

## Peter Shannon

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**From:** Peter Shannon  
**Sent:** Wednesday, 5 September 2012 4:29 PM  
**To:** Peter Shannon; Joshua Aylward  
**Subject:** Government Strips Compensation Rights  
**Attachments:** GOVERNMENT STRIPS COMPENSATION RIGHTS.pdf

To those members of the press that remain interested in landholder concerns we comment as follows:

As usual, the mining industry gets its way, with a further sleight of hand under the Mines Legislation Streamlining Amendment Act 2012. Yet again there is little insight or consideration given to the legal implications for landholders of the evolving legal framework that keeps eating away at landholder rights.

Do the National Party members of the current Parliament realise that yet again landholders have lost rights on what appears to be innocuous legislative drafting? Who is looking at things from the necessary landholder legal perspective – in fact is anyone?

The amendments mean that Landholders who operate their businesses through Family Trusts, Companies or Partnerships will be ineligible to claim compensation for losses they suffer from CSG activities unless they have formal registered leases in place, which most do not. Entering into leases is not a straightforward matter and involves a raft of planning and other issues that may make it undesirable.

Government must start looking at these things more carefully if they are genuine about protecting Landholder interests or getting it's perceived "balance" right.

A summary of the position is attached but the explanation as to the law is as follows -

The right to compensation under the Act is in sect 532(1). That allows only "owners" and "occupiers" to claim (as "eligible claimants").

An "owner" is defined as you would expect – "a registered owner"

The problem is the definition of occupier is very specific. As a result of the change now effected, it now reads as follows:

*occupier, of a place, means a person-*

*(i) who, under an Act, or, for freehold land, a lease registered under the Land Title Act 1994, has a right to occupy the place, other than under a mining interest, petroleum tenure, licence*  
*.....;or*

*(ii) to whom an occupier under paragraph (a) has given the person the right to occupy the place.*

Nowhere in there (ii above especially as it only relates to rights given by lessees), is there provision for someone who the OWNER has given the right to occupy the place – eg a family trust etc. Oddly enough if a registered lessee had given the right to them to occupy then the Family trust would be able to claim.

Now this is how the section read **before** the "Streamlining" legislation was passed:

*occupier-*

*1 Other than for chapters 9 and 10, a person is the occupier of a place only if-*

*(i) the person has a right to occupy the place, other than under a mining interest, petroleum authority, 1923 Act petroleum tenure, GHG authority or geothermal tenure; or (ii) an occupier under subparagraph (i) has given the person the right to occupy the place.*  
**2 For chapters 9 and 10, 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.**

Notwithstanding the Explanatory Notes to the Bill suggesting that this was only a 'minor amendment', the problem for Landholders is obvious. Even that doesn't do the issue justice. It now creates a whole raft of landholder problems (as do so many aspects of the new framework):

- 1 What law now governs existing CCA's – those before the changes or those after?
- 2 Are CCA's that covered people who were previously Occupiers but are not now, now "inconsistent" with the Act? Given that the Act expressly forbids CCA's to be inconsistent with it, are those provisions now unenforceable? For instance, if they allowed an unregistered family trust to claim compensation for a material change in circumstances (a right afforded them previously), is that now invalid?
- 2 If there are contractual indemnities to pay the owner for crops lost when repairs are done to underground gathering lines, are they now effectively unenforceable because the Trust suffers the loss and not the owner?

No doubt it serves industry well to have this confusion – as it did for so long when trigger thresholds were not set for 7 years.

These issues arise constantly. There are a raft of complex legal issues in relation to CCA's. The evolving legislation is creating a complex legal nightmare and nothing is being done about it. The industry cannot come at any cost and the progressive erosion of landholder rights is intolerable.

If government is serious it either makes all CCA's able to be reopened at any time they have proven unjust or they need to be putting on landholder legal glasses as well whenever they rush through changes at the behest of industry.

For any queries, please contact our Peter Shannon or Joshua Aylward.

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## GOVERNMENT STRIPS COMPENSATION RIGHTS

The Queensland Government, in their wisdom, made amendments to the *Petroleum and Gas (Production and Safety) Act 2004* last Wednesday 29 August 2012.

The motive behind some of these amendments is questionable, however it is our opinion that the slyest amendment is the change to the definition of 'occupier'.

By way of summary, a CSG company has an obligation to compensate each owner and occupier of the Land for the compensatable effects (i.e. diminution of value, cost, loss, damage etc.) they suffer because of the company's activities.

Last week, the definition of occupier changed from 'a person who has the right to occupy a place...' to 'a person who, under an Act, or, for freehold land, a lease registered under the Land Title Act 1994, has a right to occupy the place...'. Up until last week, a CSG company had an obligation to negotiate with and compensate:

1. Owners of the Land; and
2. Occupiers of the Land, which included anyone who had a 'right to occupy' the Land, being companies, family trusts, partnerships and other like arrangements.

With the amendments, a CSG company only now has the obligation to compensate:

1. Owners of the Land; and
2. Occupiers of the Land, which is essentially just those with a registered lease.

The government explanation for the change is:

"The Bill also contains a minor amendment to the definition of 'occupier' in the *Petroleum and Gas (Production and Safety) Act 2004*, to fix an inconsistency with other resource legislation."

This so called 'minor amendment' has effectively stripped every family trust, partnership, company etc., who runs an operation on the Land, of their entitlement to compensation unless they happen to be the owner of the Land or if they have a lease registered on the title, which most do not.

The majority of landholders in Queensland operate their properties with family trusts, companies and/or partnerships with unregistered leases, and it is these entities who have been stripped of their right to compensation.