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2 October 2012

The Research Director
State Development, Infrastructure and Industry Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Research Director,

Re: Invitation to comment on *Surat Basin Rail (Infrastructure Development and Management) Bill 2012*

AgForce is the peak representative body for rural broad acre producers in the cattle, grain and sheep and wool sectors of Queensland. AgForce has established a vast regional and rural network in Queensland and our members represent approximately 50pc of Queensland's land area.

Through the combined strength of our members, AgForce provides an effective voice for Queensland rural producers and we continue to work closely with government, industry and the community to ensure the viewpoints and concerns of farmers are professionally represented at the highest level.

AgForce generally supports the approval of the Surat Basin rail corridor, providing impacted landholders are appropriately consulted and agreements are reached prior to works commencing.

However, our concerns regarding some sections of the legislation are outlined below.

Part 2 Section 8 - The declaration of the railway lease as an exempt lease will enable the boundaries of the lease to be amended (for example, to allow the expansion or realignment of the railway) without the parties having to negotiate and enter into a new lease, by removing the application of section 67(3)(a) of the Land Title Act 1994. This will enable the State to manage administration of the railway lease in an efficient and cost effective manner, however provides little certainty to adjoining landholders.

Part 3 Division 2 12 (1) allows an authorised person to enter land adjacent to the Surat Basin Corridor (after consultation with the landholder) to carry out activities mentioned in section 20 (1). However under this draft legislation consultation has not been defined and we believe that true and appropriate consultation is essential. Therefore we believe that the consultation process should clearly outline the roles and responsibilities of both parties in the legislation. i.e. does consultation involve liaising with the land owners/occupiers about the location of infrastructure and timeframes for rail works?

The legislation does not allow the owner or occupier of the land the right to appeal a decision made by the Coordinator-General to grant an applicant access to their land if they believe due process has not been completed.

The intent of **section 16** is that land owners/occupiers will have clarity about what activities are able to be conducted on their land. However for a works authority these activities can include **section 20(2e)(vii)** the right to "demolish, destroy, and remove plant, machinery, equipment, goods, workshops, sheds, buildings or roads". These sorts of activities must only take place through genuine engagement, negotiation and approval with land owners/occupiers**.**

Section 16(b) states that the applicant, for entry onto land must state the land to which the application applies. This information must be made available to land owners/occupiers, not just in the application to the Coordinator-General for an authority. Land owners/occupiers should be given GPS coordinates and maps of potentially impacted areas as part of full disclosure of activities from railway manager, licensee or lessee to form part of the consultation with land owners/occupiers.

Furthermore for an investigation authority these activities can include section **22(2) "a)** do anything on the land; and b) bring anything onto the land". This clause potentially leaves land owners/occupiers open to the presence of chemicals and other substances on their land that could impact their liability, for example it may contravene the statements that the land owners/occupier has signed under a National Vendor Declarations.

Among other things **section 20** allows the authorised person to occupy the land and erect workshops and sheds etc. However it does not state that the authorised person **has** to remove any permanent structures from adjacent land once it is no longer required to carry out rail works. AgForce believes that any permanent structure erected (on adjacent land) to carry out rail works that is no longer required when the rail works are completed, should have to be removed and the land restored to the same condition prior to erection. Except if there has been agreement from the owner or occupier of the land that the structure can remain.

AgForce believes that **section 22 (a) and (b)** are too broad and that the Coordinator-General or associated persons should detail exactly what they will be doing to the land and what they would be bringing onto the land. AgForce does acknowledge

that section 24 states that the authorised person must provide written notice with the intended use of the land and a general outline of activities to be carried out. However in order for the owner or occupier to claim appropriate compensation they need to know exactly what impact they will incur. i.e. any equipment brought on to adjacent land must be clean and free of seeds etc, to keep the biosecurity risk to a minimum.

Section 24 states that the authorised person must give at least 7 days written notice of entry to the land's owner or occupier before they enter. However if the intention is to commence building permanent structures, AgForce believe that more notice is required especially if the building is near existing buildings, house, sheds etc. The bill also does not stipulate whether the 7 days are business days or not. It also requires companies to 'state certain information' however it doesn't require companies to provide a map of the proposed activities, which is required under land access laws for resource companies. This clause also requires only oral notice be provided for 'urgent remedial action on the railway' however no specification is stated for road maintenance.

Section 24(3) (b) the notice to enter the land must state "a general outline of the activities intended to be carried out on the land". Land owners/occupiers must be given as much information as possible to determine the impacts to their businesses and to therefore make claims for compensation and to allow for adequate consultation to take place between both parties

Part 3 Division 4 Clause 26 requires parties to compensate landholders for loss or damage caused, however it does not require compensation be paid for any 'cost' to their business as in line with resource legislation.

According to **section 27(5) and 27(6)**, the amount of compensation for railway works or investigations is an amount agreed between the parties/Coordinator-General or if the parties cannot agree "within a reasonable time", an amount determined by the Land Court. AgForce has two main concerns regarding this:

1. What is deemed to be "within a reasonable time" and who determines what this is?
2. If the land owners/occupiers do not agree to the offered compensation, their first point of remediation is Land Court, throughout which process they would need to cover all their own legal fees.

Also landholders may lodge a written claim for compensation for loss or damage caused by entry, railway works and investigations, taking or use of materials or require restitution for damage and any consequential loss [S27(1)]. What is the process by which these claims will be evaluated, are the claims made directly to the Coordinator-General office or the railway manager and or railway licensee or railway lessee? What level of proof do the land owners need to demonstrate that the loss or damage was as a direct result of the entry of an authorised person?

The bill does not mention agreements between land owners/occupiers and the Coordinator General and or the railway manager, licensee or lessee as to conduct and efforts aside from compensation. If infrastructure is built to assist in the construction of the railway can said pieces of infrastructure (sheds, roads, etc.) form part of the land owners/occupiers compensation? If so, do the land owners/occupiers need to follow the claims process from **section 27**?

Also, what rights do land owners/occupiers have to negotiate the placement of rail infrastructure on their land? Clearly the location of the rail line is fairly constrained, however, the location of ancillary infrastructure and associated offices, sheds, roads, etc., should be negotiated in genuine good faith with land owners/occupiers to minimise business interruptions and in such a way that pieces of infrastructure can potentially have use beyond the completion of the rail line.

Given the length of the Surat Basin rail corridor there will be many potential rail crossings that allow for owner or occupiers to access particular areas of their land. The legislation only allows for local government to apply to the Coordinator-General to construct, maintain and operate a road. Owner or occupiers may require numerous crossings of the rail corridor to allow them appropriate access to their land. Some of these crossings may be for stock and therefore will not be a formal road crossing, and local government is not involved. Does the legislation allow owner or occupiers to access and cross the corridor at certain points at any time (when safe) without being subject to **Part 7?**

The Minister and the railway licensee, railway lessee must ensure that owner or occupiers are able to carry on their business with as little impact as possible.

Section 35 allows the railway manager to temporarily close or regulate a railway crossing for safety reasons. However the legislation does not state that the railway manager must offer and or advise alternative options when a crossing is closed. Owners or occupiers must be reasonably able to access their home and move produce to market. While compensation is able to be negotiated owners or occupiers still need to be able to get to and from their residence and move stock, grain etc when required.

Part 4 Division 3 allows the railway manager to divert a water course, with the approval of the Coordinator-General. However the draft legislation does not require the Coordinator-General or the railway manager to consult with the adjacent land owner or occupier. AgForce believe that it is essential that both the railway manager and the Coordinator-General consult thoroughly and agreement must be reached with the land owner or occupier prior to any water course being diverted. Also where a water course is not being diverted and is allowed to continue on its natural path, i.e. creek that culverts and bridges are built rather than building a structure that block the water's natural flow and unintentionally creates a diversion.

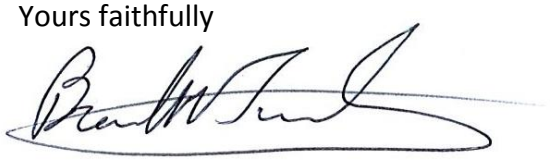
Section 40 discusses the rights of the Coordinator-General to enter land and carry out activities for watercourses. According to the bill the Coordinator-General may

require the owner of the land to take action to reduce or prevent the collection of water and if the owner does not comply with the Coordinator-Generals directions the owner may be liable to pay the Coordinator-General costs incurred by the Government to take action to reduce or prevent the collection of water, “even if the water collected, or was likely to collect, as a result of action authorised under an Act” **[section 40(6a)]**. AgForce believe this does not seem to be an appropriate land owners/occupiers liability.

AgForce believe that true and genuine consultation is required by all will ensure the safe and effective development of the Surat Basin Rail.

Should you require any further comment or information please do not hesitate to contact Lauren Hewitt, 07 3236 3100 or hewittl@agforceqld.org.au .

Yours faithfully



Brent Finlay
AgForce General President