Speech By

Michael Berkman

MEMBER FOR MAIWAR

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MINERAL, WATER AND OTHER LEGISLATION AMENDMENT BILL

Mr BERKMAN (Maiwar—Grn) (4.39 pm): I rise to speak on the Mineral, Water and Other Legislation Amendment Bill and say at the outset that there is much in this bill to commend, particularly around the government's endeavours to resolve some of the very onerous and complex processes that landholders are left to deal with in negotiating with resource companies and dealing with the Land Court. This is a bill that, as other speakers have mentioned already, does address the power balance between the resource sector and the agriculture sector in important ways. These are issues that the Greens have long been concerned about and we have fought for landholder rights in various contexts. In some respects we are really the only party that is representing those people who are struggling to express their rights against coalminers and CSG fracking companies across the state.

I reflect on the bill that Larissa Waters has brought to the federal parliament a number of times to seek to enshrine the right of landholders to refuse entry to resource companies on their properties. This is an imperative right—an imperative protection—that those who claim to represent rural interests should themselves be very interested in. We engage with people whose rights are being trampled and who have to go up against these resource companies. Just last week I had the pleasure of visiting Acland, and it is interesting reflecting on that.

I note the response from my friend the member for Condamine, who does not appear to have much interest in the interests of those farmers who are affected by the New Acland coalmine, particularly the stage 3 expansion, but I have seen firsthand the impacts that this project is having on neighbours of the project. I would encourage the member for Condamine to look beyond just the interests of the mining company and the substantial LNP donor parent companies of that mining company and engage with the Plant family and Glen Beutel, who now has mining operations only a few hundred metres from his door.

Turning to the substance of the bill, others have raised this issue of the change in definition around compensatable effect for landholders. My friend the member for Buderim raised it earlier, but the concern is that the amendment narrows the definition of compensatable offence for which a landholder might be compensated under a conduct and compensation agreement. The existing wording defines this term by reference to certain effects on land value 'relating to the eligible claimant's land' whereas the proposed new section narrows this wording to specify those same effects as are currently in the section where they are caused by the holder or person authorised by the holder carrying out authorised activities on the eligible claimant's land.

This was a concern that was raised by a number of submitters—by Lock the Gate, the Queensland Law Society, George Houen, Shay Dougall, Russell Bennie, Protect the Bush Alliance and Shine Lawyers. It was not just an isolated concern. The Queensland Law Society best sums it up in that same passage read by the member for Buderim earlier and gets to the nub of the issue. It refers to this question of whether—

... the liability of resource authority holders extends to encompass liability for the effects and impacts suffered by eligible claimants arising from activities undertaken off their properties.

The committee has acknowledged this concern. It raises a really complex question of statutory interpretation, so bear with me if you will please, Mr Deputy Speaker Kelly. We are focusing here on eligible claimants—that is, those people who have tenure on their property and compensation that may be payable for the impacts and costs of activities that occur off their property. The explanatory notes for the bill make quite clear the purpose of this section. It states—

The original policy intent remains unchanged despite other minor amendments to the drafting of the section.

…

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

Then it says—

See the explanatory notes for the Mineral and Energy Resources (Common Provisions) Bill 2014, which outlines the policy intent of this section.

The explanatory notes are specific about it being compensation only for the activities being carried out on the land. I have looked at the earlier explanatory notes and I can find no such succinct statement of policy intent. It does not appear, on my reading, to narrow that compensation for an eligible claimant to only those activities that are conducted on their land. In fact, this supposed policy intent appears to run counter to the case law that has recently come out of the Land Court on this issue. On my understanding, the court agrees with the position that a conduct and compensation agreement can properly provide for compensation for activities taking place on neighbouring land, particularly the 2017 Land Court case of Nothdurft and QGC Pty Ltd. On my reading, this decision does not reflect what the department claims is the current policy and the intent of both the existing provision and the proposed new wording of section 84. The provision along with the explanatory notes ensure a narrowing of the compensation payable to landholders.

Resolving any supposed existing ambiguity in this section—and by reference to that limited scope that is described for the first time in the explanatory notes—will exclude compensation, as I read it, for an eligible claimant for any approved activities conducted on neighbouring land. I am sure that anyone who has had exposure to these projects would understand that these can be some of the worst impacts. Say you have a single well on your property and you have a condenser plant next door. The noise, the fugitive emissions, the gases and the potential dust impacts—all of these can affect your property.

The department's response to these concerns was less than comforting for those neighbouring landholders and I think it skirts around the central issue as articulated by the explanatory notes—that is, that question of whether eligible claimants are entitled to compensation where the activities are being carried out on the neighbouring land. The department says—

There is no change to the obligation to compensate neighbouring landholders as a result of the changes to section 81. The provision has always only been about compensation for landholders upon whose land the advanced activities are being carried out on.

This does not reflect the full concerns raised by the QLS. It does not address what is the position for those landholders—the eligible claimants—and the impacts on neighbouring properties. The committee observed as well—

The department argued that changes to the wording in s 81 did not alter the intent of the MERCP Act:

These stakeholders submitted that a proposed minor change to the wording in section 81 ... represents a significant change to landholders' rights to claim compensation for the impacts of resource activities. This is not the department's view. The minor wording change to section 81 does not alter the compensation entitlement of landholders and does not reflect a change in policy.

The committee has made a fair paraphrasing of the department's observation there, but the purpose of this new section when compared to the position taken by the court would narrow the costs or impacts for which compensation is payable, and that is a concern.

The committee recommended that the minister clarify this, except it is not the same point. It has again recommended that clarity be given around arrangements for addressing compensation for landholders who do not have a resource tenure activity on their land but might be affected. Alternative arrangements under the EP Act and make-good agreements are all well and good, although there are a number of issues with these compensation mechanisms in practice and it is onerous of course to require landholders to engage with further separate processes outside of a conduct and compensation agreement.

If we turn again to the QLS, the question is whether the liability of resource authority holders extends to encompass liability for the effects and impacts suffered by eligible claimants arising from activities undertaken off their properties. These are immensely important issues for the people affected and the section should not be amended. The intent is actually being clarified now.

The intent is being made clear that where previously the court has found compensation will be available the explanatory notes say it no longer will be. If we get to the third reading I will introduce a simple amendment to retain the wording from the existing provision among the other changes proposed in section 81. The wording ‘in relation to the eligible claimant’s land’ should be retained in section 81(4)(a) in place of the words ‘carrying out activities on the eligible claimant’s land’. This retention would ensure that the compensation available to claimants now would be retained, as the courts found previously. Short of that, I broadly support the bill.