8 April 2016

Research Director
Infrastructure, Planning and Natural Resources Committee
Parliament House
George Street
BRISBANE QLD 4000

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Dear Sir/Madam

SUBMISSION ON *MINERAL AND OTHER LEGISLATION AMENDMENT BILL 2016 (QLD)*

p&e Law acts for landholders affected by coal seam gas (CSG) and mining activities. We thank the Infrastructure, Planning and Natural Resources Committee for the opportunity to make a submission on the *Mineral and Other Legislation Amendment Bill 2016* (the Bill) to amend the *Mineral and Energy Resources (Common Provisions) Act 2014* (the Common Provisions Act).

While **p&e Law** supports some aspects of the Bill, for example, the reinstatement of objection rights, there are several aspects currently existing in the Common Provisions Act or proposed as part of the Bill which will significantly diminish the rights of landholders. We take particular issue with the following:

1. Despite being portrayed as an Act to standardise the legislation applying to different resource developments, neither the Common Provisions Act or the Bill standardise the requirement for companies to enter into Conduct and Compensation Agreements (CCA) with affected landholders. CCAs are still not required for mining companies proposing to undertake intensive mining activity on rural land.

2. The introduction of 'opt out agreements' in the Common Provisions Act should be removed as part of the Bill. In practice, opt out agreements will allow resource companies to disregard minimum standards relating to negotiations and conduct which would ordinarily apply in a CCA. We have become aware of many instances of misleading and deceptive conduct and unconscionable conduct on the part of resource companies. This kind of behaviour is likely to increase not decrease if resource companies can entice landholders to "opt out" of the statutory framework.

3. Under the current *Petroleum and Gas (Production and Safety) Act 2004* (PAG Act), resource companies cannot come within 600 metres of a dwelling to undertake preliminary or advanced

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activities unless they enter into a CCA (the '600m rule'). The Common Provisions Act removes this buffer for preliminary activities, and only imposes the requirement that written consent be obtained if undertaking activities within 200m of a residence. The Bill should amend the Common Provision Act to reinstate the '600m rule.'

4. Rather than standardising the definition of 'restricted land', the Bill in fact reduces the definition of 'restricted land' compared to that which has been applied under the *Mineral Resources Act 1989.* This diminishes landholder rights in comparison to existing standards.

Each of the points above are examples of a diminishment in landholder rights compared to current standards. We provide a further explanation of these points below.

1. Conduct and Compensation Agreements (CCA)

Chapter 3, Part 2 of the Common Provisions Act deals with access to private land. It includes an entry notice regime and requires agreement to be reached with a landholder prior to undertaking advanced activities (in the form of a CCA, deferral agreement or 'opt out' agreement).[1] The Common Provisions Act has been portrayed as an Act to standardise provisions across the various Resource Acts.

Why is it that the entry regime under the Common Provisions Act, particularly in relation to requiring a CCA, specifically excludes prospecting permits, mining claims and mining leases granted under the MRA?[2]

A CCA allows the parties to agree on conduct relating to entry. This can include conditions for pest and weed management, timing of access, duration of access, hours of work, use of chemicals, fencing and other infrastructure, etc. In contrast, under the MRA, mining companies are only required to enter into 'Compensation Agreements.' This only deals with the issue of compensation and does not provide the landholder with an avenue to negotiate conditions relating to the conduct of the resource company on their land.

Given that one of the purposes of the Common Provisions Act is to "provide for particular common processes that apply to resource authorities"[3] we strongly recommend that changes be made to the Bill to require mining authority holders to also enter into CCAs with landholders, not just Compensation Agreements. This would then truly represent a "simplified common framework" for managing resource authorities.

[1] Common Provisions Act, s43.
[2] Common Provisions Act, s37.
[3] Common Provisions Act, s3(b).

2. Opt Out Agreements

Under the PAG Act, a person cannot enter private land to carry out advanced activities for a petroleum authority unless the authority holder and landholder have entered into a CCA.[4] The existing CCA process provides the following:

1. A statutory negotiation process which includes the following:
    - Providing a landholder with a Notice of Intention to Negotiate (NIN), which must include a copy of the land access code, the land proposed to be entered, the activities proposed to be carried out and the timing and location of proposed activities;[5]
    - A minimum negotiation period;[6]
    - A cooling-off period;[7]
    - Processes for seeking a conference or independent ADR.[8]
2. Statutory standards for the content of CCAs, which must include the following:[9]
    - How and when the petroleum authority holder can enter land;
    - How activities must be carried out;
    - The holder's compensation liability;
    - The CCA cannot be inconsistent with the Act;
    - Be written and signed by both parties;
    - State whether the CCA is for all or part of the compensation liability;
    - Provide for how and when the compensation liability will be met.

Under the PAG Act, part of the authority holder's compensation liability includes the landholders reasonably incurred legal, accounting and valuation costs. Despite these statutory protections being in place, we have still been made aware of instances where resources companies have, in our opinion, engaged in deceptive and misleading conduct and unconscionable conduct in their dealing with landholders. Introduction of an "opt out" process will further encourage unconscionable behaviour to

[4] PAG Act, s500.
[5] PAG Act, s535.
[6] PAG Act, s536A.
[7] PAG Act, s537.
[8] PAG Act, s537A.
[9] PAG Act, s534.

entice landholders to agree to the "opt out" provisions in section 45 of the Common Provisions Act, so that resource companies do not have to comply with the statutory requirements of CCAs.

This provision is an example where the Common Provisions Act has diminished landholder protections in favour of resource companies. We urge the Committee to amend the Bill to remove the opt out provisions in the Common Provisions Act.

3. 600m Rule

Current provisions of the PAG Act allow a resource company to enter land to undertake preliminary activities without the need for an agreement with the landholder. Preliminary activities are defined to include things like scouting, taking soil and water samples, surveying and pegging, unless they occur within 600 metres of a school or occupied residence.[10] Under the PAG Act, activities undertaken within 600m of a residence are described as 'advanced activities'.[11] Generally, a CCA must be entered into with a landholder if a resource company wishes to undertake advanced activities.[12] This has been described as the '600m rule.'

The 600m rule has been an important element of co-use which seeks to strike a balance between the rights of resource companies and the privacy and amenity of landholders and their private property. While landholders couldn't refuse to have preliminary activities undertaken on the balance of their property, their privacy, security and safety could be maintained within 600m of their home. Where landholders agreed to allow activities within 600m of their home, this access was regulated under a CCA, which provides a number of statutory protections and process which benefit landholders. Many landholders view this as an important right, particularly given that the agents of resource companies undertaking preliminary activities are strangers to the landholder.

Under the Common Provisions Act, this reasonable and fair protection has been completely removed.

Subsection 571(3) of the Common Provisions Act amends the definition of 'preliminary activity' in the PAG Act by omitting item 2(b) of the existing definition, as shown below.

> *2 However, the following are not preliminary activities—…*
>
> ~~*…(b) an authorised activity carried out within 600m of a school or an occupied residence;*~~

As preliminary activities undertaken within 600m of a residence will no longer be considered 'advanced activities', a CCA will no longer be required. Instead, a new process for accessing 'restricted land' is introduced via Chapter 3, Part 4 of the Common Provisions Act. Restricted land provides only a 200m

[10] PAG Act, schedule 2.
[11] PAG Act, schedule 2.
[12] PAG Act, s500.

buffer around a permanent residence. To access restricted land, the resource authority holder only needs the landholder's written consent, which may be subject to conditions, rather than a CCA.[13]

Under the new laws, preliminary activities can be undertaken up to 200 metres from a residence without the need for consent or a CCA. This is a significant diminishment in the already few protections for landholders and works only in favour of resource companies.

We urge the committee to seriously consider the practical effects and consequences on landholders if this is not changed via the Bill. It is our strong recommendation that the committee amend the Bill to omit section 571(3) of the Common Provisions Act so that the 600m rule can continue, and maintain the requirement of a CCA should resource authority holders wish to access land within 600m of a residence.

4. Restricted Land

While the amendments to the definition of 'restricted land' in Bill is an improvement compared to the definition currently provided in the Common Provisions Act, it in fact diminishes the rights of a landholder in comparison to the current standard in the *Mineral Resources Act 1989* (MRA) in relation to water pipelines.

The current definition of restricted land in the MRA includes bores, artesian wells, dams and "*other artificial water storage connected to a water supply*".[14]

In *Xstrata Coal Queensland Pty Ltd & Ors v Friends of the Earth*[15] the applicants challenged the position of the objecting landholders that 'pipelines' give rise to restricted land. While President CAC MacDonald said that water pipelines were not "artificial water storage", the following was held at paragraph 157:

> "*Nevertheless I do not consider that the objectors should be left without any water supply for their tanks and troughs or any other water storage facilities as that would defeat the evident purpose of s.238(2) which is to preserve the relevant improvements (in this case water storage facilities) and the specified area surrounding them, from mining."*
>
> (underlining added)

CAC MacDonald recommended that areas occupied by water pipelines and 50m laterally around them be excluded from the mining lease.

Despite this finding by CAC MacDonald, the Bill seeks to define "water storage facility" by specifically excluding interconnecting water pipelines.[16]

[13] Common Provisions Act, s70.

[14] MRA, schedule 2.

[15] *Xtrata Coal Queensland Pty Ltd & Ors v Friends of the Earth – Brisbane Co-Op Ltd & Ors, and Department of the Environment and Resource Management* [2012] QLC 013.

[16] *Mineral and Other Legislation Amendment Bill 2016,* clause 7.

As so eloquently pointed out by CAC MacDonald, what is the point in preserving water storage improvements if a landholder cannot transport water in these locations? It certainly diminishes existing rights of landholders in relation to restricted land and limits their ability to continue to utilise land for agricultural purposes while mining activities occur on other parts of the land.

We draw the Committee's attention to the purpose of the Common Provisions Act:

> ***3 Main purposes***
>
> *The main purposes of this Act are—*
>
> *(a) to consolidate particular provisions common to each of the Resource Acts; and*
> *(b) to provide for particular common processes that apply to resource authorities; and*
> *(c) to manage overlapping coal and petroleum resource authorities for coal seam gas; and*
> *(d) to assist in achieving the purposes of each of the Resource Acts.*
>
> (underlining added)

The amendments to the definition of restricted land by specifically excluding water pipelines do not achieve any of the said purposes. Rather than consolidating existing provisions so that they apply to each resource activity, the Government and resource industry has taken this opportunity to water-down existing standards and landholder protections. The amendments do not restore existing rights of landholders to protect agricultural infrastructure, as so portrayed by the Queensland Government.

We recommend that the committee amend the Bill so that the existing definition of 'restricted land' in the MRA is reinstated into the Common Provisions Act, so that the purpose of 'consolidating provisions' can be achieved.

5. Conclusion

p&e Law is of the view that the framework proposed under the Common Provisions Act requires amendment to protect landholders. Removing landholder protections will result in an increase in unfair dealings and augment conflict between landholders and resource companies. We recommend that the following reforms to the Common Provisions Act be included as part of the Bill:

1. Require all resource companies to enter into CCAs with landholders for advanced activities.
2. Repeal the 'opt out' provisions.
3. Reinstate the 600m rule and require CCAs be entered into for activities within 600m of a residence.
4. Reinstate the definition of 'restricted land' as it is currently defined in the MRA so that it includes essential water pipelines.

We welcome contact by the Committee to further discuss the issues raised in this submission.

Yours faithfully

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