

Wednesday 21 April 2010

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Mining bill must be delayed

The NSW Farmers' Association is calling for a delay in the Mining and Petroleum Legislation Amendment Bill currently before the NSW Parliament.

NSW Farmers' Association President Charles Armstrong said the speed in which the State Government intends to push the Bill through Parliament is of great concern and more time is needed.

"The Association requests that the Bill be circulated by Government for proper consultation and review by interested and affected parties so that appropriate attention is given to this important matter," Mr Armstrong said.

"A delay of three weeks, to the next sitting of Parliament, is not unreasonable given the potential severity of impact from the proposed Bill as it currently reads," Mr Armstrong said.

The Government is today seeking to revoke a recent Supreme Court decision and Land and Environment Court decision, both of which sort to support farmers' property rights and ensure landholders were properly consulted.

"This issue is complex and the Association is concerned that on first glance the proposed Bill may contain some unintended adverse consequences that could grossly abuse our Members property rights, long term on-farm management issues, ongoing property values, and the local environment and water systems," Mr Armstrong said.

"The Supreme Court decision provides greater certainty of the rights of farmers whose land is covered by an exploration agreement.

"This judgment was concluded after careful consideration of the facts and evidence presented to the court.

"If the Government is seeking to reverse these court decisions through this Bill, then careful consideration by the Parliament with input from all interested parties is absolutely vital," Mr Armstrong concluded.

A copy of the open letter to the NSW Parliament is attached.

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Charles Armstrong
President

21 April 2010

OPEN LETTER TO MEMBERS OF PARLIAMENT

Re: Mining and Petroleum Legislation Amendment (Land Access) Bill 2010 ("the Bill")

The NSW Farmers' Association (the 'Association') requests that the Bill be deferred for appropriate consultation over the next three weeks. The technicalities and complexity of this Bill necessitates a consultation period and the deferment of the decision. The Association is concerned with the speed with which the Government intends to push the Bill through Parliament.

On first glance, the proposed Bill may contain unintended adverse consequences that may grossly abuse:

- our Members property rights;
- long term on-farm management;
- ongoing property values; and
- the local environment, water systems and underground aquifer systems in NSW.

Firstly, limiting the definition of "landholder" to a person who has exclusive possession or a right to exclusive possession of a property and removing the requirement for exploration companies to negotiate access arrangements with easement holders or mortgagees, seeks to completely reverse the recent NSW Supreme Court decision in *Brown & Anor v Coal Mines Australia Pty Ltd* [2010] NSWSC 143 ('*Brown*') where the landholder's rights were upheld by the Honourable Justice Schmidt, and BHP Billiton's license to explore for coal on the landholder's property were deemed invalid due to a lack of consultation with all landholders.

It is the view of the Association that the Supreme Court decision provides greater certainty of the rights of farmers whose land is covered by an exploration agreement. Furthermore, the judgment was concluded after careful consideration of the facts and evidence presented to the Court. Various perspectives were given the opportunity to be heard and analysed over time. If any reversal of this decision is sought by the Government and the Parliament of NSW careful consideration with input from all interested parties is vital.

The proposed Bill raises questions as to whether leaseholders or even squatters may be deemed to potentially have exclusive possession or a right to exclusive possession over land, so would the proposed amendments to the Bill seek to allow these parties to have the right to enter into access agreements with mining companies?

Secondly, another interpretation of the Bill may be that it nullifies a recent decision by the Land and Environment Court, *Rosane Pty Ltd v T & P Clarke* that exploration licence conditions should and can be attached to access agreements.

The result of these two aforementioned judgments has been a significant improvement of landholder rights with regard to mining exploration. So a fulsome review of the proposed Bill needs to be undertaken with an area of express interest being the proposed amendments to Section 141.

Thirdly, proposed amendments to s158 also pose some concerns. Presently access agreements terminate when a bound landholder either ceases to be a landholder, or dies. Significantly the Bill seeks to provide that access agreements with two or more parties do not terminate if one party ceases to be a landholder. Rather, in the circumstance in which the land under an access agreement changes landholders, the agreement will continue to operate until it is replaced by a new agreement, whether by agreement, or by the determination of an arbitrator or the Land and Environment Court. This amendment could result in significant impacts to property values should the landholder seek to sell their property.

The Association therefore supports the Opposition's call for deferral of the Bill to the next sitting week to allow for proper consultation and review by interested and affected parties so that appropriate attention is given to this important matter. A delay of three weeks is not unreasonable given the potential severity of impact and unintended consequences from the proposed Bill as it currently reads.

Yours sincerely

A handwritten signature in cursive script, appearing to read 'C. J. Armstrong'.

Charles Armstrong

PRESIDENT