COTTON AUSTRALIA

Committee Secretary

Clean Economy Jobs, Resources and Transport Committee

Parliament House

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3/5/2024

Dear Committee, Re: Mineral and Energy Resources and Other Legislation Amendment Bill 2024

Introduction

Cotton Australia is the peak body representing Australia's 1,500 cotton growers, including a significant number on the highly productive Darling Downs.

Cotton Australia is pleased to provide this brief submission to your committee, but at the outset must protest the very tight timeframe that has been allowed to prepare comprehensive submissions.

There has only been two weeks for landholders and their representatives to digest this critical piece of legislation. Not only is it extremely important, but the Bill and the associated Explanatory Notes run to close to 500 pages.

Much of this bill was developed out of a comprehensive consultation process run by the government throughout 2023 and culminating in official submissions on the Regional Planning interest Act, the co-existence institutions, and the proposed subsidence management framework.

While that consultation process must be acknowledged, to expect landholders and their representatives to become fully conversant with the Bill in two weeks is completely unrealistic, and not conducive to good democratic processes.

Cotton Australia calls on the committee to keep these unrealistic timeframes in mind and allow plenty of latitude for the introduction of new material while the committee process is underway.

It must be also made very clear, that the comments provided by Cotton Australia is very much in the context that the existing Section 22 of the Regional Planning Interest Act is maintained, preserving the rights of landholders under this section.

For clarity, Cotton Australia has highlighted some key wording in the current Regional Planning Interest Act.

Division 2 Exempt resource activities

22 Exemption—agreement of land owner

(1) This section applies if the authority holder for a resource activity is not the owner of the land (the land owner).

(2) The resource activity is an exempt resource activity for a priority agricultural area or area that is in the strategic cropping area if—

(a)either—

(i) if a conduct and compensation agreement requirement applies to the authority holder under a resource Act—

(A) the land owner and the authority holder are parties to a conduct and compensation agreement under the resource Act, other than because of the order of a court; and

(B) the authority holder has complied with the requirement; or

(ii) the land owner has voluntarily entered into a written agreement with the authority holder and the carrying out of the activity is consistent with the agreement; and

b) the activity is not likely to have a significant impact on the priority agricultural area or area that is in the strategic cropping area; and

(c) the activity is not likely to have an impact on land owned by a person other than the land owner.

(3) For subsection (2)(c), a resource activity has an impact on land if the activity has an impact on—

(a) for land in a priority agricultural area—the suitability of the land to be used for a priority agricultural land use for the area; or

(b) for land in an area that is in the strategic cropping area—the land's soil, climate and landscape features that make that area highly suitable, or likely to be highly suitable, for cropping.

It is clear from the sections highlighted above; the current Act provides some power to the landholder. Also, that it requires a Regional Interests Development Approval (RIDA) application if there is likely to be a significant impact on either the landholder's land or someone else's land.

It is now known that subsidence will occur, and therefore a landholder should be able to demand an assessment of that impact to determine whether it is significant or not. It appears almost nonsensical to remove from consideration an assessment of subsidence when it is known it will occur, not only on the landholder's land but also other land.

While noting that the Regional Planning Interest Act is managed by the Department of Housing, Local Government, Planning and Public Works, and the MEROLA Bill falls under the Department of Resources, it is imperative that there is a whole of government announcement making it clear that Section 22 of the Regional Planning Interest Act will be maintained.

Any movement away from that position would represent a very significant weakening of land-holder rights, and impact significantly on the overall support for the MEROLA Bill.

Background

Many of our Darling Downs cotton producers either already share their land and its resources with the Coal Seam Gas (CSG) industry or expect to in coming years and decades.

The ability to co-exist or not is subject to the broadest range of opinions from landholder vehemently opposed to CSG development on their land and in their vicinity due to what they believe are unacceptable risks, right through to landholders who have and/or are willing to actively work with CSG companies and are confident that the risks are low and manageable. In between there are landholders who may prefer not to have to engage with the CSG industry but believe under the right circumstances co-existence is manageable.

In summary Cotton Australia's CSG Extraction Policy seeks to:

- Protect the sustainability of aquifers that underlie irrigated and dry land cotton production and their communities.
- Protect high value agricultural land from CSG extraction activities.
- Enhance landholder rights, to ensure land access agreements are fair and equitable.

As mentioned above Cotton Australia is very aware that among our growers there is a wide diversity of views, from those that openly embrace co-existence with the CSG industry, to those that hold very strong concerns about the environmental

impact and are firmly opposed to the industry in their district. In between there are growers who may not be

enthusiastic but can see a pathway to co-existence.

While the Cotton Australia policy is now over a decade old, the core principles still apply. However, one very key thing that has changed, is that there is now irreversible proof that landscape wide subsistence is and will occur from the extraction of CSG. What is not absolutely known at this stage is whether this subsidence will cause economic impact to the productive capacity of the land. Some landholders report no economic impact, while others are reporting economic impact.

The Bill has a focus on co-existence. In Cotton Australia's opinion the resource industry and the agricultural industry cannot co-exist; co-existence cannot be mandated on industry.

However individual resource companies and individual landholders may be able to co-exist, as the relationship must be between those two parties. The matter becomes much more complicated when the activities of the resource company, operating from a base on a landholder, has impacts on other landholders, and this is the case both for impacts on water and subsidence – the impacts do not stop at farm boundaries.

Mineral and Energy Resource and Other Legislation Amendment Bill 2004

It must be acknowledged that the Bill, in principle, takes significant steps to improve the position of landholders, should they be negatively impacted by subsidence, regardless as to whether they support the CSG industry operating on prime agricultural land or not. However, the fact that some landholders remain completely opposed to the CSG industry, on the basis that they believe the risks from subsidence, among other risks including the potential for groundwater contamination cannot be ignored, and for them this Bill will not address their concerns.

For others who either openly support co-existence, or who see a way to co-exist if they must, the Bill does represent significant progress.

It must also be recognised that the Bill covers much more than the subsidence Management frameworks, and this submission will make some comments on other elements, but will focus on subsidence management.

The comments below will largely follow the order they are covered in in the Bill and the Explanatory Notes.

Cotton Australia has indicated specific support for a number of clauses below. We are not commenting on all clauses, and lack of comment should not be taken as either support or not support.

PART 4 –

Coexistence Qld

Cotton Australia is generally supportive of the re-branding and widening of the scope of the Gasfields Commission and re-naming it Coexistance Queensland, being mindful of the comments above that coexistence cannot be mandated, but it might be encouraged. It should also be noted that the rights that landholders have or don't have in regards to CSG development, are significantly different the rights they have in regards to many other forms of co-existences such as hosting renewable energy ect, where a landholder has to provide explicit agreement to development.

Amendment of S9A

There is some concern that the criteria "the interests of landholders" is not specific enough. To be clear, there is a need for a person to be able to demonstrate knowledge and experience as a primary producer landholder.

Replacement of s 10

Again there is no specific mention of qualifications or experience in either agriculture or primary production.

Omission of s 25

Clause 22 omits section 25 as Coexistence Queensland's regulatory oversight role will only be performed at the request of government. This means that a government entity will no longer be required to consult with Coexistence Queensland about policy or legislation that they are developing, even if it relates to sustainable coexistence between landholders, regional communities, the resources industry and the renewable energy industry. This aligns with the functions of Coexistence Queensland as an educational and engagement focused institution rather than a regulatory overseeing entity.

Cotton Australia does not understand what this means in practice, but it does on the surface appear to be a diminution of the power of the Commission, and Cotton Australia asks the committee to explore this further.

Division 4A – Entry to private land outside authorised area to undertake subsidence activity

There is natural concern when there are any provisions that can override the wishes of landholders to have someone else enter their land.

Cotton Australia calls on the Committee to fully explore the justification of these powers, and whether or not there are viable alternatives.

Subdivision 3A Arbitration

Cotton Australia has significant concerns around the cost of arbitration. As a general principle, Cotton Australia believes it should be the resource company's obligation to meet the full and reasonable costs of arbitration. The landholder has not invited the resource company to undertake resource activities on the landholder's land, so therefore the landholder should not be subject to the costs, unless the arbitrator decides the action of landholder are either frivolous or similar.

Clause 86

Cotton Australia supports the change to "relevant specialist"

CHAPTER 5A CSG-INDUCED SUBSIDENCE MANAGEMENT

Section 184AA

Cotton Australia supports the purpose

Section 184BC

Supported

Section 184CA

Supported

Section 184CD

Supported

184CG

Cotton Australia supports a full and transparent peer review process, and while it would be appropriate for Office of Groundwater Impact (OGIA) to provide advice to the Chief Executive, for the sake of a higher level of independence transparency, the Chief Executive should be the one determining the Terms of Reference and the composition of the group.

184DB

Supported

184DC

It needs to be very clear that while the relevant resource holder must fund the land monitoring, it must be genuinely independent work.

184FC

Supported

184HK

Supported

184HN

Landholder costs must be paid for by the resource holder unless they can clearly be determined to be unreasonable. The benefit of the doubt should be applied to the landholder.

Subsidence Management Plans

While Cotton Australia supports the requirement for subsidence management plans, and believe the various appeal process are adequate, the Bill is very light on what must be covered in a Plan, and who are appropriate people to make it, and provide advice on. It would be an expectation that the Queensland Department of Agriculture would review plans, utilising their agricultural expertise, and that landholders would be fully compensated for any expenses incurred by them in providing input and expertise into the plan. While the development of these plans must be at the Resource Holders expense, the reality is that it is the landholder that must be satisfied with the plan.

Subdivision 2

As a general comment on compensation it is not clear to Cotton Australia as to the priority here. Certainly, landholders must be fairly compensated for any losses. However, the over-riding aim of any subsidence management plan, and associated compensation must be the requirement to maintain or restore the land's productive capacity. Compensation payments, without restoration of productive capacity, should not be the result of this Bill. This is an area the Committee should further investigate.

Further, any compensation agreement must be enduring, or subject to review. If subsidence causes a compensable impact, then it is very possible that the impact maybe ongoing for an extended period of time.

184IU

Comments immediately above are relevant.

DIVISION 2 CRITICAL CONSEQUENCES

This is one of the most critical elements of the Bill, and is very much supported in principle.

At this stage Cotton Australia believes the proposed sections are good, but the key will be timely decision making, without unreasonable time extensions being granted. It is also clear, that better definitions/examples of what composes a critical consequence are required.

However, Queensland up to now has been without any mechanism to pull-up CSG development should the potential damage or actual damage be deemed critical, so this is very much a welcome and important step.

184KN

While very difficult to avoid judgement terms such as "reasonable" are always subject to different interpretations. It is heartening that the clause includes the following examples:

critical consequence from continuing or

becoming worse, including, for example—

(a) stopping production of coal seam gas at a

stated location for a stated reasonable

period; or

(b) plugging or relocating a petroleum well

within a stated reasonable period.

184LG

Supported

196R

Please see comments under Subdivision 3A Arbitration above

Part 4 Regional risk assessment

It appears that Subsidence Reporting is all about identifying the risk to specific landholdings, which is extremely important and fully supported. However, what appears to be missing is a commitment to landscape wide modeling, measuring, monitoring and reporting. This is very important to identify major shifts in overland flow water patterns etc. This is an area the Committee should explore further, in particular questioning OGIA on whether or not landscape wide reporting will be included, and whether a trend established through that work could trigger a critical consequence decision by the Minister.

CONCLUSION

Cotton Australia does recognise this Bill has a significant step forward, and congratulates the Government for its efforts. However, as discussed earlier, the limited opportunity to fully explore the Bill, means there may still be unidentified short-comings, and lack of detail in many areas. Cotton Australia recommends that these provisions introduced by the Bill should be subject to a 12-month review process, so as to provide an opportunity to rectify any issues.

Cotton Australia also believes the Committee must consider what measures are currently in place, and/or could be put in place to assist those landholders who believe they are already impacted by subsidence.

In considering this Bill, the Committee must recognise and respect the very wide range of opinions landholders have on the CSG industry, its benefits, its costs and its risks.

Finally, Cotton Australia would be delighted to appear before the Committee. Cotton Australia General Manager Michael Murray can be contacted on michaelm@cotton.org.au or 0427 707868.

Yours sincerely

Michael Murray

Michael Murray

General Manager,

Cotton Australia