LANDHOLDER UPDATE–*COMMON PROVISIONS ACT*

On 27 September 2016 the *Mineral and Energy Resources (Common Provisions) Act 2014* (the Common Provisions Act) commenced, which seeks to consolidate similar provisions of different resources legislation into one. One of the focus areas of the Common Provisions Act is in relation to land access.

p&e Law made a number of policy submissions during public consultation periods in relation to these changes, particularly in relation to the definition of 'restricted land', the 600m rule and the introduction of Opt-Out Agreements.

In our view, there are 3 key changes that landholders should be aware of under the new legislation.

Firstly, the Common Provisions Act requires CCAs and Opt-Out Agreements to be recorded on the title of land. This will assist future buyers of land to identify whether an agreement applies to the land.

Secondly, the '600m rule' has been removed, meaning that a resource company is no longer required to enter into a CCA with a landholder if undertaking preliminary activities within 600m of a dwelling. Instead, the new restricted land regime applies, which requires a resource company to simply obtain consent from a landholder if they wish to undertake preliminary activities within 200m of a residence. Neither a CCA nor written consent is required from a landholder if preliminary activities are proposed outside of the 200m buffer. A CCA will still be required for advanced activities. Restricted land is also defined to include land within 50m laterally of an artesian well, bore, dam or water storage facility or principal stockyard, amongst other things.

Finally, the *Common Provisions Act* has resulted in the introduction of Opt-Out Agreements. This is an alternative to a CCA and allows a landholder and resource company to "opt-out" of the CCA process. The template Opt-Out Agreement form must be used and is available online. By entering into an Opt-Out Agreement, landholders will lose many of the statutory protections available under the CCA process, for example:

- There is no need to negotiate how and when a resource authority holder can enter land, how activities must be carried out and what the compensation liability is.
- Unless agreed otherwise, accounting, legal and valuation costs are not automatically recoverable.
- There is no requirement for entry notices once an Opt-Out Agreement is signed.
- There is no legislated dispute resolution process or Land Court review of compensation or a material change of circumstances under the Opt-Out process.

p&e Law strongly opposed the introduction of Opt-Out Agreements and encourage all Landholders to seek independent legal advice before considering signing an Opt-Out Agreement.

NEW MAKE GOOD REQUIREMENTS TO ASSIST LANDOWNERS

The *Environmental Protection (Underground Water Management) and Other Legislation Amendment Act 2016* (the Act) commenced on 22 November 2016. The Act changes environmental assessment and management of underground water extraction by resource projects by amending the *Environmental Protection Act 1994* and the *Water Act 2000*. Numerous changes have been made to the "make good" framework under the *Water Act 2000*. A summary of these changes is set out below.

Costs of Engaging a Hydrogeologist

One key issue that landowners should be aware of is an amendment to the *Water Act 2000* that requires resource companies to reimburse landowners for any hydrogeology costs incurred by the landowner in negotiating or preparing a Make Good Agreement. This is a significant change from the previous position at law and one which we have advocated for years. Previously landowners were only entitled to be reimbursed for legal, valuation and accounting costs. This is obviously a sensible change and a positive result for landowners seeking to obtain expert advice about impacts to their bores.

Landowners should be cautious to engage only appropriately qualified hydrogeologists. The Act expressly provides that only the costs of an appropriately qualified hydrogeologist will be reimbursed. Hydrogeologists must have the minimum experience and qualification as stated in a guideline produced by the Department including sufficient experience in underground water level monitoring programs, underground water quality sampling programs, groundwater hydrology, engineering as well as practical knowledge of water bore construction and infrastructure. We suggest seeking prior approval from a resource company should you wish to retain an expert, prior to the hydrogeologist commencing work.

We have been involved in the negotiation of a number of Make Good Agreements for landowners and can recommend appropriately qualified hydrogeologists to provide independent advice to landowners to assist in negotiations.

Clarification about when a bore has "impaired capacity"

Whether or not a bore has "impaired capacity" (as that term is defined in the *Water Act 2000*) can often be a contentious issue between resource companies and bore owners. Once it is established that a bore has "impaired capacity", the resource company has make good obligations to "make good" the bore by, for example, paying compensation or drilling and equipping a new bore to a deeper aquifer. The new Act introduces positive changes for landowners.

The previous position under s 412 of the *Water Act 2000* was that the impairment must be caused by the exercise of underground water rights by resource companies. This position has been amended in favour of landowners so that impairment to a bore may occur when it is likely to be caused or materially contributed to, by the exercise of underground water rights. The level of certainty required about the cause of the impairment has been reduced and this is sensible given the difficulty in some cases of determining with certainty the cause of impairment.

Damage to Pumps, Health or Safety Risks

Another amendment to this provision is the expansion of the circumstances in which a bore is taken to have been impacted. The previous position was that a bore must suffer a decline in quantity of water at the location of the bore and because of the decline the bore can no longer produce a reasonable quantity or quality of water for its authorised use. Under the changes, if a landowner can show evidence of damage to the bore, pump or other infrastructure or if the bore poses a health and safety risk, then the bore will be taken to be impaired provided it has been caused or likely to have been caused or materially contributed to by the exercise of underground water rights.

Free Gas in Bores

If free gas from the carrying out of resource activities has, or is likely to have, caused or materially contributed to damage to the bore, there will be a requirement for the resource company to "make good" the damage to the bore. Free gas may adversely affect water quality and flow impacts, and bores can become impaired by free gas even in circumstances where there is no decline in water level at the bore.

Cooling Off Period

Another sensible amendment allows landowners to terminate a Make Good Agreement during a cooling-off period of five business days from the date of the agreement. If an agreement is terminated during the cooling-off period, it is no longer a Make Good Agreement and landowners can re-negotiate.

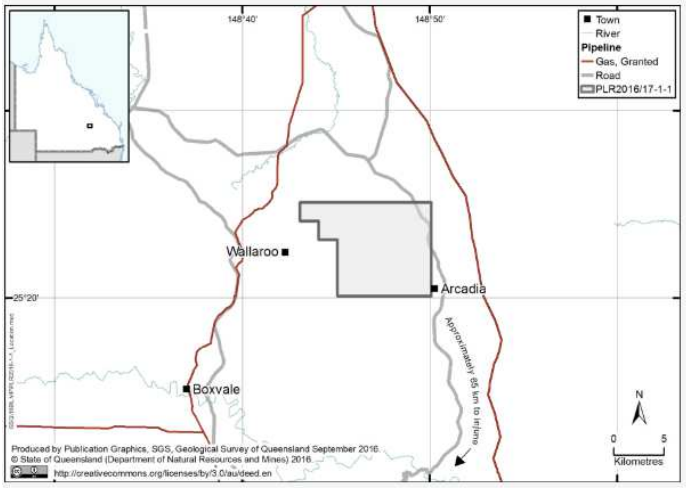
Costs of Alternate Dispute Resolution

In our experience, Make Good Agreements can be complex agreements and it is common for parties to disagree on a range of issues including whether the resource company has caused impairment to a bore and the appropriateness of the make good measures proposed by the resource company such as compensation, drilling a new bore etc. In some cases, alternative dispute resolution may be required to settle the matter. The Act now requires the resource company to pay the costs of an alternative dispute resolution facilitator or mediator if the dispute resolution process has been instigated by the resource company.

CALL FOR TENDERS–AUTHORITY TO PROSPECT

The Queensland Government has recently released two prospective areas for tender for petroleum and gas exploration.

The first tender is approximately 65 kilometres north of Injune and has an area of 86 km² (PLR2016/17-1A). This area is considered to have high prospectivity for coal seam gas. The second tender is located approximately 40 kilometres south-east of Surat and has an area of 365km² (PLR2016/17-1-2). This area is considered to have a moderate to high prospectivity for conventional gas.

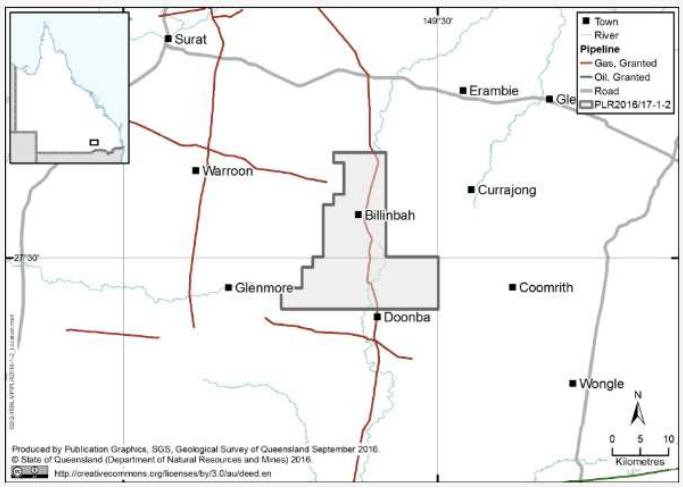


PLR2016/17-1A

The calls for tenders close on 20 April 2017. Once the ATP has been granted to the preferred tenderer, the ATP holder will need to complete a series of exploration activities in accordance with land access requirements.

If you, or anyone you know, has a property affected by the proposed ATP areas, please feel free to contact us for a no obligation consultation.

The tender areas are shown in the maps to the right.



PLR2016/17-1-2

EXPERTS FORUM

On 18 October 2016 **p&e Law** hosted an Experts Forum in Miles. Presentations were given by the Leichardt Group, who specialise in land valuation, and O2 Environment + Engineering, who presented on land rehabilitation, compliance with environmental authority conditions and the importance of maintaining soil structure and profile. **p&e Law** presented a landholder update on recent legislative changes and the new Underground Water Impact Report. The forum was well-attended and our experts generated interesting discussions throughout the presentations. Thank you to everyone who attended the forum.

If you have questions, please do not hesitate to contact

Adam Phillips, Matt Patterson or **Renee Wallerstein**

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