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Submission to Mining Lease Notification and Objection Initiative

Property Rights Australia (PRA) is a not for profit organisation formed to protect the property rights of landowners. We represent many rural businesses in Queensland in particular but have members in all states.

Summary

Property Rights Australia objects strongly to some aspects of the proposed changes to the Mineral Resources Act and Environmental Protection Act as in the *Mining Lease Notification and Objection Initiative discussion paper including Regulatory Assessment*.

There are no definitions in this discussion paper and very importantly no definition of "directly affected landholders" who will be the only landholders notified of a mining lease application and allowed to object to the granting of a mining lease.

The concurrent assessing of mining leases (ML) and environmental Authorities (EA) effectively giving landholders only one chance to object and in a shorter total timeframe. Landowners have long asked for longer timeframes as they must fit review and analysis around work schedules. Unlike mining companies they do not have floors of experts at their disposal.

Conventional notification is not sufficient. If only directly affected landholders are to be notified, no public notification is to occur and given tight timeframes, a more efficient and certain form of notification must occur than reliance on an easily disrupted country mail service and unreliable and slow internet connections. Shifting of "water" and other "factors of production" to the Planning and Environment Court will only work if the Planning and Environment Court has the power and expertise to award compensation to landholders. PRA would need to be convinced that this was to the advantage of landholders.

PRA is concerned at the unexplained concept that it will build on the idea of unco-operative Landholder. If this is to be followed through with there needs to be a tight set of criteria which do not include landholders simply trying to establish a bargaining position for themselves and not having their time wasted. The code needs to apply to mining companies as well.

The initial discussion paper was meant for small and/or alluvial miners and is definitely NOT appropriate for mines such as those proposed for the Galilee Basin.

The property rights and principles of natural justice of landowners will be severely compromised by the proposed changes.

The proposed savings of $6m are insubstantial and will cost landholders much, much more than $6m worth of damage.

ML's given without conduct and compensation agreement and after 3 months of no agreement being sent straight to the Land Court is an unreasonable. No ML's should be given without Conduct and compensation agreements and this includes low or no impact mines.

The MRA will list grounds for objection in the Land Court but we do not know what they are. Having this discussion without them is impossible.

No full parliamentary committee inquiry as has been the case for other proposed legislative changes has been carried out. These changes are substantial for landholders.

Introduction

It is impossible to comment accurately on the paper without definitions and particularly a definition of a "directly affected" landholder. This will affect who has the right to object and is vital to the submission. It appears that the intent is that only those landholders within the footprint of the mine site will have the right to object to the Mining Lease. Any landholder who has land over an affected aquifer or is on adjacent aquifer where leakage or depressurisation may occur is a "directly affected" landholder and should be recognised as such. This legislation seems tailor made to stop objections such as those already made to the Land Court by landholders who are concerned that they may lose one of their factors of production, namely water. This is a very important issue and landholders should not be disadvantaged to accommodate medium to large mining projects.

"Make-good arrangements" for water loss is not a right under the Mineral Resources Act and it should be for all landholders within a given set of potentially affected aquifers. Presently, companies are refusing "make-good" agreements to many landholders and those that they do make are subject to confidentiality clauses. Property Rights Australia considers that the property rights of many landowners in the vicinity of any medium to large mine may be adversely affected. Any potentially affected landholder should have the ability to object to and appeal against a Mining Lease and the attempt to limit the classes of landholders who have these rights does not conform with the principles of natural justice. The grounds for objection are also unavailable and make serious comment difficult.

We are concerned that a discussion paper which originally purported to be applicable to small and/or alluvial mines has morphed into a document which covers large and medium mines. This is a major shift of policy with major shifts in landholder rights and consultation has been sporadic and insufficient. We note that a recommendation has been made that no impact or low impact mines should be able to proceed without a conduct and compensation agreement. PRA would contend that it is sometimes impossible to tell in advance what impacts there will be. Even in the simplest of cases there exists a potential for impacts such as weeds, damage to roads, death of animals, gates left open, fences cut, unauthorised water use and garbage. The list is not exhaustive. There is always a need for a conduct and compensation agreement. Landowners should not need to subsidise small undercapitalised miners.

The lack of consideration given to the fact that many "directly affected " landholders are still in severe drought or may have only recently emerged from severe drought does not give those landholders any real opportunity to submit or comment on the proposed changes. Water is not just an "environmental concern" for anyone involved in livestock or agricultural production. It is an essential "factor of production" and to bundle it with air, noise, rubbish and amenity is to devalue its importance for rural production.

The government needs to detail to landholders as part of this consultation how moving most landholder objections into the Planning and Environment Court will be to their advantage or disadvantage.

Future research may also see some of the other "environmental concerns" drawn into the arena of " constraints on production" and should therefore be compensatable.

We understand that the Government wishes to limit objections from outside groups and note that the document "Stopping the Australian Coal Export Boom" is referenced twice at page 8.
We strongly recommend that landholder rights not be compromised as a result of sensitivity about the actions of third party groups. However, also referenced at page 8 is *Xstrata Coal Qld Pty Ltd v Friends of the Earth - Brisbane Co-op Ltd & Ors and Department of Environment and Resource Management [201] QLC 013.* While at face value this may seem like just another third party objection, Property Rights Australia considers this to be a very poor example as most of the objectors, and all of those mentioned in the decision were simply landholders who were protecting their rights. Protecting landholder's rights and having them receive compensation and fair conditions when necessary is a just and reasonable outcome. Limiting landholder's rights to object and be paid appropriate compensation or have appropriate agreements in place is not acceptable and we would advocate strongly against this approach.

Page 46 of the discussion paper has examples of decreased numbers and complexity of cases in the Land Court. This is a direct attack on the rights of those who may or will be affected by the operations of some mines.

> *Based on this analysis the following mix of cases is anticipated in the Land Court under each of the options.*
> ***Current:***
> • *Two single person/single Act objections one under the EP Act against standard application by the landholder and one under the MRA by someone other than the landholder- low complexity objections*
> • *Three multiple Act/single person objections by the landholder under the EP Act against standard application and MRA against the ML - complex objections*
> • *Eight multiple Act/multiple person objections under the EP Act against the EA and MRA against the ML of which: o one is an objection under the EP Act about a standard application EA by the landholder and an objection under the MRA against the ML by someone other than the landholder*
> - *Two are third party objections under the MRA and EP Act against the ML and site-specific application for an EA*
> - *Five are landholder/third party objections under the MRA and EP Act against the ML and site-specific application for an EA*
> - *All are highly complex objections*
>
> ***Proposed model (with all of the proposals implemented):***
> • *Two single person/single issue objections against a standard application for an EA and non-landholder objection against the MRA (both low complexity objections) will no longer be lodged*
> • *One multi issue objection against a standard application for an EA by the landholder and ML (a highly complex objection) by non-landholders will no longer be lodged*
> • *Three multi Act single person (landholder) objections against the standard application for an EA under the EP Act and ML under the MRA (complex objections) will become single issue single person (low complexity objections)*
> • *Two multi Act multi third party objections against the site-specific application for an EA and ML (highly complex objections) become single Act multi person objections against the site-specific application for an EA (complex objections)*

Property Rights Australia considers that landholder rights are being severely compromised.

Notification and Objections

The document swings from landholder to landowner on page 19 for eligible objectors and back to landholder again. Once again the lack of definition makes analysis of who may be eligible objectors impossible, particularly in light of the definition of "owner" as in the discussion paper on Regional Planning Interests Bill.

It would seem that the classes of possible objectors have now been made too narrow. It would appear that affected landholders who may not be in the footprint of the proposed mining lease or who are not on the access area will be unable to object to the ML. Affected landholders whose "factors of production," in particular, water, or its potential loss of quality or quantity, may not be able to object. Other factors of production may unfold in the future. This has narrowed the field too far.

Water is the most fundamental issue to any farming enterprise and access to it is vital. If an aquifer is disturbed or dewatered, a primary producer on that aquifer or one affected by it needs access to water today. Mining companies are not being forthcoming in offering effective "make good agreements" with people in the area of any particular aquifer.

We also are of the opinion that limiting the timeframes and opportunities for objections will most disadvantage landholders who have to fit it around work schedules and often have poor communications including easily disrupted mail services and poor internet connections. The justifications given of saving business days and a small amount of cost to any medium to large mine seems insubstantial in the overall cost and time to establishment of any such mine but can result in substantial constraints on rural business. Instead of twenty business days from notification to make submissions or objections we would like to see an increasing scale based on numbers of pages of documentation up to 90 days. In the scale of things the costs are not substantial in comparison to the rights of landholders.

A cost estimate for a professional such as a solicitor to answer an EIS of about 400 pages on behalf of a landholder is $30,000. Increasingly we see landholders expected to bear a large proportion of costs of various sorts for the benefit of a different entity or the community. This is untenable.

The hearing of site specific appeals by the Land Court after an EA has been granted is to turn the Land Court into a rubber stamp, undermines its authority and leaves landholders with no bargaining power. Property Rights Australia objects to this change in the strongest possible terms**. No mining lease should be granted without Conduct and Compensation agreements in place.** That includes no impact or low impact mines. This is a significant change and the degree of consultation with landholders has been insufficient and may be counterproductive at any rate. It may just result in more cases in the Land Court and longer timeframes. Minister Seeney at the Brisbane hearing of the RPI Bill 12/2/14 said,

> *In relation to affected persons, we have very deliberately limited that to people who are affected and, once again, it enlivens the debate about the definition of 'affected'—who is actually affected—because we want to, not just in this instance but more broadly, put an end to the situation where somebody in California, Melbourne or somewhere else can unduly hold up the consideration of an assessment process here in Queensland, and that is happening. It is happening within the existing resource legislation and we are considering ways of preventing it from happening. There is absolutely no intention, nor will we allow an outcome, that takes away the ability of a genuinely affected person to have their right of appeal, and that is consistent across all legislation . Public Hearing—Inquiry into the Regional Planning Interests Bill 2013 Brisbane - 53 - 12 Feb 2014*

Property Rights Australia considers that the measures proposed to reduce assessment times are an unacceptable restriction of the property rights of landholders and much more thought and consideration must be given to the proposals with a more genuine process to hear landholder's views.
Running the application for ML and EA concurrently and giving a landowner only one chance to object or make submissions is also not acceptable.
Landholders have consistently asked for more time for objections and they are being offered less time.

Unco-operative Landholders

Before this pejorative term is applied to landowners Property Rights Australia finds it essential that it be defined in the discussion paper. This is not done.

We object strongly to the genuine concerns of landowners being overridden in an attempt to speed up the process on behalf of mining companies. If they want to speed up the process they can pay proper compensation and take care of the concerns of landowners.

Landowners simply trying to get a fair deal for themselves, their businesses and their family safety and trying not to have their time wasted are not being unco-operative. Landholder's time is treated as valueless and not compensated for. Mining companies are all too willing to waste time, call unnecessary or unproductive meetings, are be inflexible with meeting times and offer no new information. These meetings are held by people who, unlike the landholder are on a payroll. Landholder's time should be paid for and it might not be wasted so readily.

Already the balance of power between miners and landowners is skewed too far in the direction of the mining companies and this attempt to skew it even further is not a sign of understanding or natural justice.

Restricted Areas

The use of some restricted areas could be a simplification of a full mining lease reapplication but what this discussion paper is proposing is too simplified. Simple agreement with a landholder is not sufficient. This opens the door to bullying which has been a feature of the behaviour of some mining companies.
All houses and dwellings including temporary accommodation, rental accommodation and holiday homes as well as other presently restricted areas should be unable to be mined without application as well as consent of the landowner or occupier. Many landholders live in sheds or other temporary accommodation as a matter of necessity. They also run farmstay businesses as a matter of necessity. Such housing deserves legislative protection.

If there is a Swiss cheese set of restricted areas as claimed in the discussion paper the mining company should buy the property.

Datum Post

This requirement could be substituted with a list on DNRM-electronic website with link to the actual application.

Recommendations

1. This is a major change of policy and a major shift of rights away from landowners, landholders and occupiers. Before such sweeping changes are made nothing less than a parliamentary committee inquiry with submissions on the parliamentary website, public hearings and wide public discussion is acceptable.

2. **We recommend that no mining lease should be granted without Conduct and Compensation agreements in place.** That includes no impact or low impact mines.

3. PRA would need to be convinced of the benefits of moving most landholder objections to the Planning and Environment Court rather than the Land Court. We recommend that there be more broad ranging public debate on this issue.

4. We recommend that time frames for submissions objections be widened not contracted. The proposed process is a clear attempt to limit landholder objections at all levels.

5. If there is to be no public notification there need to be safeguards in place to ensure that "affected "landholders" are notified in sufficient time to prepare proper submissions and objections.

6. The concept of "unco-operative landholder" should not exist much less be built on. There are sufficient legal avenues at every stage for it to be unnecessary.

7. We strongly recommend that landholder rights not be compromised as a result of sensitivity about the actions of third party groups.

Conclusion

Quite simply, this Bill just once more pushes the balance even more in favour of the mining companies at the expense of the landholders.
"Frustration" at what amounts to a minor hold-ups and minor cost savings in a process that will inevitably take years anyway is not sufficient reason to further reduce the rights of landholders.

Regards

Joanne Rea

Joanne Rea
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