PROPERTY RIGHTS AUSTRALIA
STAND YOUR GROUND

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Link to submission portal: https://www.qlrc.qld.gov.au/reviews/mining-lease-objections-processes-review/submission

RE: Property Rights Australia Submission on Mining Lease Objections Review

Property Rights Australia was formed in 2003 to uphold the rights of landowners unfairly charged with vegetation offences. Of fourteen court cases supported, our members won thirteen and one was dismissed.

Since then, the range of legislation and regulation which negatively impacts landowners has grown exponentially. Not least of these impositions is the forced marriage of landowners and resources in the form of government mandated co-existence. It is an uneven partnership and landowners need robust processes and systems to help compensate for that power disparity.

Replacing an adversarial process with a non-adversarial process to compensate for failed negotiations is not the answer.

Many of the very real listed shortcomings of the process are administrative in nature or would require a reasonably simple legislative change. This applies to many of the excellent points at #35 to #48. For example, allowing landowners to update their evidence as knowledge or circumstances change to align with the rights of the miner should be a relatively simple change.

Landowners, who are often hugely impacted by resources industries, need to be front and centre at every level of this process which does not seem to be the case.

Property Rights Australia while acknowledging the limitations of the present system, has grave doubts about most of the suggested models. An independent, enforceable, merit based process available to affected parties, is essential.

It has always been a problem that in the objections process landowners cannot vary their evidence in spite of changes of situation and new knowledge while miners can vary their evidence at all stages including variations to mining tenements and environmental authorities. This is clearly not fair and objectors should be able to introduce and respond to new information.

The rights of landowners should always be paramount. They are the people who, uninvited, are hosting resources and not only landowners in the footprint or used as access. Neighbours can also be affected and this also needs acknowledging.

In the consultation paper discussion, concern is shown for every possible community group. The legitimate rights of landowners seem to be a peripheral consideration.

As the situation stands, compensation is only for actual damage, or, in some rare cases, time. All landowners report that interactions with resources companies cost them a great deal of time which keeps them from their primary job. This is mostly uncompensated.

Many of the suggested models are offering suggestions which will take a significant amount of time in consultation or submission writing with no knowledge of effectiveness.

Landowners have become very resistant to spending time participating for unknown results.

Actual harm is often not fully compensated or is difficult to get.

Landowners seem to be the forgotten people and yet the harm that can be caused to their businesses can be extensive. Miners often have a lack of understanding of their 'General Biosecurity Obligations' when traversing a property. There needs to be better adoption of protocols to align with a property's Farm Biosecurity Plan and the local government's Biosecurity Plan. Land Court personnel lack expertise in biosecurity matters and tend to only consider regulated biosecurity matters and not industry-led biosecurity (e.g. Livestock Production Assurance systems for red meat production).

It is unfair that landowners bear the cost of objecting to mining leases and environmental authorities including for expert advice when these co-tenants are uninvited and often uncooperative and cause significant damage. Property Rights Australia is not sure what system can be put in place unless it is for availability of funding modelled on the EDO which once sometimes acted for landowners but now seems intent on green lawfare.

All of the suggested models have limitations to them.

#92 to #95. Widespread "consultation" meetings, whether conducted by the mining companies or the department would be considered lightweight and a waste of time as history has shown that they are mostly characterised by poor information, lack of transparency and are regarded as a "tick a box" exercise where wishes and concerns of landowners are not covered extensively and not listened to. It would not be robust enough to take the place of any present right. They are not designed to put all the issues and possible solutions on the table.

They certainly do not address emerging issues.

#96 to #98. Another proposed solution is to have a committee appointed by the government. That is a definite no. Firstly, landowners need to have a clear passage to object in their own right and not through a third party nor representative committee. In addition to this, governments can, and in some cases have, appointed to committees, people who will advance their own agendas.

99. Even a "community leader" has most of the limitations of previous models. Coexistence Queensland tends to align with government policy, rather than be a fully independent body focusing on solving coexistence issues. Landowners, as the primary host of the resources industry must have a direct right to object and be heard.

#105 to #107 "If the IPC holds a public meeting, there is a right of merits review of its decision in the NSW Land and Environment Court. If it holds a public hearing, there is not.50"

Property Rights Australia will not agree to any mechanism which excludes a merit based review.

"#57. We are proposing a new Independent Expert Advisory Panel (Page.13). The panel would be comprised of experts that would form a project-specific committee ('Independent Expert Advisory Committee') for environmental authority applications that meet specified criteria. The Independent

Expert Advisory Committee's advice would enhance the evidence base for decisions as well as the quality, consistency and transparency of the decision-making process."

While Property Rights Australia has huge respect for bodies such as the federal Independent Expert Scientific Committee (IESC), it is possible to come up with examples of other bodies, that are political or agenda driven appointments. The federal IESC also does not give advice to governments, either state or federal. They just present the evidence and governments make the decision.

Before commenting positively on this proposal, PRA would need to know how influential such a body would be, whether it was offering scientific advice only or giving an opinion on that advice. We would also need to know criteria for appointment.

So far, we are just being told that decision makers must consider community advice and the advice of the expert committee. Landowners need specific rights to influence the decision makers.

No committee or community leader can represent all the competing and conflicting interests in a mining lease and environmental authority.

Community groups have shown that they can cause considerable upset and delay to approval processes. Their concerns need to be site specific, genuine and supported by evidence. If they employ delaying tactics, the decision makers should no longer be required to listen to them and the group loses its standing

"#112. For example, while a landholder has no right to refuse mining access to their land, they have a right to compensation. A mining lease cannot be granted unless the miner and landholder agree on compensation or the Land Court determines what amount should be paid.

The compensation must address matters such as the deprivation of land, diminution of land value and loss or expenses arising from the mining project. Unlike the conduct and compensation agreements that must be made with landholders for a petroleum operation, mining agreements do not address the conduct of the miner, which is dealt with by conditions of either or both the mining lease and environmental authority (Pages 23 & 24)."

Although a mining lease cannot be granted until the miner and the landowner agree on compensation, there are strict guidelines and timeframes such that the process is in no way a real negotiation but more of a process of getting it done with a gun to the landowner's head. The option of a Land Court or other merits based court process must remain.

There also needs to be a way of enforcing compensation and conditions when miners play fast and loose with landowners which is a not infrequent occurrence. Only a court process can do this. Removal of that process will only encourage bad behaviour.

#114 Removing the Land Court hearing and not replacing it with a formalised court process including merit based review is not satisfactory to PRA. The "alternative processes" cannot and must not replace the Land Court. Just because a process is used infrequently does not mean that it should be abolished. Alternate non-adversarial processes will not have any deterrent effect on either party in a compensation negotiation.

Right to compensation needs to be extended to affected neighbours from mining activity (e.g. subsidence) and also include mining prospectors.

Mining compliance staff should be joint authorised officers under the Mineral Resources Act 1989 and the Biosecurity Act 2014 to assess miner conduct to ensure no breaches from mining activity, land use and biosecurity.

#113. The Land Court's recommendation on the applications may influence the compensation agreed or determined. Further, the Government decision-maker will be a party to, or aware of, agreements or determinations made under the native title processes. The 'future acts' regime under the Native Title Act 1993 (Cth) is currently under review by the Australian Law Reform Commission.(page 24).

#114. Removing the Land Court objections hearing means the Land Court recommendation cannot influence the compensation or native title processes. We must consider whether replacing the objections hearing with alternative participation opportunities is sufficient to address these private interest concerns."

"Alternative participation opportunities" is definitely not sufficient to address private interest concerns.

Having the right to a court case, whether it be merits based or a judicial review or a combination of both, after the decision makers have made their decision feels like a formality which is unlikely to be listened to.

We would need to know how much weight would be given to landowners' rights by decision makers by every stage and by every mechanism.

"Reasons for decision, other than for the Land Court recommendation, are not publicly available."

All reasons for decisions, whether they are evidence based or political should be publicly available. That "decisions by the Coordinator-General can bind other decision makers, including a Minister, with no right of review," is something that Property Rights Australia would strenuously object to. We would vigorously assert that the Minister, and NOT a bureaucrat should bear ultimate responsibility. They are voted in by the public to take on that role. They are able to take as much advice as they require.

#178 to #186. We offer no evidence on indigenous presentations as it is outside our area of expertise.

Legislate a subsidence management and compensation framework

Subsidence from coal seam gas mining has been confirmed as a direct impact across high value cropping areas in Western Downs, Queensland. Land sinks permanently which alters surface water flows. Directional drilling can result in subsidence occurring on neighbouring properties, who currently have no rights to compensation. Neighbours have borne massive costs in labour, machinery, fuel, damage and suffered mental stress. Subsidence and earthquakes caused by geothermal energy mining needs to be included in mining objection and compensation legislated guidelines. There needs to be proper governance, oversight, accountability and transparency of CSG and geothermal miners. Environmental regulators need power to take action against miners causing subsidence.

Other Acts

Greenhouse Gas Storage Act 2009

"Unlike for mining lease applications, there is no opportunity to object to applications for the grant of resource production authorities under the Greenhouse Gas Storage Act 2009, the Geothermal Energy Act 2010 or the Petroleum and Gas (Production and Safety) Act 2004. The objections process that applies to environmental authorities associated with mining leases under the Environmental Protection Act 1994 does not apply to environmental authorities for these resource production authorities, although in certain situations there is a process for public notification as part of the application and some rights of internal review and appeal. QLRC have been asked to consider whether any changes we recommend to the objections process for mining leases and associated environmental authorities should apply to applications for resource production authorities under those Acts." mining-lease-objections-review-background-paper-1.pdf (qlrc.qld.gov.au) p6

Property Rights Australia would like to comment on the Greenhouse Gas Storage Act 2009.

The proposal by Glencore subsidiary CTSCo, to pump liquefied carbon dioxide into the Great Artesian Basin showed that the Australian public and politicians have enormous knowledge gaps about the risks involved in such a proposal.

[redacted]

A fast learning curve by the agricultural community and a strong stand, as well as sourcing scientific literature from a multitude of sources showed that the risks can indeed be very great.

Never again should any Australian government seek to make such a wide ranging and dangerous decision without the benefit of thorough scientific briefings from multiple sources.

Never again should any aquifer be threatened with this sort of use.

Objections to such proposals must be formalised.

Conclusion

This submission is by no means exhaustive and Property Rights Australia would like to signal its wish to make further commentary on the process as the picture becomes clearer.

Property Rights Australia has no objections to its submission being quoted or made public.

[redacted]

PRA Director