

**STATE DEVELOPMENT, NATURAL RESOURCES AND AGRICULTURAL  
INDUSTRY DEVELOPMENT COMMITTEE**

**REPORT NO. 4, 56<sup>th</sup> Parliament ON THE**

**MINERAL, WATER AND OTHER LEGISLATION AMENDMENT BILL 2018**

**QUEENSLAND GOVERNMENT RESPONSE**

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**INTRODUCTION**

On 15 February 2018, the Mineral, Water and Other Legislation Amendment Bill 2018 (the Bill) was introduced to Parliament. The Bill was subsequently referred to the State Development Natural Resources and Agricultural Industry Development Committee (the committee). On 9 April 2018, the committee tabled its report no. 4, 56<sup>th</sup> Parliament 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 the Mineral, Water and Other Legislation Amendment Bill 2018 be passed.

**Government Response**

The government notes the recommendation that the Mineral, Water and Other Legislation Amendment Bill 2018 be passed and thanks the committee for its thorough consideration of the Bill.

**Recommendation 2**

The committee recommends that the Minister in his second reading speech clarify the effectiveness of the current arrangements in addressing compensation for landholders who do not have resource tenure activity on their land but may be affected by the impacts of such activity.

**Government Response**

The government supports the recommendation. The Minister for Natural Resources, Mines and Energy will clarify the effectiveness of the current arrangements in addressing compensation for landholders affected by resource tenure activities that are taking place on nearby properties in his second reading speech.

### **Recommendation 3**

The committee recommends that:

- the Department of Natural Resources, Mines and Energy develops an extensive suite of educational material regarding the arbitration process and that this material be readily available and easy to find on the Department of Natural Resources, Mines and Energy website
- the Department of Natural Resources, Mines and Energy conducts information sessions with peak bodies, key stakeholder and affected communities to provide, and advertise, the availability of this material
- the Department of Natural Resources, Mines and Energy reports to the committee in November 2018 on the development and distribution of this material.

### **Government Response**

The government supports the recommendation and will implement these measures as part of the broader update of land access materials such as the 'Guide to Land Access in Queensland' and the Land Access Code.

The Department of Natural Resources, Mines and Energy will also work collaboratively with the Department of Environment and Science to implement this recommendation for make good agreements as appropriate.

### **Recommendation 4**

The committee recommends that proposed s 91C be removed and that the Bill be amended so that parties have the right to legal representation during arbitration.

### **Government Response**

The government supports this recommendation.

The amendment contained in the proposed s91C relates to recommendation 8 of the Independent Review of the Gasfields Commission Queensland and Associated Matters. The policy rationale for including this amendment is to provide a lower-cost and less adversarial process for arbitration of land access matters.

The government acknowledges the significant stakeholder concern about the potential for parties to be unable to access legal representation in arbitration. The government will move amendments during consideration in detail to give effect to this recommendation.

The government will also move amendments during consideration in detail to implement the recommendation in relation to the arbitration process proposed for make good agreements under the *Water Act 2000*.

### **Recommendation 5**

The committee recommends that the Department of Natural Resources, Mines and Energy collaborates with stakeholders to investigate developing a methodology to determine reasonable landholder time-related costs and how this could be included in legislation.

### **Government Response**

The government notes the recommendation. The issue of landholder time-related costs has been extensively investigated in recent years.

In 2013, as part of the Land Access Implementation Committee Report process, an independent 'Review of the heads of compensation for land access in Queensland' was completed by Sinclair Knight Merz (SKM).

This review found that there is no generally accepted compensation mechanism to assess or quantify the economic loss incurred by landholders when negotiating a conduct and compensation agreement (CCA). The report also noted that often, landholder time is included within the compensation received in a conduct and compensation agreement, but that this is often not clearly outlined to landholders. Three potential mechanisms by which landholder time could be calculated were proposed by the report, with one approach recommended.

The Land Access Implementation Committee reviewed the SKM report, but did not recommend the adoption of the report's proposed mechanism for reasonable landholder time-related costs. The Committee considered that "landholder/resource authority holder negotiating practice is evolving naturally with more experience and education." As a result, the Committee considered that "it would not be prudent for the government to intervene in this evolution and further legislate heads of compensation" as it would likely lead to dysfunctional outcomes, rather than encouraging the aspects of positive behaviour taking place in the agriculture and resource sectors.

Further, while the issues related to landholder time were not able to be included in the scope of the Independent Review of the Gasfields Commission Queensland, the report outlined that, with the adoption of its recommendations on the statutory negotiation process for conduct and compensation agreements, the time invested in negotiations should be shortened. These recommendations, as adopted in the Bill, will establish an efficient pathway for reaching an agreement.

To further support and limit the impact on a landholder's time, the Department of Natural Resources, Mines and Energy will continue to support industry stakeholders in developing a standardised conduct and compensation agreement. This will help parties to understand the matters they should consider and reduce the time taken to negotiate conduct and compensation agreements.

Additionally, the communications materials developed by the Department of Natural Resources, Mines and Energy, including the 'Guide to Land Access in Queensland', will be revised to better assist stakeholders to negotiate conduct and compensation agreements in a more timely manner.

### **Recommendation 6**

The committee recommends that the Bill be amended to:

- remove proposed s 91 from cl 46 of the Bill
- retain the current provisions with respect to professional costs as set out in s 81(4)(b) of the *Mineral and Energy Resources (Common Provisions) Act 2014* (under cl 38 of the Bill), with a minor amendment to include the costs of an agronomist as follows:
  - 81(4)(b) accounting, legal or valuation or agronomist costs the claimant necessarily and reasonably incurs to negotiate or prepare a conduct and compensation agreement, other than the costs of a person facilitating an ADR.

### **Government Response**

The government notes the recommendation.

The Committee's recommendation was based on alternative drafting recommended by the Queensland Law Society to address concerns that the separation of the requirement to cover a landholder's necessarily and reasonably incurred legal, valuation, accounting (and now agronomist) costs from the general compensation liability under section 81 will have unintended consequences. Other stakeholders, including Shine Lawyers and Mr Tom Marland, also submitted that the requirement to cover a landholder's necessarily and reasonably incurred costs should remain within the general compensation liability that resource authority holders owe landholders under section 81.

The proposed section 91 implements recommendation 9 of the Independent Review of the Gasfields Commission Queensland and Associated Matters. The Review identified that under the current drafting of the *Mineral and Energy Resources (Common Provisions) Act 2014*, landholders cannot recover these costs unless they have reached an agreement. The Review identified that this unfairly requires landholders, who were legally compelled into negotiations, with the responsibility to cover these costs if the resource authority holder walks away from negotiations.

At present, the term 'compensation liability' as defined in section 81 of the of the *Mineral and Energy Resources (Common Provisions) Act 2014* only covers compensatable effects which are caused by authorised activities. This means there is no compensation liability where conduct and compensation agreement negotiations have been abandoned and no authorised activities occur.

The intent behind moving the requirement to cover these costs into a separate section was to ensure that landholders are able to recover the costs from the resource authority holder even where negotiations do not result in a conduct and compensation agreement.

The Department has received further correspondence from the Queensland Law Society regarding this recommendation. This further correspondence suggests additional changes to section 91 of the Bill that seek to clarify the timeframe in which negotiation and preparation costs can be necessarily and reasonably incurred.

The government will continue to work with the Queensland Law Society and other relevant stakeholders, regarding these proposed further changes.

### **Recommendation 7**

The committee recommends that the Minister for Natural Resources, Mines and Energy clarifies, during his second reading speech, the timeframe proposed for an official to report on a direction given to a relevant entity to take action on a water quality issue.

### **Government Response**

The government notes and accepts the recommendation and will provide clarification in the Minister's second reading speech of the proposed timeline for an official to report on a direction given to take action on a water quality issue. The government acknowledges the importance of providing clarity and transparency to stakeholders and the community in the way these new direction powers are used.

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