

# Community Over Mining



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## ***Landholders' Right to Refuse (Gas and Coal) Bill 2015***

*I give my full support to the proposed bill -*

### ***Landholders' Right to Refuse (Gas and Coal) Bill 2015***

*It rightly confirms the need for a national approach on agreed protocols for land access authorisation, land access contracts and full disclosures of risks to the landholder.*

*The strongest case and reason and why resource legislation should be reformed and amended are the risks to the person, to the land, to the environment and to our future health and prosperity.*

### **Dear Committee Members**

Victoria has two resource acts being the Petroleum Act 1988 (PA) and the Mineral Resource (Sustainable Development) Act 1990 (MRSDA)

As the Crown own the mineral rights, all the normal legal recourse open to landowners is removed.

The rationale for denying landholders a power of veto stems from the traditional common law notion that mineral rights are reposed in the Crown. This principle has been acknowledged by the legislature in Queensland. Disallowing a right of veto has long been supported by the Queensland Government on the basis that the Government, as owner of the resource, should decide the circumstances under which the resources are to be removed. In Western Australia, concerns were held that a right of veto would have the effect of limiting mining operations.

In Victoria the legislation is in place to require exploration and mining companies to obtain consent from landowners prior to accessing land for all minerals and petroleum.

Under both Acts, if a landholder does not provide consent and an appropriate amount of compensation cannot be agreed, then either party may refer to the Victoria Civil and Administrative Tribunal (VCAT). VCAT does not determine the right to access land, rather the amount of compensation to be paid to the landholder. Yet in the determination of the amount of compensation to be payable by the licensee to the landholder, this confers a right for the licensee to enter the land when, in fact, the landholder did not give authorisation.

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## **PETROLEUM ACT 1998 - SECT 14**

### ***Crown retains Crown land petroleum rights***

*In conferring any grant, lease, licence or other tenure of any Crown land after the commencement of this section on any person, the Crown retains all rights that it has in relation to any petroleum on or below that land, unless otherwise stated in the document by which the grant, lease, licence or other tenure is conferred.*

## **PART 8--COMPENSATION**

[128.](#)

## **MINERAL RESOURCES (SUSTAINABLE DEVELOPMENT) ACT 1990 - SECT 9**

[9.](#) [Ownership of minerals](#)

### **Ownership of minerals**

(1) The Crown owns all [minerals](#) except—

A licence is the rights to exploit the resource. For onshore unconventional gas it accords to a speculative and hazardous industry a **legal economic privilege that subordinates existing economic enterprises**, through occupation of private property, rendering landholders and communities subservient to the proponent in the absence of the right of veto.

## **PART 3--WORK UNDER A LICENCE**

## **MINERAL RESOURCES (SUSTAINABLE DEVELOPMENT) ACT 1990 - SECT 38AB**

[38AB.](#) AB Authority to enter land

[S. 38AB\(2\)\(b\)](#) amended by No. 64/2012 [s. 29.](#)

[S. 38AB\(3\)](#) substituted by No. 10/2014 [s. 13.](#)

As the whole question of Onshore Natural Gas is about RISK ASSESSMENT, science is only a cursory attempt at defining a predictive model that can go some way, in part, to allay fears of what might happen.

So, it is essential that the information contained within that written authorisation is appropriate to inform the landowner of the risks economically, legally and environmentally.

Similarly, the discussion on insurance is limited to the Proponent as a singular entity and does not address the complexity of the legal arrangements the proponent enters into in the development of the tenement and the insurance liabilities of each party, the content of those individual policies, and the interpretation of the clauses of which are being tested in US courts currently.

The issuance of a licence for mineral rights, **by default**, is an unofficial licence for the corresponding surface rights only limited by those prohibited areas as defined in the relevant legislation. The balances of those surface rights are available for use by the Proponent, as the law is silent for it provides no limit.

What legal standing does a landholder have to refuse the use by the proponent of the surface rights for the disposal of waste solid or liquid, when the receiving environment waste has deemed to be scientifically suitable? Waste conveniently re-branded as *beneficial water, pasture enhancement* substantiating the concept of Co-Existence Principle. This is in

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direct conflict with the landholder's better judgement and, potentially, in breach of their existing contractual arrangements.

**Consequently:** if the regulation standards are inadequate or their application lax, then the government is in breach of their respective legislatives objectives landowners only avenue of VCAT is now too cost prohibitive to hold government to account, if wanting to appeal bad decisions.

***If companies have to prepare hazards and risks declarations to shareholders to protect their investments then the same rights should be afforded to the landowner prior to signing a land access agreement or to ensure transparency.***

## Land Access

**MINERAL RESOURCES (SUSTAINABLE DEVELOPMENT) ACT 1990 - SECT 38AE**  
**38AE. AE Insurance**

## Insurance

A licensee must not enter any land, or carry out any surveying or marking out, for the purposes of section 38AA unless the licensee is insured for an amount determined by the Department Head against any risk that might arise if the owner or occupier of the land were to sustain a personal injury as a result of the licensee's entry on to, or activities on, the land

## PETROLEUM ACT 1998 - SECT 171

### Insurance must be held

The main disadvantage to landowners is in the creation of new risks of environmental harm created by ONG operations. It is clear that disturbance of soil and pasture will occur and that varying impacts related to contamination will also occur as can happen with any mining operations, which is why the term 'minimising the impacts' is found throughout all government documentation for ONG development.

***For this reason, it is important that any contractual agreement allocates responsibility for managing the risk and any adverse outcome onto the licensee and/or operator.***

Industry has captured the regulatory process for its own benefit. Landowners are going in blind for contractual agreements in exploration stages without any real understanding of the risks and liabilities from operations and to any protections from liability.

***Currently, no presumptive liability exists.***

## Joint Venture and Implications

Mining and energy projects throughout Australia are frequently conducted through joint ventures. Despite the prevalence of joint ventures, there is no single body of regulation that applies to this type of legal relationship, nor are there settled legal rules that determine the rights and obligations of parties to a joint venture relationship. The majority of mining industry joint ventures in Australia are unincorporated joint ventures and all references in this guide card to joint ventures are to unincorporated joint ventures, except where otherwise indicated.

Joint ventures are distinguished from partnerships for a number of reasons. Some of the key distinguishing characteristics of a typical mining joint venture are:

1. (a) participants hold the property of the joint venture as tenants-in-common;

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2. (b) participants contribute money, property or skill to the joint venture, but their contributions are not necessarily equal;
3. (c) the liability of the participants to third parties for debts of the joint venture is several rather than joint<sup>1</sup> and the extent of liability is usually determined by reference to their respective ownership shares of joint venture property;

[www.lexisnexis.com.au/pdf/joint%20ventures.pdf](http://www.lexisnexis.com.au/pdf/joint%20ventures.pdf)

## Insuring the Partners

Whether or not the JV entity itself is protected through its own insurance program, the partners need to be certain that their insurance policies provide coverage for losses arising from the JV. Even if the JV entity is separately insured, there are circumstances under which the JV's coverage may be inadequate or not apply at all.

Considerations of Joint Ventures from most insurance policies provide some protection for mergers, acquisitions or other consolidation. However, JVs are usually treated differently. For example, the 'Who is an Insured' section of a commercial general liability (CGL) policy specifically excludes joint ventures.

[http://www.zurichna.com/internet/zna/sitecollectiondocuments/en/media/whitepapers/joint\\_ventures\\_for\\_energy\\_company%20final.pdf](http://www.zurichna.com/internet/zna/sitecollectiondocuments/en/media/whitepapers/joint_ventures_for_energy_company%20final.pdf)

## Mortgage Terms

Loan Contract Terms and Conditions booklet

### 10.1 Default

You are in default if:

- Any security property under any legislation relating to the proceeds of crime;
- any insurer, who has provided lender's mortgage insurance or title insurance in respect of the loan, cancels, suspends or limits that insurance; or
- we reasonably believe that any information given to us about you, the security property or any guarantor is misleading or false.

### 3.12 Property reports

From time to time, we may arrange a valuation of, or other inspection relating to, a security property. This is in addition to any valuation or inspection we may arrange relating to a construction facility.

We may charge you a fee for the valuation or other inspection we require.

Any valuation or report we obtain about the security property under these terms and conditions is for our purposes and you should not rely on it, even if you find out the value assessed by the valuer or the details of the report. If you wish to have a valuation or undertake an inspection for your own purposes, you should organise it separately.

"Works" includes excavation and earth works, demolition and construction works.

## 3. Title and Information

**3.1 absolute and unchallengeable title** You promise Us that You have an absolute and unchallengeable title to the Property, or that You will have such title on completion of your purchase of the Property, subject only to any rights that appear on the title to the Property or that You have previously notified to Us in writing.

**3.2 Land not subject to any other rights** You promise Us that:

- the Property is not subject to any right under

[www.communityovermining.org](http://www.communityovermining.org)

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- option to purchase or contract of sale,
- lease, licence or tenancy,
- adverse possession claim,
- public or private right of way or easement, or
- Mortgage, charge or other security,
- except as appears on the title to the Property or which You have previously notified to Us in writing,
- no part of the Property is reserved for the purpose of a roadway or road- widening or for the purpose of existing or proposed public open space or public purposes,
- to the best of your knowledge no person claims or has threatened to make any claim to any interest in the Property, and
- You are not breaching any obligation to any other person by signing the Mortgage.

## **3.3 all information given to Us is true**

You promise Us that all information given to Us in connection with each Secured Agreement and the Mortgage remains true and correct in every respect. In particular You promise that all answers or statements given by You or on your behalf to any requisitions or enquiry made by Us or on our behalf before You signed the Mortgage in relation to:

- the Property,
- your interest in the Property, and
- your capacity and financial position, remain true and correct in every particular.

**1. 3.4 Improvements** You promise Us that all Improvements comply with all applicable laws and the requirements of all relevant authorities.

**2. 3.5 Contamination of the Property** You promise Us that, to the best of your knowledge and belief, at the time You enter the Mortgage the Property is free from pollutants and is not contaminated. You must inform Us as soon as reasonably practicable if You have reason to believe that the Property is polluted or contaminated.

**3. 3.6 Title documents** You will immediately deliver to Us all documents of title relating to the Property and permit Us to retain these during the continuance of the Mortgage.

## **5. Obligations Regarding the Land**

**6. 5.1 Sell or deal with the Property** You must not, without our prior written consent:

- sell or transfer the Property,
- lease or allow a surrender or variation of any lease of the Property,
- give any mortgage, charge or other security over the Property,
- subdivide or consolidate the Property,
- part with possession of the Property, or
- create, vary or terminate any easement, covenant, licence or other right affecting the Property.

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**4. 5.2 Permit charges on the Property** You must not, without our prior written consent, allow any charge or liability to be imposed on the Property.

<http://www.homeloanhq.com.au/special/loan-terms-and-conditions>

## **PETROLEUM ACT 1998 - SECT 46**

### **Rights conferred by licence**

*A production licence authorises the holder of the licence, subject to and in accordance with the conditions of the licence—*

- (a) to carry out petroleum production in the licence area; and*
- (b) to carry out petroleum exploration in the licence area; and*
- (c) to do any thing in the licence area that is necessary for, or incidental to, those purposes.*

## **PETROLEUM ACT 1998 - SECT 167**

*Authority holder must not interfere with other rights*

*In carrying out petroleum operations, the holder of an authority must ensure that the operations are carried out in a way that does not interfere with the activities of any other person who is using the land to a greater extent than is necessary for the reasonable exercise of its rights, and the performance of its duties, under the authority.* [http://www.austlii.edu.au/au/legis/vic/consol\\_act/pa1998137/s46.html](http://www.austlii.edu.au/au/legis/vic/consol_act/pa1998137/s46.html)

## **MINERAL RESOURCES (SUSTAINABLE DEVELOPMENT) ACT 1999**

*Section 45 "work" means any of the following activities—*

- (c) any excavation for the purposes of mining or bulk sampling of ore;*
- (d) any excavation for the purposes of exploration using mechanised equipment;*
- (e) any construction or use of any opening, excavation, structure or equipment for access to, or ventilation of, underground workings;*
- (f) any treatment, extraction, handling or processing of minerals using plant or equipment (other than hand-operated equipment); s. 45*
- (g) any construction or use of roads for the haulage of ore, waste rock or overburden;*
- (h) the bulk storage of ore, waste rock or overburden; any construction or use of dams for the storage of tailings, process water or groundwater;*
- (i) any construction or use of other facilities for the treatment, handling or storage of tailings or other wastes;*

## **Disclosure of Risk**

### **- to Investors**

Australian Minerals Industry Framework for Sustainable Development - Enduring Value Element 4.3: Inform potentially affected parties of **significant risks** from mining, minerals and metals operations and of the measures that will be taken to manage the potential risks effectively.

[http://www.minerals.org.au/file\\_upload/files/resources/enduring\\_value/EV\\_GuidanceForImplementation\\_July2005.pdf](http://www.minerals.org.au/file_upload/files/resources/enduring_value/EV_GuidanceForImplementation_July2005.pdf)

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## LAKES OIL NL

ABN 62 004 247 214 LISTED UNSECURED CONVERTING NOTES 10% INTEREST PER ANNUM RIGHTS ISSUE PROSPECTUS

2. (g) *Operating Risk: Industry operating risks include the risk of fire, explosions, blow-outs, pipe failure, abnormally pressured formations and environmental hazards such as accidental spills or leakage of petroleum liquids, gas leaks, ruptures or discharges of toxic gasses, the occurrence of any of which could result in substantial losses to Lakes Oil due to injury or loss of life, severe damage to, or destruction of property, natural resources and equipment, pollution or other environmental damage, cleanup responsibilities, regulatory investigation and penalties and suspension of operations, the occurrence of any of which could result in substantial losses to Lakes Oil. Damages occurring as a result of such risks may give rise to claims against Lakes Oil.*

*The occurrence of an event that is not covered, or fully covered, by insurance could have a material adverse effect on the business, financial condition and results of operations of Lakes Oil.*

<http://www.asx.com.au/asxpdf/20121023/pdf/429kzh03vm3gl3.pdf>

## **to Landholders**

*When it comes to disclosing risks, drilling companies clearly have a double standard: Shareholders are warned, but many landowners are not. This means that thousands of landowners may be signing legally-binding contracts without understanding that their property, their health, their finances and their communities could suffer serious harm. As the rush to exploit new gas and oil deposits continues, public officials have a duty to bring an end to this pattern of deception. Disclosure of risks to Landholders by State governments, which have jurisdiction over ONG and oil drilling, should require full disclosure of drilling risks to landowners. Risks should be stated conspicuously that their property, their health, their finances and their communities could suffer serious harm. Disclosures should state plainly that property covered by a License might violate the terms of a current mortgage or make it impossible to secure a mortgage, refinance or secure insurance on the property in the future.*

[www.ewg.org/sites/default/files/report/Drilling\\_Doublespeak.pdf](http://www.ewg.org/sites/default/files/report/Drilling_Doublespeak.pdf)

## **Victorian Current Acts – Buffer Zone**

MINERAL RESOURCES (SUSTAINABLE DEVELOPMENT) ACT 1999

Section 45 -Prohibition of work near dwellings and certain places and sites

MINERAL RESOURCES (SUSTAINABLE DEVELOPMENT) ACT 1990 - SECT 46

Minister may authorise work near dwelling house

S. 46(1) amended by No. 74/2000 s. 3(Sch. 1 item 83.2), substituted by No. 82/2000 s. 46(1), amended by No. 63/2006 s. 35(2), substituted by No. 59/2010 s. 40.

(1) The Minister may authorise a licensee to do work within the area prohibited by section 45(1)(a)(i) or within 100 metres below that area after consultation with—

(a) the municipal council in whose municipal district an area is situated; and

(b) any community group or member of the community whom the Minister considers should be consulted about the proposed work.

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## Plugged and Abandoned Wells

The onshore gas industry has no responsibility for monitoring and maintaining their “abandoned” wells in the exploration stage of onshore gas drilling. Additionally, a company also ceases responsibility for any remaining infrastructure post rehabilitation i.e. wells and the subsurface pipe network on cessation of production and a further period of 3 years. This includes monitoring for potential ongoing ‘fugitive’ gas emissions.

Under MRSDA’s ‘code of Practice the following applies yet there is no contractual agreement with the crown to say that the State takes on the responsibility of plugged and abandoned wells in perpetuity after production.

### *Infrastructure*

*Any pre-existing infrastructure damaged as a result of exploration activities, and which is to be retained on site after the completion of the exploration works, should be repaired to the satisfaction of the private landowner / occupier or Crown land manager.*

*Where exploration related infrastructure is to remain, the licensee should obtain the written consent of the Crown land manager or private landowner / occupier that they will assume responsibility for it.*

Without the right of veto the landholder is subordinated to the Proponent.

The Surface rights held with security comprise only of those contained in the Acts as prohibited areas. (Note - the Minister can authorise work within the prohibited area)

The use of the surface rights has already been authorised as prescribed in the above Acts impairing any real protection a landholder can negotiate in access agreement.

The surface areas that are not designated as prohibited areas are enshrined in ambiguity.

In carrying out petroleum operations, the holder of an authority must ensure that the operations are carried out in a way that does not interfere with the activities of any other person who is using the land **to a greater extent than is necessary for the reasonable exercise of its rights, and the performance of its duties, under the authority.**

It is with anticipation that this bill, in its entirety, be accepted to ensure the landholder and their communities receive improved protections and that national protocols be legislated.

Yours sincerely

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