

Dissenting Reports

Ms Jackie Trad MP, Member for South Brisbane Deputy Chair, Agriculture, Resources and Environment Committee

Dear Chair,

I write to lodge a dissenting report on the Agriculture, Resources and Environment Committee's (the Committee) report on the *Mineral and Energy Resources Common Provisions Bill 2014* (the Bill).

I have attached additional recommendations on behalf of the Opposition that should have been contained in this report. The fact that this report does not address the key concerns of submitters to the Committee shows that the Newman Government is incapable of listening to Queenslanders.

The Opposition is extremely concerned that the Newman Government is not listening to the concerns of the overwhelming majority of submissions to the Committee and does not support recommendation 1 of the Committee's report that the bill be passed with consideration of minor amendments. The fact that the Committee's report does not make recommendations about any of the substantive concerns raised by stakeholders is a complete failure of responsibility on the part of LNP Members.

I do not support the removal of public notification and objection rights on mining lease applications and environmental authorities, the amendments to remove principal stockyards, bores, artesian wells, dams and other artificial water storages from the 'restricted land' legislative framework or the watering down of prescribed distances to be inserted in a later regulation rather than legislation.

The Committee received many submissions from concerned stakeholders including at public hearings on 6 and 27 August in Brisbane, 19 August in Toowoomba and 20 August in Townsville and Mackay.

Mr George Houen of Landholder Services Australia Pty Ltd told the Toowoomba hearing that:

"I am a rural consultant with Landholder Services... This is a wrecking ball. It is a train wreck. It is an acid bath for the rights of the landholder. There will be a great increase in the level of conflict between landholders and miners."

AgForce in their submission said that:

"The primary concerns with the proposed changes in the two discussion papers can be summarised as loss of rights to object in many circumstances, limited protection for non homestead property infrastructure and reduction in negotiating power (of producers) in general. The overall concern being that a reduction in existing rights will erode further any goodwill between the agriculture and resources sector and will not increase possibilities of co-existence."

Shine Lawyers representing regional landowners said in their submission that:

"As an overall statement we would like to say that the amendments for discussion concern us greatly as they seek to very substantially alter long held principles and rights of landholders in Queensland with virtually no benefits flowing back to them from the proposal. The government has made and continues to make promises that the idea of the reforms is to harmonise the various pieces of legislation and that no

landholders will be worse off unless they agreed to be. Unfortunately, the proposals do not live up to that promise but rather almost entirely make landholders worse off.”

The Opposition strongly opposes the removal of public notification and objection rights on mining lease applications and environmental authority applications which is without any policy justification. As the report notes the Committee found no evidence of significant costs or vexatious use of objections to small scale mining applications. Mining resources are held by the crown on behalf of the people and nearby landowners and the broader community have a right to know about, and to object to mining projects in their State.

The Opposition will be detailing further and more detailed problems with this bill when it is debated in Parliament.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jackie Trad', with a vertical line extending downwards from the start of the signature.

Jackie Trad MP

Member for South Brisbane

Attachment to the Member for South Brisbane's Dissenting Report

Recommendation

The committee recommends that the Mineral and Energy Resources (Common Provisions) Bill 2014 be passed with consideration of the amendments recommended in this report.

Recommendation

The committee recommends that the proposed amendments to notification and objection rights for mining lease tenure under the *Mineral Resources Act 1989*, be removed from the Bill, noting that the committee supports the retention of amendments removing notification and objection for environmental authority applications under the *Environmental Protection Act 1994*. The committee believes this will successfully achieve the government's objective of reducing red tape and duplication, whilst also balancing the interests of affected land holders and Queensland communities.

Recommendation

The committee recommends that the department amend the current definition for 'affected person'

To ensure that the following persons are provided notification and objection rights under the *Mineral Resources Act 1989*: Owners and occupiers of land sharing a Common boundary with the land/property over which the mining claim/lease applies (neighbours other than those defined for purposes of access land) and any other person who can demonstrate a direct link to water infrastructure which is shared in common with the land of the mining area or directly impacted by the resource activity.

Recommendation

The committee recommends that the government's Queensland Globe and Mines Globe initiative allow any interested user to know where exploration and resource authorities have been applied for, and the option to allow interested parties to be automatically notified if exploration licences are allocated or applied for in a particular area, as per the Productivity Commission's recommendation.

Recommendation

The committee recommends that the Bill be amended at clause 68(1)(a)(iii) as follows to allow for structures such as stockyards, dams, bores and other infrastructure important to a landholder's business or land management practices to be protected under restricted land provisions:

(iii)

A building, structure or property feature used, at the date the resource authority was granted, for a business or other purpose if it is reasonably considered that—

(A) The building, structure or property feature cannot be easily relocated

(B) the building, structure or property feature can not co---exist with authorised activities carried out under resource authorities, and

(C) the impact on the building, structure or property feature cannot be easily rehabilitated or remediated following the completion of the authorised activities carried out under resource authorities.

Recommendation

The committee recommends that the department undertake a review of prescribed distances

for restricted land in consultation with key stakeholders to ensure the regulated distances are appropriate to each category of resource activity and that they are consistent with agreed MQRA program principle of no disadvantage.

Recommendation

The committee recommends that the Bill be amended such that the prescribed distances for restricted land, consistent with those determined as part of the review recommended above, be stated in the legislation *or* be included as a schedule to the Common Provisions Act in order to provide certainty and clarity to landholders and resource companies.

Recommendation

The committee recommends that the department develop a practical and cost effective mechanism/process, other than the Land Court, that would be available to an owner, occupier or holder of a resource authority to seek a review or declaration of an area as restricted land.

Recommendation

The committee recommends that the provision allowing for an access right over land to be 'agreed orally' as stated at clause 47(1)(a) be removed from the Bill, to provide the level of transparency and

Security that only written agreements (e.g. exchange by letter, email or fax) can achieve for the purposes of land access agreements.

Recommendation

The committee recommends that the Bill be amended to provide for the making of only one land access code, consistent with the existing legislation and the objectives of the land access policy framework to provide a single and consistent approach across all resource activities and reduce red tape.

Recommendation

The committee recommends that a review of the Land Access Code be completed by the Land Access Implementation Committee, in consultation with key resource, agriculture and landholder

sectors, within 6---12 months of the commencement of the Common Provisions Act.

Recommendation

The committee recommends that the Bill be amended at clause 45(2) to reflect the requirement that an opt---out agreement must be entered using the approved form as follows:

- (1) The election to opt out is an *opt---out agreement* and is invalid if it:
 - (a) is not made using the approved form; and
 - (b) does not comply with the prescribed requirements for the agreement.

The committee recommends that the department develop a standard/template 'opt-out agreement' form which:

--- is prescribed by regulation; and

--- includes a **warning statement** which includes, but is not limited to, ensuring the landowner has been advised of their right to negotiate a CCA, been provided a copy of the opt-out factsheet, is aware that the opt-out agreement is binding on future owners and successors and will be noted on their land title, and has been advised of the applicable cooling off period.

Recommendation

The committee recommends that the Bill be amended at clause 45 (1) to limit the circumstances when an opt-out agreement may be used to access agreements and low impact authorised activities, such as prescribed activities and advanced activities which are not site-specific

(or other criteria that meets the same objective consistent with drafting principles).

Recommendation

The committee recommends that the Bill be amended at clause 90 to require that (a) the resource authority holders give the registrar notice of entry notices, waivers and access agreements; (b) the registrar must record in the relevant register the existence of entry notices, waivers and access agreements.

Recommendation

The committee recommends that the Bill be amended at clause 90(3) to make it clear that, if a dispute arises over the end date of the agreement, resource authority holders, if required, will need to remove the particulars on the title within 28 days of resolution of the dispute.

Recommendation

The committee recommends that further consultation and consideration be given to the timing of the introduction of provisions relating to the overlapping tenure arrangements for coal and coal seam gas, in light of concerns expressed during the inquiry as to issues not resolved within the Bill.

Recommendation

The committee recommends that only an independent third party conduct ADR processes, and that an independent panel of expert ADR specialists be established to arbitrate dispute resolution processes recommendation 2.1 in the Land Access Committee Implementation Report be accepted and adopted.

Recommendation

The committee recommends that section 86(2)(a) be removed from the Bill, to remove the option of a departmental conference for ADR. (Department to have a continued role in information and education.)

Recommendation

The committee recommends that the Bill be amended to provide that reasonable costs incurred by land holders in negotiating an agreement are compensable by resource companies (with consideration of a capped amount), including where the resource company withdraws from the negotiations prior to finalising the agreement.

Recommendation

The committee recommends that all provisions relating to ADR be introduced in this Bill, including any legislative amendment determined necessary to establish clarity in the framework where a party does not agree to an ADR process.

Recommendation

The committee recommends that the consideration be given to amending clause 423 in the Bill in order to ensure that it describes the full list of matters that the Land Courts shall take into account and consider when making recommendations on hearings.

Recommendation

The committee recommends that the definition of:

'owner' be amended/expanded to include occupier or that throughout the Bill wherever owner is used in a singular, that the bill be amended to specify 'owner and occupier'.

'occupier' be amended to clarify that an occupier may only be a person/entity that has a legal/contractual and/or registered right to occupy land or dwelling.

'place of worship' be reviewed/refer to Native Title Act to ensure that it adequately covers all Indigenous and non-Indigenous cultural and spiritual sites.

'residence' is sufficient to protect homesteads.

Recommendation

The committee recommends that the Bill be amended to remove clause 200. It is an inappropriate delegation to broadly provide for a regulation may be made about any matter of a savings, transitional or validating nature because it anticipates that the Bill may not make provision or enough provision. The committee notes the opportunity presented through concurrent existing legislation and an anticipated two (2) further Bills to address any unforeseen issues.

Mr Shane Knuth MP, Member for Dalrymple
Committee member, Agriculture, Resources and Environment Committee

I wish to dissent against the Agriculture, Resources and Environment Committee's ruling to support the Mineral and Energy Resources (Common Provisions) Bill 2014.

I believe this Bill is biased toward the mining giants while further removing landowners' rights.

My concerns regarding aspects of the Bill towards the restricted land can be conveyed by Mr Donny Harris of Donny Harris Lawyers, who has stated in the AREC public hearing in Townsville:

"The other concern with restricted land is the fact that the new definition removes what I would describe as some key infrastructure, particularly for graziers. The number one key infrastructure is water infrastructure. If you talk to any grazier or any farmer in fact, water is a key requirement for their enterprise. The other key infrastructure is the removal of the principal stockyards. Both these items are no longer going to be considered restricted land under the new definition so where does that leave landholders who were previously in a position where they could, for example, either negotiate make-good requirements for that principal infrastructure or at least negotiate a higher compensation value for the loss of that infrastructure."

I am deeply troubled about the removal of key infrastructure from the restricted land as the whole aspect of the management of a farm or grazing property is reliant on these key infrastructure components. Without them a property cannot operate.

As a committee member I am concerned about what has been pointed out under new section 260: *"...people's right to object to the issuing of a mining lease for a resource activity will be unduly restricted to 'affected persons', and that the definition of 'affected persons' has been further limited.*

"Further, low risk environmental activities/mining lease grants will not be subject to public notification. This will impact persons who live near a resource activity but who are deemed to be 'not directly affected' by its activities as well as the general public/local and wider communities who may not be aware that a resource activity for which there is a public interest being carried out."

The Bill removes all public notification and objection rights to land tenure decisions with only the impacted landholders having the right to object.

I am greatly concerned about opt-out agreements without any safeguards such as information and warning statements to ensure landowners are aware of the risks and implications of these agreements.

These are important issues that need to be addressed and it is disappointing that the committee has recommended that the Bill be passed without any safeguards.

Another concern is that, for example, if Ben Lomond Uranium Mine has a development application, landowners downstream, or the Charters Towers community, have no right to object even if uranium leaks into their water supply.

I also have great concerns for farmers in coal seam gas areas, whose rights have already been trampled. This Bill will further erode their rights and seriously affect their ability to manage their business.

Yours sincerely

A handwritten signature in black ink, appearing to read 'S Knuth', written in a cursive style.

Shane Knuth MP

Member for Dalrymple