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Water Reform and Other Legislation Amendment Bill 2014

Property Rights Australia (PRA) was formed in 2003 to provide a strong voice for landowners with regard to property rights issues. It aims to promote fair treatment of landowners in their dealings with government, businesses and the community.
Our philosophy is that if the community (or business) wants our resource for any other purpose such as environmental protection then the community must pay fair and unsterilised value for it.
Most of our members are in Queensland but we have members in all States.

Introduction

This legislation is wide ranging so Property Rights Australia will confine comments mostly to "make good" agreements.

Property Rights Australia has ongoing concerns about the "make good" provisions and their as yet untested effectiveness. It has been our long term position that there is no substitute for a reliable source of clean water for agriculture where that is customary and that all other options are an inferior option.

The concept of "make good" is an acknowledgement that the property rights of landowners will be violated and need to be protected. However this Bill does nothing to improve landowner access to timely and independent water and hydrological advice and the Government clearly wants to limit its involvement.

The discussion paper acknowledges that the legislation breaches legislative standards.

This Bill has elements of third world lawmaking at its worst with the potential destruction of one community by another with no failsafe redress.

Clearly the rights of a community who have been part of our history and will continue to be so into the future if they are allowed have been disregarded for a short term mostly foreign owned set of multinational companies who have no interest in the long term workability of the community.

The Water Reform and Other Legislation Amendment Bill 2014 needs to be sent back to the drawing board with a longer and deeper consultation period allowed.

Key points in the draft legislation

Issue	Discussion
A) The Bill has confirmed that the mining tenement holders will also be the "water monitoring authority".	A) If the mining tenement holder is to be the "water monitoring authority" then it is imperative that provision be made in the legislation for independent verification of their results including by Government agencies, landowners and their independent experts.
B) The "water monitoring authority" will have the power to construct and plug bores. It will also have the power to investigate landowner bores. s334ZQ(1) It will also be able to obtain authority to carry out these activities outside the area of its mining tenement.	B) The "water monitoring authority" has the unqualified power to plug a monitoring bore with no qualifications such as safety and no requirement to notify anyone including affected landowners and Government. This will be a most unsatisfactory result if it is done to cover or delay knowledge of a drop in quantity or quality of water
C) The "water monitoring authority" will be the owner of the "water monitoring bore". s334ZZJ	C) This is an unwelcome reversal of the usual rules of ownership.
D) No-one will be allowed to interfere with a "water monitoring bore" without the authorisation of the owner. Severe penalties apply. S334ZZK(1)	D) This section appears to be a discouragement to landowners to conduct their own independent tests and as with the rest of the Bill penalties for offences most likely to be committed by landowners or their experts are at least in the order of magnitude of those imposed for offences most likely to be committed by resources companies or their agents.
E) Baseline testing for a "water monitoring bore" will not be required.	E) That baseline testing for water monitoring bores is not required is extraordinary. The most basic requirement for measuring or recording anything is that there be a measured baseline. This is a requirement of the most basic kind and reflects the undue influence of resources companies on Government. What is also extraordinary and unacceptable are those matters raised by Minister Cripps 11/9/14

	when he introduced the Bill. He states that "The regulatory burden on existing tenures would also be minimised through an exemption from the requirement to produce a baseline assessment plan or an underground water impact report if they are located in an area where the take of underground water is presently unregulated or if they already hold a licence or permit to take."
F) In the event of a dispute provision is made for 30 days negotiation, followed by 30 days for Alternative Dispute Resolution.	F) In the event of a dispute over "make good" provisions and whether a resources company is responsible or not 60 days could become a severe animal welfare problem if a landowner is unable to provide alternative water. All costs and losses should be compensated for in a timely fashion.
G) If no resolution occurs either party can go to the Land Court. The decision of the Land Court is binding on both parties and successive title holders.	G) Considering that the Land Court decision is binding on both parties, the number of issues able to be considered by the land court is limited. If there is any possibility that any landowner is likely to have a cataclysmic water loss, and it is possible, the number of grounds that the Land Court can cover and the orders that it can make need to be deepened and widened. The same applies to access to monitoring information and hydrology where landowners seem to be excluded from any timely and detailed information. The "water monitoring authority "will be the keeper of the up to date information with respect to water monitoring bores which makes them judge, jury and expert witness in the event of a dispute with little available to the landowner in the form of access to independent information**. This issue alone could be the subject of yet another parliamentary inquiry.**
H) The grounds that the Land Court can consider are very limited.	H) There should be no limitations on what matters the Land Court can cover. Considering the importance of the water resource to landowners the Court should be able to obtain any evidence and make decisions on any grounds that it sees fit for a fair and proper outcome.

Make Good Agreements

Currently landowners are required to prove that their water bore was affected by the resources company with no presumption in landowner's favour. Not only has the type of proof required for such an exercise beyond the pockets of most landowners but the ability to access the data necessary has been put even further out of reach by this legislation. The Government likes to forget that resources companies are usually uninvited and unwelcome on landowners property and agreements have precious little in common with "commercial arrangements". Landowners bear much of the uncounted cost of the resources boom in both personal and financial costs, can often be put to great uncompensated expense by the actions of resources companies. Opportunity costs do not even get a Guernsey.

Landowners have been left high and dry by Government when it comes to any protection of their most necessary resource. If water is to be affected there should be built in unequivocal legislative protections and compensation without having to jump through hoops when they have been left without the minimum amount of data to safeguard their businesses.

An ongoing problem for landowners has been the length of time taken by resources companies to drill "make good" bores and some try to get landowners to accept the inferior option of cash compensation. The timeframes to action "make good" provisions should be legislated.

The "make good" arrangements are totally inadequate to ensure the full and fair recompense of affected bore owners in every single case with possible blocks to fair outcomes at every step of the process. With such an impact on the primary resource required by agriculture the Government needs to do more than employ a catchy phrase and give actual legislative grunt to provisions to compensate for such loss.

This Bill has, if anything decreased those rights and the realistic redressing them through the Court system with some institutionalised blocks to running an effective Court case. These institutionalised blocks include the unavailability of data and the lack of independence of the source of the data needed to prepare a case, also the near impossibility of funding independent expert witnesses and the limited grounds that the Land Court can consider.

"Low Risk" resource projects

On the non-requirement of low risk resources projects not to have a requirement to prepare an underground water impact report the discussion paper has this to say,

> *Further, regardless of whether a regulation is made exempting low risk tenures from the underground water impact report requirements, the general obligation to enter a make good with affected bore owners will still apply to the tenure holder. This will ensure that, if there is an impacted bore owner despite the low risk nature of the tenure, the bore owner has the right be made good.*

Be that as it may, in the event of a dispute arising over "make good" arrangements, there will be no available data on which to base a decision. Once again, landowners will be left without the tools to protect their businesses. This has translated into section 370A in the amendment Bill.

Change of date for new infrastructure

The change of date from when a resources lease was granted to when it was applied for as the cut off date for "new" infrastructure is one that should never have been made. In fact to have a cut off for "new" infrastructure which will not be covered by "make good" arrangements at all is to deny the rights of the landowner to a profit making business. Over the say, 30 year life of a resources project there will be an ever increasing pool of

landowners with fewer and fewer viable water options for their business and with fewer and fewer of them covered by "make good" agreements.

Government Responsibility

Property Rights Australia sincerely hopes that a Government of any colour will respond promptly to calls by landowners to have "make good" provisions tightened by legislation. It is our belief that not all possibilities are covered and time will expose many weaknesses in the legislation which will leave some landowners without sufficient protection to continue their businesses in an acceptable and profitable manner.

Landowners should also be warned that to accept cash compensation for a water bore which will be constructed by a third party (not the resources company) brings that bore into the category of "new" infrastructure and may not be covered by future "make good" provisions.

Stock Water

Property Rights Australia would also like to make the point that the lack of past regulation of stock water was based on sound philosophy. The ability to regulate stock water in times of shortage or contamination could mean at almost any time and an unknowing Government could too easily do it causing an animal welfare problem and the necessity to destock. If the last two and a half years has taught us anything it is that the necessity to destock can have dire consequences with respect to stock prices and animal welfare.

Conclusion

Property Rights Australia urges the Government not to pass this Bill and do another more extensive round of consultation, including with potentially affected bore owners and their lawyers.

The change of purpose is unnecessary and unwarranted.

This Bill will not promote the responsible, ongoing use of the State's most valuable resource.

Recommendations

- The Water Reform and Other Legislation Amendment Bill 2014 needs to be sent back to the drawing board with a longer and deeper consultation period allowed.
- Baseline testing for a "water monitoring bore" should be a requirement.
- Water monitoring processes should be transparent, results independently verified and readily available to the public.
- There should be a parliamentary inquiry into "make good" arrangements which examines their adequacy from the point of view of the landowner with all possible limitations to a fair outcome investigated and remediated. This will require extensive consultation with solicitors who work on behalf of landowners and a recognition given that there will always be room for improvement.
- There should be no limitations on what matters relating to the water resource that the Land Court can cover

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