be their rights if their actions were likely to unreasonably diminish other property holders’ enjoyment of their property.” Obviously, this is not the case for freeholders.



A coal mine near Blackwater covering dozens of kilometres in length. The view is as from 59 km altitude.



A view as at 1.10 km altitude of the workings of a coal mine. The heaped up spoil will be useless forever for growing crops or pastures. The damage to the soil is permanent.

We currently have 51 working coal mines in Queensland with another 49 of newly granted coal leases or applications. (DNR&M Mines and advanced projects July 2012). In just two of these new mines there will be approximately 80,000 hectares covered by the coal leases. What would be the total area covered by the combined new and existing coal leases?

Some multi-hundreds of thousands of hectares would be a fair guess.

These are scattered over a wide area of Queensland, disrupting many eco-systems and farming enterprises. New rail lines are being built, further disrupting even more eco-systems and farm businesses and putting flood plains at risk of damage. Anywhere there is coal seems to be fair game. The Bowen basin has a coal reserve estimated by the DNR&M at approximately 60,000 square kilometres in which 83% of Queensland's coal production occurs.

In the Surat basin, more new mines totalling over 100,000 hectares are to be opened up on prime mixed farming (Grain and grazing) land. The Galilee Basin is to be opened up on a very large scale and requiring new rail lines. Has any thought been given to confining new coal mines to areas already serviced by existing infrastructure such as rail? Obviously the coal companies are cherry-picking the best coal deposits at the moment without a thought to what we may need for ourselves domestically in coming

generations. Why not reserve, for instance, the Galilee Basin for future generations? Let the miners have only one area, the Bowen Basin and phase out mining on the Darling Downs over the coming decades. That way, we remove some of the mining/farmer conflict and confine it to one area.

Although I accept that mining is essential to our economy, it should be equally regulated and controlled as farming is, with all its restrictions. Either restrict the mining industry or give the farming community more equity in the discussion through equity tenure rights.

The previous government proposed the deeply flawed “Strategic Cropping Land” protection for the “best of the best” cropping land. It was never going to work, just as the current governments successor plan will never work. The reason is quite simple. Those on the wrong side of an arbitrarily created line and graziers have no protection or benefit from coal mining or CSG on their properties. To get willing co-operation, there needs to be a security of freehold tenure but most of all, there needs to be a benefit for the landholder to co-operate with the miners. Really, it is simple good human relations that are needed here. That can only occur if the land owner is empowered and can negotiate with the miner on equal terms and equal terms means equal rights insofar as the minerals in the ground are concerned.

Freehold property and the VMA

With the introduction of the Regrowth Regulations added to the VMA, no native regrowth can be removed from a band fifty metres wide either side, along a waterway. This is plainly absurd as this has given farmers the perception that if the seeds of a gum tree germinate in cultivation within this area, they cannot remove it and therein lose more productive land from cultivation. Obviously, seedlings will be ploughed out as a matter of course. It also means that when mature, some of these species which are excellent timber cannot be selectively and sustainably harvested.

If land that is leasehold is converted to freehold, normally, the valuation of the land includes timber assets on the property to arrive at the sale price. If these trees are included in the valuation, the farmer is paying the crown for timber which he is not allowed to use! Even if the landowner issues a Notification of a Forestry Practice to the DNR, he will still not be able to include this resource in the forestry management.

The VMA also precludes the broad scale clearing of land to increase the property's productivity. In which case, again he is paying for land which he is not allowed bring to its full potential.

To date, the clearing of regrowth and woody weeds has been fraught with danger of prosecution. So, there is more land being denied to good farm management. These matters will have to be addressed before converting leasehold to freehold otherwise there is no point to the exercise.

Suggested Resolutions to undermined Property Rights

As mentioned before, there will be widespread reluctance to the cost of freeholding land if it sits on top of a coal reserve. The conflict between miners and freeholders could be removed almost completely if the following changes to freehold title were made.

- a.** Allow the landholder to have the right to allow or disallow mining on his land.
- b.** Grant part equity in the mineral resource to the freehold title holder. This could be in the form of an added royalty that the miner has to pay to the land holder if the land owner gives the miner the right to mine on his land. This would not impinge on the royalties that the Crown determines the miner should pay the State and would be separate to it. This royalty to the farmer could be full or part substitute to compensation for land and rural production lost to mining. In the past, the land owner had this right but it was taken from him in 1908. Pre 1908 land titles still have these rights.
- c.** In future, wind back the granting of coal mining leases to the Surat and Galilee Basins and keep all new export coal mines in the Bowen Basin. Similarly, keep CSG drilling out of the Galilee Basin. The Galilee can be a reserve for the exclusive use of and continued prosperity of future generations of Queenslanders. The Tarong and Clarence-Moreton Basins can be reserved for the use of Queensland industry only, for instance, power stations. The Maryborough Basin could be similarly reserved for exclusive Queensland use. If we do not reserve these areas, the export coal companies will cherry pick the easiest coal to mine and leave Queenslanders with that which is hardest and most expensive to mine in the future.
- d.** If the VMA is not modified, the value of standing timber should not be included in the valuation of a property for freeholding. The land value should be reduced for natural stands of timber, which if cleared, would have improved the carrying capacity and/or, productivity of the property.
- e.** There should be a simple process that allows for the clearing of woody weeds and regrowth without the threat of prosecution.
- f.** Broad scale timber clearing should be allowed to improve the productivity under certain conditions. For instance, clearing should be in no more than 500 hectare blocks and should not leave creek and gully banks exposed. A twenty metre strip of timber should be left along creeks and gullies. This will give a mosaic effect which allows for connectedness for native fauna. There should be dedicated areas left of around 5% of the property that is kept as a conservation area or in as near as possible to a natural state.

- g.** There should be incentives for the planting of woodlots and timber windbreaks that can double up as sustainable timber production enterprises. Rights to harvest the timber on a sustainable basis should be set in concrete. Clear felling for timber would be prohibited.

So, reiterating Mr Seeney's words, "Secure property rights are essential for sound investment decisions and are a basic essential for State development". The above solutions are what it will take to get "Secure property rights"

Thank you for the opportunity to present my suggestions.

Mike Jubow



27th August 2012