

Accountability and the Law

Queensland Case Studies – Accountability in the Resource Assessment Process

Glen Martin – Associate, Shine Lawyers

The law governing the energy and resources industries in Queensland has always been evolving and changing but the scope and extent of the changes over the past 1 to 2 years to the approvals process has been staggering.

One of the most staggering changes was seen when the *Mineral and Energy Resources (Common Provisions) Act 2014* (Qld) (**the Common Provisions Act**) was passed into law in late 2014. This legislation changed dramatically the mining lease objection process and the rights of people with respect to the notification, submission and objection process for Environmental Authority applications and also gave overarching power to the Co-ordinator General to preclude a submitter from objecting to a draft Environmental Authority.

Given the time available it is not possible to address the entire breadth of changes introduced by the Common Provisions Act so I will only address the following three (3) areas of amendment as they are the most poignant to today's discussion:

- a) the changes to the mining lease application process;
- b) the changes to the environmental authority application process; and
- c) Legislation by Regulation.

I should preface the following by stating that many of the provisions of the *Common Provisions Act*, including some of those that I will refer to, are yet to come into effect as they have not yet been proclaimed.

Mining Lease Applications

At its most basic level, the amendments introduced a triple boost to applicants for a mining lease or a triple hit to the rights of individuals to object to the grant of a mining lease.

1. Objectors

Firstly, section 260 of the *Mineral Resources Act 1989* (Qld) (**the MRA**), currently allows **any** person to object to an application for a mining lease. The Common Provisions Act will amend this by only allowing an “*affected person*” to object.¹

The definition of an affected person only includes:

- a) landholders who own land within the boundaries of the mining lease;
- b) landholders who adjoin the boundaries of the mining lease
- c) landholders who own land used to access the mining lease;
- d) the relevant local government.²

It will be obvious to almost everyone that the scope of persons entitled to object to the mining lease application has been dramatically reduced to virtually no one.

A concerned person will no longer be able to object.

As matter of practice most miners (other than small mines) will buy out the landholders within boundaries of the mining lease and frequently they buy out the adjoining owners.

There will be very few examples of landholders who own access land.

¹ *Mineral and Energy Resources (Common Provisions) Act 2014* (Qld), s 438

² *Ibid.*

2. Grounds of Objection

Second, section 260 of the MRA currently allows for an objector (that is any person) to object to an application for a mining lease on **any** grounds. However, under the Common Provisions Act, this position will change considerably as depicted in the table below³:

Grounds of objection	Objector			
	Landholders under Mining Lease	Landholders adjoining mining lease	Access Landholders	Local Council
Compliance with the Act	✓	✓	✓	✓
Operations conform with sound land use management	✓	×	×	×
Operations are an appropriate land use having regard to the current and future use of that land	✓	×	×	×
Operations are appropriate having regard to the impact that the activities will have on the surface of the land	✓	×	×	×
Operations are appropriate having regard to the impact that the activities will have on affected persons	✓	×	×	×
Access to the land the subject of the lease is reasonable	×	✓	×	×
Operations are appropriate having regard to the impact that the activities will have on the existing use of the adjoining land	×	×	✓	×
Operations are appropriate having regard to the proximity of adjoining land to the proposed operations	×	×	✓	×

³ Ibid.

Operations are appropriate having regard to the impact that the activities will have on the any infrastructure owned by the local government	x	x	x	✓
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