INFORMATION STATEMENT

10 September 2012

FARMERS IGNORED IN LATEST MINING POWER PLAY

An amendment bill which went through parliament last week without any apparent consultation with peak landholder groups could see hundreds of Queensland farmers now unable to claim compensation for the impacts of coal seam gas and other petroleum development on their business and lifestyles.

An Environmental Authority issued to a petroleum tenure holder gives approval for the petroleum tenure holder to cause harm and the tenure holder is obligated to compensate each owner and "occupier" for damage.

In a change (via the Streamlining Mining Amendment Bill) that was considered "minor" by the Government, the definition of the "occupier" of the land was altered in the Petroleum and Gas (Production and Safety) Act 2004. The change effectively means that farmers who operate their businesses through family trusts, companies or partnerships without formal leasing arrangements in place may find themselves ineligible for compensation for the business impacts they suffer as a result of resource development.

The definition of "owner" is clear. It just involves referring to the registered owner on the title to the Land.

Prior to the amendments the definition of "occupier" in the Petroleum and Gas (Production and Safety) Act 2004 was also clear and made common-sense – it read "*an occupier of a place includes anyone who reasonably appears to be, claims to be or acts as if he or she is, the occupier of the place.*"

The amended wording of this act now effectively means the only "occupiers" able to claim are those with registered leases or people they give rights to.

BSA believes that the previous definition of "occupiers", whilst not ideal, at least covered many people suffering loss and damage without requiring the technicality of a registered lease.

"The definition change will restrict who can claim compensation for compensatable effects and future losses over the life of the tenure to those who comply with the new technicality. This will catch many people off guard and force those who are made aware of it, to make the decision as to whether they want formal leases in place for their family trusts, companies and partnerships etc. Often there are good reasons behind people not registering leases for these entities and registering leases over properties can be complex.

The reality is the definition change will benefit industry and it has been slipped through in legislation without consultation under the guise of providing consistency in regulation by bringing the definition in line with that under the Minerals Resources Act. Yet again, it seems important changes that strip landholders of rights are rushed through or hidden in legislation and not openly discussed.

As far as we understand, there was no active consultation with landholders, landholder lawyers or farming peak bodies on this change.

As a simple example, under the new "occupier" definition, a family trust not registered on the land title which owns a wheat crop that suffers loss, such as from the repair of an underground pipeline, would be ineligible to claim compensation for damages under the new wording. The owner would have no claim either because he didn't suffer damage. Why should this be so convoluted? Surely if damage is suffered by anyone it should be compensated?

Anecdotal evidence that BSA has sourced from local accounting and legal firms, infers that possibly more than 80% of farming businesses (family trusts, companies, partnerships and sharefarmers who don't have formal leases) could be affected by this change.

It is so ironic that in this, the "Year of the farmer", we are seeing yet another change that eases the path for mining while adding more cost, more confusion and more stress to the average farmer.

BSA believes that compensation should be payable to **all** parties who are impacted by petroleum activities and not made subject to convoluted rules that see some miss out because they technically don't qualify but clearly suffer impact or damage . BSA has obtained legal advice that the amendment could also complicate the position of many Conduct and Compensation Agreements already in place and drawn up when the prior definition of "occupier" was in place and impact in other ways that could be problematic for landholders.

BSA is *demanding* the Government bring an *urgent* amendment to return the "occupier" definition to what it was previously and to ensure landholder rights aren't continually eroded, let alone without consultation and forewarning. We expect government to be protecting our interests too.

It is common practice for Mum and Dad to own the property and a family trust or partnership to operate the farming enterprise. However, it is unusual for there to be a formal registered lease in place between the two entities. It is not just a case of "do up a lease" to overcome this problem. It is often a deliberate strategy not to tie parties in to set time frames or formal arrangements. Often the family or families living and working on the property are not the "registered owners".

Registering a lease may add financial and emotional strain to a business with legal costs to be paid and potential complications with determining the period of the lease and issues with excluding the family home where the occupier and owner are different entities.

BSA urges the government to ensure that landholders are not ignored in these processes. Recognition must be given to the lack of financial capacity for landholders to constantly be monitoring these issues when they only stand to lose as opposed to industry which stands to gain billions. We must rely on the government to protect our interests or alternatively to fund peak landholder groups so that landholders have genuine and meaningful input.

ENDS