

# **AGRICULTURE, RESOURCES AND ENVIRONMENT COMMITTEE**

## **REPORT NO. 46 ON THE**

### **MINERAL AND ENERGY RESOURCES (COMMON PROVISIONS) BILL 2014**

#### **QUEENSLAND GOVERNMENT RESPONSE**

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#### **INTRODUCTION**

On 5 June 2014 the Mineral and Energy Resources (Common Provisions) Bill 2014 (the Bill) was introduced to Parliament.

The Bill was subsequently referred to the Agriculture, Resources and Environment Committee (the committee) with a report back date of 5 September 2014.

On 5 September the committee tabled its report no. 46 in relation to the Bill.

The Queensland Government response to recommendations made and clarification on points raised by the committee are provided below.

#### **RESPONSE TO RECOMMENDATIONS**

##### **Recommendation 1**

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

##### **Government Response**

The government thanks the committee for this recommendation.

##### **Recommendation 2**

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.

##### **Government Response**

This government is committed to opening up more opportunities through the open data revolution. It is a key part of the government's agenda to drive growth and job creation in Queensland. We will ensure that we have a government that is open, accountable and delivers the results Queenslanders expect.

The Queensland Globe has been developed as a new capability to share Queensland's spatial information.

The government advises that application areas for all permits are made available through a central publishing area and in MinesOnlineMaps as soon as practical after the application is made.

The Local Area Mining Permit Report, which is available on the Department of Natural Resources and Mines' (the department) website, provides landholders and members of the community with detailed information of permits (applications and grants) in and around their local area based on the lot on plan, or a local government area.

These processes provide for information to be readily available. The department will continue to look at opportunities to add information to the Queensland Globe and where the community can subscribe to alerts and notification as part of its ongoing reform agenda as its ICT systems are enhanced.

### **Recommendation 3**

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 4**

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.

### **Background**

Recommendations 3 and 4 relate to aspects of the land access framework.

By way of background, as part of the Modernising Queensland's Resources Acts Program, the Bill consolidates provisions relating to private land access (among others) from the five Resource Acts and migrates them to the new Common Provisions Act created by this Bill.

Prior to this Bill, the land access framework relating to private land was duplicated across all of the Resource Acts without significant variances of regulatory process. The land access framework is included in the new Common Provisions Act so that landholders and the wider community can benefit from a centralised reference point, and an improved understanding of concepts and the regulatory framework.

As such, in migrating these provisions to the Common Provisions Act, they have largely been unchanged except to implement three of the six recommendations of the Land Access Implementation Committee to improve the land access framework.

In 2010, the land access framework was introduced aimed at balancing the interests of landholders and the resources sector, with a particular focus on compensation and emphasising the need for good communication and relations.

A review of the land access framework was undertaken in November 2011 by an independent panel – the Land Access Review Panel – comprising of agricultural and resource sector experts, with an independent chair. The purpose of the review was to assess the efficacy of the framework against its original objectives.

Dr David Watson was Chair of the Land Access Review Panel. Dr Watson was joined by Ms Alice Clark, Mr John Cotter, Dr Geoff Dickie and Mr Gary Sansom.

Stakeholders were invited to meet with the panel at various locations across Queensland. Interviews were held in Emerald, Moranbah, Townsville, Mount Isa, Roma, Dalby, Toowoomba and Brisbane.

A broad cross-section of affected parties was interviewed by the panel including peak bodies, community groups, landholders, resource companies, lawyers and other land access professionals. Most stakeholders interviewed had direct and practical experience with the land access framework.

From the panel's analysis of the submissions and information provided by stakeholders during interviews, key issues were identified and recommendations made in relation to addressing these issues.

The review panel concluded that, while the land access framework had improved the way in which land access negotiations occurred, it had not fully realised its policy objectives. The review panel made 12 recommendations to address the issues which had been identified by stakeholders, as well as detailing the optimal process and steps involved in successful land access negotiations.

In July 2012, the government released the review panel's report seeking stakeholder feedback on the recommendations. The stakeholder feedback later informed the government's response to the review, released in late 2012. The focus of the government's response was a Six Point Action Plan to improve the land access framework.

The government's Six Point Action Plan included the following:

- Action 1: Conduct and compensation:
  - a) A review of the heads of compensation to ensure no cost or erosion of landholder rights.
  - b) Expanding the Land Court's jurisdiction to include matters concerning conduct.
- Action 2: Introducing a single accredited form of alternative dispute resolution (ADR) process, independent of government, that is recognised by, and can be integrated seamlessly into the Land Court process without duplication of process.
- Action 3: Noting the existence of conduct and compensation agreements on title by resource authority holders.
- Action 4: Parties being able to agree to opt out of the conduct and compensation agreement framework at the election of the landholder.
- Action 5: Development of standard conduct and compensation agreements for mineral, coal and coal seam gas industries in partnership with the resource and agricultural sectors.
- Action 6: Review of stakeholder information sources – with the purpose of combining into a single, comprehensive and plain language resource for landholders and resource companies.

In February 2013, the government established the Land Access Implementation Committee to advise and oversee the policy development to support implementation of the government's Six Point Action Plan. The Committee consisted of peak resource and rural industry representatives.

The Implementation Committee's recommendations for implementing each of the actions suggested a package of legislative and policy changes (i.e. non-legislative) to the land

access framework. The Committee's recommendations have been endorsed by the government, and the government has commenced implementation of them as follows.

Action 1(a) – The Land Access Implementation Committee commissioned Sinclair Knight Merz (SKM), independent consultants, to review the heads of compensation for land access. The independent review found that Queensland has the most comprehensive heads of compensation compared to other jurisdictions, and as a result the Committee did not recommend further legislating heads of compensation. SKM's report is available for review on the Department of Natural Resources and Mines' website.

Action 1(b) – Being implemented by the Bill to expand the Land Court's jurisdiction to consider matters concerning conduct.

Action 2 – The government will establish a panel of independent ADR specialists from which a party may choose a facilitator of the ADR. This panel is not going to replace the existing ADR process under the land access framework which has been migrated to the Common Provisions Act. The establishment of an independent panel of expert ADR specialists, as recommended by the Committee, is to complement the current dispute resolution arrangements under the land access framework.

The panel of expert ADR specialists is to be established under the existing ADR process so that parties can choose their own ADR specialist or choose from the panel of experts.

The panel of preferred ADR specialists will be appointed through a competitive tender process, on the recommendation of the Committee, to provide landholders and resource authority holders with confidence in the independence of the panel members.

The departmental conference option will still be available free of charge.

Action 3 – Being implemented by the Bill to require a resource authority holder to register the existence of an executed conduct and compensation agreement on the relevant property title, and to remove the note on title after its cessation.

Action 4 – Being implemented by the Bill to allow parties, at the election of the landholder, to opt out of entering into a conduct and compensation agreement. Requirements for an opt-out agreement can be prescribed by regulation.

The government is developing a template for an opt-out agreement that parties may choose to use, but its use will not be mandated, to provide parties with flexibility to make their own agreement. It should be noted that the Land Access Code and the resource company's compensation liability will continue to apply.

Action 5 – The government is currently developing standard conduct and compensation agreement templates containing provisions specific to each of the resource sectors.

Action 6 – A review of the information and materials on the department's website is being undertaken and will be modified where necessary.

In summary, the Bill migrates the existing private land access provisions to create a common framework and implements the recommendations of the Land Access Implementation Committee that require legislative change that will address stakeholder concerns that came out of the comprehensive review of the land access framework.

### **Government Response – Recommendation 3**

The Land Access Code was developed in 2010 by the Queensland Government in consultation with the resource and agricultural sectors through the Land Access Working Group.

The working group included representatives from AgForce, Queensland Farmers' Federation, Australian Petroleum Production and Exploration Association and the Queensland Resources Council.

The Land Access Code was again reviewed as part of the review of the land access framework that commenced in 2011 (as outlined above).

The Code is readily available on the Department of Natural Resources and Mines' website, and has consistently received positive feedback from stakeholders.

It is a user-friendly document, and is written in plain English and clearly outlines:

- the mandatory conditions for a resource authority holder to carry out authorised resource activities; and
- best practice guidelines for communication between the holders of authorities and owners and occupiers of private land.

Given the recent and extensive development that the Land Access Code has undergone it is the government's view that a review of the Code is not warranted at this time. The government therefore does not accept this recommendation.

### **Government Response – Recommendation 4**

As outlined above, the Land Access Implementation Committee commissioned an independent consultant to review the heads of compensation for land access. After a comprehensive analysis of the key heads of compensation for land access in Queensland, the review undertaken by Sinclair Knight Merz (SKM) found that Queensland has the most comprehensive heads of compensation in comparison to other jurisdictions.

It is the only jurisdiction where compensation for reasonable and necessary legal, valuation and accounting costs, and diminution of the value of land, are identified in a formal legal head of compensation.

As a result, the Land Access Implementation Committee considered that further legislating heads of compensation would frustrate the positive interactions taking place between landholders and resource authority holders, particularly in negotiating conduct and compensation arrangements.

Instead, both parties are encouraged to continue to work together on negotiating mutually beneficial conduct and compensation arrangements that minimise business and social amenity impacts on landholders.

Therefore, the government will not be progressing this recommendation.