

**SUBMISSION TO THE INFRASTRUCTURE, PLANNING AND
NATURAL RESOURCES COMMITTEE
MINERAL AND OTHER LEGISLATION AMENDMENT BILL 2016**

5 APRIL 2016

Research Director
Infrastructure, Planning and Natural Resources Committee
Parliament House
George Street
Brisbane
QLD 4000

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Dear Sir/Madam

The Queensland Farmers Federation extends its gratitude to the Chair of the Infrastructure, Planning and Natural Resources Committee for the opportunity to make a submission to the inquiry on the *Mineral and Other Legislation Amendment (MOLA) Bill 2016* which seeks to introduce changes to the *Mineral and Energy Resources (Common Provisions) Act 2014 (Qld)*.

Queensland Farmers' Federation (QFF) is the peak body representing and uniting 16 of Queensland's rural industry organisations who work on behalf of primary producers across the state and represents the interests of all farming sectors across Queensland. QFF's mission is to secure a sustainable future for Queensland primary producers within a favourable social, economic and political environment by representing the common interests of its member organisations. QFF's core business centres on resource security; water resources; environment and natural resources; industry development; economics; quarantine and trade.

Our goal is to secure a sustainable and profitable future for our members, as a core growth sector of the economy. Our members include:

- CANEGROWERS,
- Cotton Australia,
- Growcom,
- Nursery and Garden Industry Queensland,
- Queensland Aquaculture Industries Federation,
- Queensland Chicken Growers Association,
- Queensland Dairyfarmers Organisation,
- Queensland Chicken Meat Council,
- Queensland United Egg Producers,
- Flower Association of Queensland Inc.,
- Pork Queensland Inc.,
- Australian Organic,
- Pioneer Valley Water Co-operative Limited,
- Central Downs Irrigators Limited,
- Burdekin River Irrigation Area Limited, and
- Fitzroy Basin Food and Fibre.

Over 307,000 people are directly employed in agriculture across Australia, of which over 55,000 are employed in Queensland¹ making it the largest employer in rural and regional communities. Australia's 135,000 farmers produce enough food to feed 80 million people providing 93% of the domestic food supply, and supports an export market valued at more than AU\$41 billion per annum (over 13% of export revenue)².

Scope of Review

The Queensland Farmers' Federation (QFF) understands that the primary policy objectives of the *Mineral and Other Legislation Amendment (MOLA) Bill* are to amend the *Mineral and Energy Resources (Common Provisions) Act 2014 (MERC Act)* to:

- repeal yet to commence provisions within the *MERC Act* which limit notification and objection rights for mining projects;
- include key agricultural infrastructure within the definition of restricted land;
- enshrine the distances for restricted land in the primary legislation;
- repeal the proposed change which would have allowed a mining lease to be granted over restricted land where landholder consent has not been given and compensation has not been agreed; and
- remove the Minister's power to extinguish restricted land for mining lease applications where coexistence is not possible on proposed mining sites.

QFF understands that if the Bill is enacted, existing public notification requirements and objection rights for standard or variation applications for environmental authorities for mining activities will be retained. Mining lease applications will be required to be publicly notified in an approved newspaper, so that notification is no longer limited directly to affected persons. The changes mean any entity can object to a mining lease application under the *Mineral Resources Act 1989* on the existing grounds set out.

QFF welcomes the State Government's move to reinstate landholder rights to protect selected farm infrastructure from mining and petroleum activities. The changes to the 'restricted land' framework will give landholders the right to oppose resource activities close to agricultural infrastructure such as stockyards and particular water supply operations, and fulfills an election commitment by restoring safeguards for selected agricultural infrastructure from mining and petroleum operations.

QFF believes that it is essential that agricultural industries and those working within them are afforded the same rights to protect their homes and business assets (including all infrastructure) from resource activities; as other members of the community already possess.

Specific Comments

Definition of 'restricted land': The application of definitions from the *Environmental Protection Regulation 2008*.

Clause 7 (*MOLA Bill*) amends the definition of restricted land provided in section 68 of the *MERC Act* to include the distance from an area, building or structure where restricted land applies. It also amends the section to include selected agriculture infrastructure within the definition of restricted land.

¹ Queensland Treasury and the Department of Education and Training, Jobs Queensland Occupational Data, 2016.

² Australian Bureau of Agricultural and Resource Economics and Sciences. (2014). Agricultural Commodity Statistics.

Section 68(1)(a) is amended to provide that where the resource authority is an exploration resource authority or a production resource authority, land within 200 metres of a permanent building used for particular purposes, or within 200 metres of an area used for particular purposes, is restricted land. This section provides that for the purpose of applying restricted land: - a permanent building used for the purpose of a residence, a childcare centre, a hospital, a library – or for community, sporting or recreational purposes or a place of worship or business; and - **an area used for the purposes of a school, aquaculture, intensive animal feedlotting, pig keeping or poultry farming within the meaning provided under the Environmental Protection Regulation 2008, Schedule 2, Part 1.**

It is noted that Environmentally Relevant Activities (ERAs) are defined under section 18 of the *Environmental Protection Act 1994 (EP Act)*. An activity may be prescribed as an ERA if it will or may release a contaminant into the environment when the activity is carried out, and the release of the contaminant will or may cause environmental harm. Noting that provisions of the Reef Protection Program include cane farming and grazing land as ERAs within designated catchments (see section 65, *EP Act*) which have not been included within the *MOLA Bill 2016*. These regulatory definitions (as defined under the ERA framework) are limited to facilities which have the potential to negatively impact the environment, as opposed to critical farming activities and related infrastructure which may be impacted by incompatible or unsympathetic land uses. As such, the use of these ERAs omits other critical agricultural infrastructure which requires the same protections.

For example, ERA 1 (Aquaculture), 2 (Intensive Animal Feedlotting), 3 (Pig Keeping) and 4 (Poultry Farming) as defined in the *Environmental Protection Regulation 2008*, are considered ERAs due to the risk of release of contaminants into the environment when the activities are carried out. This is reflected by the Environmental Emission Profiles (EEPs) which were used to calculate the 'Annual Environmental Emission Scores'³ which, in turn, inform annual fees. EEP's also inform the application of thresholds levels to these ERAs.

QFF notes that the Green Tape Reduction Initiative in 2012-13, deleted some of the smaller thresholds for critical farming activities from these ERAs. For example, the minimum 'pig keeping' threshold was increased to 400; minimum sheep threshold (intensive farming) was increased to 1,000; and cattle to a minimum of 150. By limiting the definition of agricultural infrastructure or agricultural businesses to these four single ERAs, smaller farms (aquaculture, piggeries and poultry farming) and other farm infrastructure (not classed as a 'business' within the legislation) are excluded from these protections.

QFF further notes that definition of 'birds' within ERA 4 (Poultry Farming) omits emu and ostrich farms which are increasing across Queensland and also have critical infrastructure which requires the same protections.

QFF acknowledges that the inclusion of the limited agricultural activities within section 68 (*MOLA Bill*) does provide certainty and protection for those activities captured by the ERA framework and therefore under 'restricted land' noting that it [(ii)(B)] applies to the whole farm/activity area (usually specified by Lot & Plan) to which the Environmental Authority applies. However, QFF acknowledges that there are other critical farming activities which must also be included in section 68.

³ Environmental Emission Profiles: Environmental Protection Regulation 2008. December 2008. Environmental Protection Agency (now the Department of Environment and Heritage Protection).

Definitions of Restricted Land

Well drafted regulation leads to less frequent litigation and less burden on individuals, businesses and the court system. QFFs notes that the proposed definitions of restricted land (under Clause 7, section 68 *MOLA Bill*) have omitted critical agricultural infrastructure and assets, including, but not limited to:

- critical water infrastructure including irrigation channels and drainage (head ditches and tail drains);
- other on-farm management infrastructure for controlling surface water flows including contour banks, graded banks, levees and land which has been subject to 'laser levelling';
- energy generation infrastructure including but not limited to diesel powered pumps, wind turbines and solar power and hot water installations;

QFF recognizes that some critical infrastructure will be covered under Clause 7 (*MOLA Bill*) noting the following definitions from the Macquarie dictionary:

- Building - a substantial structure with a roof and walls, as a shed, house, department store, etc.
- Business - the sale of goods and services for the purpose of making a profit.

However, with new technologies, eco-efficiency tools and material-productivity drivers being increasingly utilised across the agri-sectors, these definitions alone do not offer the required protections for all agri-sectors now or into the future. The methods utilised for high-intensity farm production and nursery growing are also rapidly changing. For example, traditional greenhouses constructed with glass panel rooves and walls which may have historically satisfied the definition of a 'permanent building used as a business', are now being constructed using plastic sheeting due to increased polymer durability and reduced costs. The growth of hydroponic enterprises in particular across the intensive horticulture and production nurseries has resulted in the growing number of 'high technology structures' utilising fully-automated environmental controls. These structures typically have a wall height of at least three (3) metres with the roof peak being up to eight (8) metres above ground level, mostly clad in polymer or polycarbonate cladding. Such structures (particularly those set up for hydroponic growing) are not relocatable due to the investment/cost, level of fragility of the equipment and locality of the connected services. The nursey industry also utilises 'growing buffers' as well as temporary (rather than permanent) growing structures to manage biosecurity and pest control measures.

Additionally, other agri-industries have deliberately moved away from permanent buildings to mobile infrastructure due to the nature of their production. For example, the free-range egg and chicken meat production industries. Poultry sheds are mobile to keep the bacteria count down, to maintain grass cover and to meet regulatory standards for free-range egg and meat production and for those producers seeking low-stocking densities. QFF notes that ERA 4 does not apply to those facilities farming under 1000 birds.

As such, additional dispensation for various activities is required within the regulation to ensure that the intent of the regulation is extended to these businesses and their critical infrastructure, eliminating any unintended consequences. A draft of the QFF proposed changes to Clause 7 (*MOLA Bill*) are attached (see Attachment 1). QFF welcomes the opportunity to address technology advancements as afforded in future regulation.

Buffer Distances

QFF understands that it was a policy objective to clarify the intended operation of transitional provisions for land access agreements by amending the current transitional provisions in the *MERCP Act* to: -

- ensure that the requirement for a conduct and compensation agreement under the ‘600 metre rule’ applies to a resource authority applied for or granted before the commencement of Chapter 3 (Land Access) of the *MERCP Act*; and
- with the exception of restricted land, the land access provisions in Chapter 3 of the *MERCP Act* are to otherwise apply to the negotiation of the conduct and compensation agreement.

Whilst these legislative amendments appear to reduce protections for agricultural assets, (by reducing the ‘600 metre rule’ for resource authorities applied or granted after commencement of Chapter 3), QFF understands that the ‘600m rule’ was never a ‘right of veto’ for land owners to refuse access.

QFF welcomes the provisions and policy intent in section 68(1)(a) which provides that where the resource authority is an exploration resource authority or a production resource authority, land within 200 metres of a permanent building used for particular purposes, or within 200 metres of an area used for particular purposes, is ‘restricted land’. Additionally, section 68(1)(b) includes land within 50 metres of an artesian well, bore, dam or water storage facility or a principal stockyard. QFF understands that these provisions within the *MOLA Bill* do now provide landholders with a ‘no-go’ area around their restricted land use where they have not provided written consent. QFF also acknowledges that these restrictions now apply to the gas industry for the first time.

However, QFF notes that the 50 metre ‘restricted land’ determination for critical water assets (wells, bores, dams etc.) are significantly lower than those protections specified under ‘Petroleum Exploration Standard Conditions’ (see PESCC 9 and PESCC 35 for example), now utilized by the Department of Environment and Heritage on newer Environmental Authorities for petroleum activities⁴. QFF is unaware if these protections (specifically the PESCC criteria) are included in the conditions of older Environmental Authorities, in particular, those pertaining to mining activities. As such, QFF suggests increasing the buffers specified (in the *MOLA Bill*) to protect critical water assets.

Exclusion of ‘Non-Resident Workers’ Accommodation

QFF asks the Committee to seek clarification around the definition of ‘permanent building’ with regards to the definition of ‘restricted land’ within the *Mineral and Energy Resources (Common Provisions) Act 2014*. Section 68(1)(a)iii states that a permanent building is a building used for a business or other purpose if it is reasonably considered that –

- ‘a building that cannot be easily relocated AND
- the building cannot co-exist with authorised activities carried out under resource authorities’.

Section 68 (*MERCP Act*) also notes that a ‘residence’ does not include accommodation for non-resident workers, with the example provided

- *Accommodation for shearers or seasonal fruit pickers.*

⁴ Department of Environment and Heritage Protection (2014). Guideline: Streamlined Model for Petroleum Activities. 4 April 2014.

QFF brings to the attention of the Committee the various Industry Awards pertaining to the employment of seasonal and non-residents workers. In all cases, these Awards specify minimum requirements for accommodation to include 'good' and 'suitable' accommodation (for example, the Pastoral Award). This includes appropriate levels of lighting, bathroom facilities through to provision of dining rooms or kitchen facilities, with some Awards specifying accommodation which includes the services of a full-time cook with *'properly served meals, five times a day'*.

These Awards also prohibit the use of temporary and inappropriate accommodation. For example, the Shearing Industry Award specifically states that *"a tent shall not be considered suitable accommodation"*. Farmers and farm enterprises which rely on non-resident workers have invested in accommodation buildings which meet the requirements of the Awards and, in many cases, exceed the minimum specified requirements in order to attract and retain skilled personnel.

Accommodation and infrastructure for non-resident workers must have the same protections as those for resident workers. As such, QFF requests the deletion of the definition for 'residence' (under s.68, *MERC Act 2014* – specifically the exclusion for accommodation for non-resident workers) as this section adds uncertainty and is unnecessary, given the use of the term 'permanent building' as a criteria of a 'residence'.

QFF rejects the Department of Natural Resources and Mines concern that this clause is necessary to prevent the temporary location of non-resident accommodations for the purposes of deliberately creating 'restricted land'.

Thank you for the opportunity to provide comment on these important amendments. If you would like to discuss any aspect of the QFF submission please contact Dr Georgina Davis on 3837 3727.

Yours sincerely,

A handwritten signature in cursive script, appearing to read 'Ruth Wade', written in black ink.

Ruth Wade
Chief Executive Officer.

ATTACHMENT 1 – QFF Tracked Changes

Clause 7 Amendment of s 68 (What is restricted land)

(1) Section 68(1)—
omit, insert—
(1) Restricted land, for a production resource authority or exploration resource authority, means—
(a) land within 200m of any of the following—

- (i) a permanent building used for any of the following purposes—
 - (A) a residence;
 - (B) a childcare centre, hospital or library;
 - (C) a community, sporting or recreational purpose or as a place of worship;
 - (D) a business;
- (ii) an area used for any of the following purposes—
 - (A) a school;
 - (B) a prescribed ERA, under the Environmental Protection Act, that is aquaculture, intensive animal feedlotting, pig keeping or poultry farming;
 - (C) a production nursery;
 - (D) intensive horticulture structures;
 - (E) a vineyard or orchard;
 - (F) a mobile poultry shed;
- (iii) an area, building or structure prescribed by regulation; or

- (b) land within 50m of any of the following—
- (i) an area used for any of the following purposes—
 - (A) an artesian well, bore, dam or water storage facility;
 - (B) a levee or levee bank, graded bank, contour bank;
 - (C) irrigation infrastructure;
 - ~~(B-D)~~ a ~~principal~~ stockyard;
 - ~~(C)~~ (E) a cemetery or burial place;
 - (ii) an area, building or structure prescribed by regulation.

(1A) **Restricted land**, for a resource authority other than a production resource authority or exploration resource authority, means land within 50m of any area, building or structure mentioned in subsection (1).

(2) Section 68(2), 'subsection (1)(a)'—
omit, insert—

subsection (1)

(3) Section 68(3)— insert—
exploration resource authority means a resource authority that is—

- (a) an exploration permit or mineral development licence under the Mineral Resources Act; or
- (b) an authority to prospect under the P&G Act; or
- (c) an authority to prospect under the 1923 Act; or
- (d) a geothermal exploration permit under the Geothermal Act; or
- (e) a GHG exploration permit under the Greenhouse Gas Act.

water storage facility—

- (a) means an artificially constructed water storage facility that is connected to a water supply; and
- (b) does not include an interconnecting water pipeline.

irrigation infrastructure-

- (a) means water infrastructure or other infrastructure constructed, erected or installed for the supply of water or the storage and distribution of water for the irrigation of crops or pastures (see Water Act 2000)

Examples of irrigation infrastructure –

A supply channel, head ditch or tail water dam.

- (4) Section 68(1A) to (3)—
renumber as section 68(2) to (4).