

LANDHOLDER SERVICES

Pty Ltd ACN 056 205 693 ABN 94 056 205 693

13 Cottesloe Street
Toowoomba Q'ld 4350
Email: georgehouen@gmail.com

Phone 07 4632 1024
Fax 07 4632 1768

Mobile 0407 716 968
MobileSat 0145 110 576
Website: www.landholderservices.com.au

Secretary
State Development, Natural Resources and
Agricultural Industry Development Committee
Parliament House
BRISBANE QLD 4000

SUBMISSION

INQUIRY INTO

MINERAL, WATER & OTHER LEGISLATION BILL

Submitter: George Houen Landholder Services Pty Ltd

Date: 27th February 2018

WROLA Mk 2

I appreciate the opportunity to make this submission. I made three separate written submissions to the WROLA Mk 1 inquiry, and ask that those also be considered in this inquiry.

The Issue

The proposed amendment of section 81 MERCP Act would eliminate the majority of affected owner's existing rights to compensation for impacts of coal seam gas activity and to a lesser extent other exploration activities such as coal and minerals exploration. Compensatable effects would be only those arising from resource activities on the claimant's land – versus activities anywhere on the project as now.

Both the Honourable the Minister and DNRM refuse to concede that existing compensation rights will be reduced, and both have made spurious arguments attempting to justify the change.

Timeline

I request an extension of time for submissions. Only seven working days have been allowed for submissions to the resubmitted Bill and that is not sufficient to deal properly with the issues.

In particular, given the Minister's remarks in reintroducing the Bill on 15th February, stakeholders need more time to deal with the issue of Clause 38, being amendment of the definition of compensatable effects in the Common Provisions Act.

The need to deal fairly with the issue is the greater because the integrity of the process in MWOLA Mk 1 suffered due to the failure to disclose in Parliament that the definition of compensatable effects was to be amended. Once that amendment was uncovered and revealed in submissions by solicitor Glen Martin and the Law Society, the stain persisted when DNRM made unsubstantiated and inaccurate claims as to the merit of and justification for the amendment. No proper legal reasons or accurate analysis of the relevant sections of the legislation have been provided by DNRM.

It is because of that unhelpful response that I consider legal advice is needed and if that can be arranged it will take time.

Compensatable Effect

If enacted, the amended section 81 of the MERCP Act will no longer provide for compensatable effects from within the project that are **in relation to the claimant's land**. Future claims will be restricted to effects from resource activities **on the claimant's land**, which is vastly different.

On a coal seam gas field that will mean nil compensation for the potentially very damaging airborne pollution by noise from major gasfield infrastructure (eg compressor stations), by fugitive gasses and by dust; also potentially damage to water bores because of dewatering.

It will severely restrict affected owners' ability to gain compensation for loss of property value.

The Honourable the Minister said this in introducing MWOLA Mk 2:

During the then Infrastructure, Planning and Natural Resources Committee's consideration of this bill, some stakeholders asserted that the proposed redrafting of section 81 of the Mineral and Energy Resources (Common Provisions) Act 2014 would reduce the compensation entitlement of affected landholders where resources activities do not occur on their land. This was claimed to be a significant policy shift. I would like to clarify that this is not the case. The policy intent of section 81 is that compensation should be payable for any compensatable effect suffered by a landholder on the land on which the resource activities are being carried out. This is borne out by the explanatory notes to the Mineral and Energy Resources (Common Provisions) Bill 2014, which state—

A compensatable effect is a cost or impact that arises from the authorised activities being carried out on the land or entering an agreement for the chapter.

In addition, when the section is read in conjunction with the other provisions in the act, the view that this redrafting changes the policy intent of the section is not supported. There is nothing in the redrafting of section 81 that changes this policy intent, and in fact the redrafting will further clarify the parliament's intent in relation to these provisions.

The Explanatory Memorandum for MWOLA Mk 2 referred to above says this (emphasis added):

The original policy intent remains unchanged despite other minor amendments to the drafting of the section. Section 81 imposes a liability on the resource authority holder to **compensate each owner and occupier of private or public land that is in the area of, or is access land for the resource authority for any compensatable effect caused by the authorised activities.** Each owner or occupier of land within the resource authority area is defined as an eligible claimant. **A compensatable effect is a cost or impact that arises from the authorised activities being carried out on the land.** See the explanatory notes for the Mineral and Energy Resources (Common Provisions) Bill 2014, which outlines the policy intent of this section.

The highlighted sentence in the Minister's remarks is copied from the MERCPC 2014 memorandum as quoted below. It has been used out of context:

MERCPC 2014

The Explanatory Memorandum for the Minerals and Energy Resources (Common Provisions) Act 2014 said this (emphasis added):

General liability to compensate

Clause 80 imposes a liability on the resource authority holder to compensate each owner and occupier of private or public **land that is in the area of, or is access land for the resource authority** for any compensatable effect caused by the authorised activities. Each owner or occupier of land within the resource authority area is defined as an 'eligible claimant'.

A compensatable effect is a cost or impact that arises from the authorised activities being carried out **on the land** or entering an agreement for the chapter.

With respect, I say the Minister has taken the second paragraph out of context – “the land” referred to is “*private or public land that is in the area or, or is access land for the resource authority ---*” That is not a reference to the land of the owner/claimant. Given the context in respect of the resource authority, had it been intended to mean activities within the land of the owner, it would need to have said so.

History of Compensatable Effect

From my third submission to the MWOLA Mk 1 inquiry (20th October 2017) a brief summary of the history of the relevant provisions –

2004 Petroleum and Gas Act commenced with section 531(5) defining **compensatable effect** as meaning “**all or any of the following in relation to the eligible claimant’s land**”

As detailed in the MWOLA Mk 1 submissions, *in relation to* is an expression of wide general import which can include indirect effects.

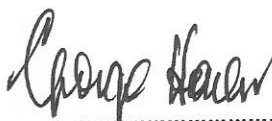
The P&G Act 2004 compensation provisions were of the same or substantially the same effect as the present section 81 of the MERCPC 2014 Act.

2010 Mineral Resources Act was amended to incorporate compensation provisions harmonized with those of the P&G Act mentioned above.

2014 Minerals and Energy (Common Provisions) Act commenced with section 81 containing essentially the same definition of compensatable effects as originally applied in the P&G Act 2004.

I submit the record debunks the claims that the current definition of compensatable effect is inconsistent with the “policy intent” – in fact the current definition has stood effectively unchanged for about 14 years throughout the progressive development of the resources Acts to the present day where it is the universal standard.

Signed:



.....
Landholder Services Pty Ltd