Thynne Macartney

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Proposed new stock route laws: A good thing or a bad thing?

By Peter Kenny, Agribusiness Partner

The Bill will bring existing legislation into one package.

On 3 November 2016 the *Stock Route Network Management Bill 2016* ("**Bill**") was introduced to the Queensland Parliament proposing, its supporters argue, a single contemporary Act to better support the long term management of Queensland's extensive stock route network comprising an area of 2.6 million hectares. The Bill is currently being considered through the parliamentary committee process and is expected to be debated in the House in early 2017.

Currently, the stock route network is administered under three Acts, namely:

- *Stock Route Management Act 2012*;
- *Land Act 1994*; and
- *Transport Infrastructure Act 1994.*

The Bill will bring the existing legislation into one package and its proponents argue that this will reduce duplication and provide clarity, consistency and simplicity for Queenslanders who use and manage the stock route network.

On an objective assessment, the main benefits of the proposed legislation would appear to be:

- establishing a single point of entry (ie local governments) for stock owners seeking approvals to move and graze stock on roads and reserves;
- reducing regulatory burdens on councils and providing them with greater ability to administer and maintain the stock route network;
- minimising the impact of livestock on areas of the stock route network that support biodiversity and are culturally significant to Queenslanders;
- consolidating and removing duplicated or overly prescriptive legislative provisions; and
- providing for all funds generated by the use of stock routes and reserves to end up back at local government level for investment in the network.

Producer organisations, including AgForce, argue that they have identified a number of deficiencies with the Bill including:

- because Queensland has 44 local government bodies, the likelihood of inconsistencies across Councils in terms of allocating sufficient resources and having the will to address issues such as weeds and overgrazing;

- the lack of state government oversight to ensure that local governments manage the stock route network effectively;
- the absence of an intermediary (such as a stock route supervisor) between the local government and the Minister if a stockowner takes issue with or is aggrieved by a decision of the local government in respect of a stock route matter;
- the handing over of responsibility for managing stock routes to councils is happening at a time when some councils have little or no interest in the extra burden of managing an effective stock route network; and
- councils being unsure if the fees they will receive from stockowners are going to be sufficient to cover the costs of managing the stock route network properly.

The general consensus seems to be that there is broad support for handing the management of stock routes back to local government, but until some accurate modelling about the viability of councils taking on this additional obligation can be done, the benefits that the proposed legislation will deliver to the various stakeholders will be the subject of on-going debate.

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Common Provisions reform land access laws

By Ari McCamley, Agribusiness Partner

The laws that govern interactions between resource authority holders and landholders have changed with the commencement on 27 September 2016 of relevant parts of the *Mineral and Energy Resources (Common Provisions) Act* (**Act**).

The Act has a long history. A creation of the Newman Government, it had passed through parliament but not commenced when the 2015 election was called. We previously reported[1] that much of what the Newman Government sought to achieve as between resource authority holders and landholders was unwelcome news for primary producers.

Since the change of Government in early 2015, the Act has been reviewed and amended by the Palaszczuk Government and has now become law. Fortunately, the former Government's most controversial changes (to objection rights and the restricted land regime) have been scrapped, maintaining some fairness for landholders and the broader community.

The remaining changes implement a consistent restricted land framework across all resource authority types, introduce "opt out" agreements, provide for agreements between landholders and resource authority holders to be noted on property titles and expand the Land Court's powers when negotiations fail.

> The former Government's most controversial changes to objection rights and the restricted land regime have been scrapped.

New Restricted Land Regime

The Act introduces a consistent "restricted land" regime, based on the rules that previously applied only to mining leases, to all types of resource authorities.

[1] http://www.thymac.com.au/publication/common-provisions-act/

Landholders will now have a right to say "no" to proposed activities within 200 metres from particular permanent buildings (such as a residence) or areas used for particular intensive agriculture (such as feedlotting or poultry farming) or 50 metres from particular infrastructure including principal stockyards, dams, bores and water storages.

For production resource authorities, the restricted land regime applies only to areas that meet the definition of "restricted land" when the application for the resource authority was made. For exploration authorities, new areas can become "restricted land" over the life of the authority; for example, if a new water storage facility is constructed.

Opt-out agreements

Since 2010, an authority holder has been permitted to enter land to carry out advanced activities where each owner and occupier has entered into a conduct and compensation agreement, a deferral agreement (deferring the negotiation of a conduct and compensation agreement until after entry) or the matter has, following unsuccessful negotiations, been referred to the Land Court.

The new Act introduces another concept: an "opt-out" agreement which negates the need for a conduct and compensation agreement or Land Court proceedings. The original thinking behind opt-out agreements was that they would suit situations where authority holders and landholders have established working relationships and do not need a new conduct and compensation agreement to cover additional activities.

In our view, "opt out" agreements could be exploited by authority holders and used to deny landholders the benefit of conduct and compensation agreements. We cannot envisage a situation where signing an "opt out" agreement would be a landholder's best option.

Landholders should always seek legal advice before signing any document presented by a resource company and in almost all instances the resources company will be obliged to pay for that advice.

Recording agreements on title

Certain agreements, including conduct and compensation agreements, reached between authority holders and landowners are binding on successive owners of the land. However, until now, there has been no independent record of such agreements and, as a result, purchasers have been at risk of becoming bound by undisclosed agreements.

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Resource authority holders must now give notice to the Registrar of Titles of any continuing conduct and compensation agreements by 27 March 2017 so that the existence of the agreements can be noted on title. From now on, the Registrar must be notified within 28 days of a new conduct and compensation agreement or opt-out agreement being entered into or coming to an end.

The content of the agreements will not be publically accessible.

Increased powers for the Land Court

The Land Court now has new express powers to decide how and when a resource authority holder may enter land and how authorised activities must be carried out. In other words, the Land Court is empowered to impose conduct conditions in conjunction with an assessment of compensation.

As a general rule, landholders will continue to have only 20 business days to reach agreement with an authority holder after being given notice of the authority holder's intention to negotiate before either party can commence dispute resolution processes. However, if those processes fail, the Land Court can order the parties to go back and engage in a further conference or mediation. For the purpose of making such orders, the Land Court is now specifically empowered to take into account the behaviour of the landholder and the resource authority holder in the process that led to the Land Court's involvement. These are welcome changes.

Thynne + Macartney's Agribusiness team has assisted landholders to reach better agreements with over 200 different resource companies in recent times. It was recognised by legal publication Doyle's Guide in 2016 as the only first-tier Queensland Agribusiness law firm.

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'Make good' regime made better

By Alex Ramsey, Agribusiness Senior Associate

> The "make good" regime has been incrementally improved by State Governments.

Landholders should welcome the recent changes to the "make good" regime for compensation for damage to water bores caused by mining or gas development.

The "make good" regime has been incrementally improved by successive State Governments as the need for robust compensation agreements has grown with the development of the resource industries in Queensland.

Changes to the *Water Act 2000*, which were passed by the State Government on 10 November, address concerns raised by landholders during the submission period to extend the regime to cover water bores which are affected by "free gas" generated by coal seam gas extraction. Previously, these bores would only be caught by the regime if the bore also experienced a reduction in the flow of water which could be attributed to coal seam gas extraction.

The trigger threshold for the regime to apply has also been lowered. Previously, there needed to be an "unreasonable level of certainty" that a bore would become affected by resource activity, whereas a bore will now qualify where there is a likelihood that the resource activity is the cause of the damage or a material contributing factor to it. This change will lessen the burden on landholders proving that their bores will be affected by mining or gas activity.

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The new laws also expand landholders' rights when negotiating "make good agreements". Resource companies are now obliged to pay the landholder's reasonable costs in engaging a hydrogeologist to assist in these negotiations. While resource companies have previously been required to pay a landholder's reasonable legal, valuation and accounting costs, expert hydrogeological advice is often needed to assist the landholder to make sense of the technical data and modelling provided by the resource company, the costs of which have previously been met by the landholder.

Resource companies are also obliged to pay for any alternative dispute resolution process (such as a mediation) as part of the negotiations. Previously these costs were payable by the party who called for the process. Also, landholders now have a "cooling off period", of 40 business days from the date on which the bore assessment is undertaken, in which the landholder can terminate the make good agreement.

The amendments are expected to commence in early December. Thynne + Macartney has significant experience in assisting landholders to negotiate "make good" agreements.

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New unfair contract term protections

By Jessica Carroll, Commercial Lawyer & Kasey Solar, Agribusiness Lawyer

Recent changes to the national unfair contract terms protections introduce the potential for contracts between businesses to be challenged.

The new regime applies to **standard form contracts** entered into, renewed or amended after 12 November 2016 for the supply of goods or services or for the sale of a grant of an interest in land, where one party to the contract is a **small business**. If the contract contains an **unfair term**, the party disadvantaged by the term can seek to have it declared void and unenforceable.

What is a standard form contract?

A standard form contract is one that has been prepared by one party to the contract, where the other party has little or no opportunity to negotiate the terms – that is, it is offered on a 'take it or leave it' basis.

The contract must have either an ascertainable price less than $300,000 or a duration of more than 12 months and an ascertainable price less than $1,000,000.

What is a small business?

The new regime will apply if either party to a standard form contract is a "small business". A small business is a business that employs fewer than 20 persons.

Which terms may be "unfair"?

A term may be "unfair" if it would cause a significant imbalance in the parties' rights and obligations arising under the contract, is not reasonably necessary in order to protect the legitimate interests of the party relying on the term and would cause detriment (financial or otherwise) to a party if it were enforced.

Terms identified by the Australian Competition and Consumer Commission which may be unfair include terms that provide businesses broad rights to reject or downgrade produce, significantly restrict a supplier's ability to sell produce, allow for late indicative or variable pricing of produce or allow unrestricted access to a supplier's property.

> Farmers and graziers should be aware that unfair terms may be open to challenge.

Either party can apply to the court for a declaration that a term is unfair. Therefore, while small businesses will be protected from unfair terms in standard form contracts imposed on them, they should also be wary of the consequences of the new protections on any standard form contracts they might propose to customers or suppliers.

Consequences

When dealing with suppliers, customers, agents and other businesses, farmers and graziers should be aware that unfair terms may be open to challenge. Thynne + Macartney's specialists can prepare contracts that minimise the risks of disputes and can assist to resolve disputes if they arise.

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Biosecurity – Are you up to date with the changes?

By Hannah Byrne, Agribusiness Lawyer

The new *Biosecurity Act 2014* (**Act**) came into effect on 1 July 2016.

General biosecurity obligation

Under the Act, individuals and organisations now have a "general biosecurity obligation" to take all reasonable and practical measures to prevent and manage "biosecurity risks" under their control and about which they know or should reasonably be expected to know.

A biosecurity risk exists when you deal with any pest, disease or contaminant, or with something that could carry one of these (eg animals, plants, soil, and equipment).

If your activities pose a biosecurity risk, you need to:

- take all reasonable and practical steps to prevent or minimise each biosecurity risk;
- minimise the likelihood of the risk causing a biosecurity event and limit the consequences of such an event; and
- prevent or minimise the adverse effects the risk could have and refrain from doing anything that might exacerbate the adverse effects.

You are not expected to know about all biosecurity risks but you are expected to be aware of the biosecurity risks associated with your day-to-day work and hobbies. For example, livestock owners are expected to stay informed about, and manage appropriately, pests and diseases that could be carried by their animals as well as weeds and pest animals that could be on their property.

> You are expected to be aware of the biosecurity risks associated with your day-to-day work and hobbies.

All individuals and organisations have a "general biosecurity obligation". So, for example, tenants of leased properties should be aware of any biosecurity risks associated with their activities and take steps to appropriately manage pests and diseases (even though they do not own the land). Landlords also have a "general biosecurity obligation" and therefore have certain responsibilities despite having handed over possession of their property.

Registration requirements

Under the Act, anyone who keeps more than a certain number of designated animals (for example, one or more head of cattle, sheep, goats, pigs etc, 100 or more chickens or one or more beehives) is a "registrable biosecurity entity" and must register with Biosecurity Queensland.

Registered biosecurity entities (**RBE**) are allocated a property identification code (**PIC**).

If you had been allocated a PIC before 1 July 2016, you will have automatically become a RBE and your registration will be valid until 1 July 2019.

PICs are not "owned" by the landowner and are instead allocated to land on which animals are kept. As a result, more than one RBE can be registered to a property. If you do not own the property where your animals are kept, you still need to register as a RBE through Biosecurity Queensland.

It is your responsibility to keep your registration details up to date and you must notify Biosecurity Queensland if there are changes to your contact information or property details (e.g. land parcels removed, changes to the types of animals kept) or you acquire additional property on which animals will be kept.

Prohibited and restricted matters under the Act

The concepts of "prohibited matter" and "restricted matter" replace the declared pest classes under the previous legislation.

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"Prohibited matter" is a disease, exotic fish, insect pest, pest animal or a weed that is not found in Queensland but if it was to enter Queensland it would seriously impact our health, way of life, the economy and the environment. If you become aware of the presence of a prohibited matter, you must report it to Biosecurity Queensland within 24 hours.

"Restricted matter" is an animal disease, noxious fish, insect, pest animal or weed found in Queensland that is listed in Schedule 2 of the Act. Specific actions are required to be taken to limit the impact of this matter by reducing, controlling or containing it. There are seven categories of restricted matter. Categories 1 and 2 must be reported within 24 hours. For example, Johne's disease is a category 1 restricted matter that must be reported within 24 hours.

Again, you are not expected to know all types of prohibited and restricted matters however you are expected to know about prohibited and restricted matters you could potentially come across as part of your business. For example, graziers are expected to know about serious diseases of livestock including foot-and-mouth, anthrax and Johne's disease and citrus farmers are expected to know about citrus canker.

Cattle tick management

Various changes have been made to cattle tick management in Queensland including:

- As at 1 July 2016, Queensland was divided into two cattle tick zones, the cattle tick infested zone and the cattle tick free zone.
- Owners of properties that are infested with cattle tick in the free zone have an obligation to notify of the presence of cattle tick or tick fever and will be subject to movement requirements and be required to undertake a cattle tick eradication program.
- In most cases, a biosecurity certificate issued by an accredited certifier must be obtained before high risk livestock (eg, cattle) are moved from an infested zone to a free zone.

Whilst the management of cattle ticks has long been a contentious issue, it is a welcome relief to have some clarity regarding the position of the cattle tick line.

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High penalties for sham arrangements: Are your contractors really employees?

By Clayton Payne, Employment Law & Workplace Relations Special Counsel

The Federal Circuit Court in *Fair Work Ombudsman v. ASAP and Another* recently considered the ramifications for a business where an arrangement with a "contractor" was found to instead be one of employer and employee.

The "contractor" in the case was trained by the business that engaged him, signed a "Services Agreement", and followed the business' directions to apply for an Australian Business Number.

However, it was accepted that the worker was subject to the day-to-day operational direction, supervision and control of the business' director, and was required to work set hours.

Ultimately, the employer admitted that it had breached the "sham arrangements" provisions of the Fair Work Act.

The employer had not paid the worker the relevant minimum rate of pay for the period, nor a casual loading, also in breach of the Fair Work Act.

The business paid to the worker almost $8,000 which had been underpaid.

However, the business and its director were also ordered to pay penalties amounting to $124,000.

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The decision highlights the need for businesses to think very carefully about how they engage workers.

The decision demonstrates that Courts can impose hefty civil penalties for breaches of the Fair Work Act, particularly involving sham contracting arrangements (where, for example, an employer knowingly or recklessly represents to a worker that they will be engaged as an independent contractor, when they will instead be employed), and the underpayment of workers.

The decision highlights the need for businesses to think very carefully about how they engage workers, and in particular, whether the workers in question are in reality employees.

The consequences of incorrectly classifying engagements can include not only penalties such as those described above, but also claims for entitlements (such as for paid annual leave, paid personal/carer's leave, long service leave, etc.), superannuation guarantee contributions, payroll tax, workers' compensation insurance premiums and other potential liabilities.

Thynne + Macartney's specialist employment team has extensive experience advising on contractor arrangements and managing problems when they arise.

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Finding Cooper:
Your support will deliver an educational resource that showcases Outback Australia's fossil heritage

Outback Gondwana Foundation Ltd is a not-for-profit organisation founded to discover and showcase Outback Australia's fossil heritage by third generation landholders, Stuart and Robyn Mackenzie of "Plevna Downs", Eromanga.

The Foundation has recently completed development of the first phase of the Eromanga Natural History Museum, the first regionally-based Australian natural history museum with internationally significant dinosaur, megafauna and microfauna collections all held within the region of discovery.

Six directors, including Thynne + Macartney Agribusiness Partner Ari McCamley, volunteer their time and expertise to lead this internationally significant project and ensure it continues to grow.

Following the first South West Queensland dinosaur bone discovery west of Eromanga in 2004, many more dinosaur sites were found, including a site which produced the bones from Australia's largest dinosaur, nicknamed "Cooper". This new dinosaur grew up to 30m long and 6.5m high and is one of the top ten largest dinosaurs in the world. After 10 years of careful preparation of the bones by the Eromanga Natural History Museum, the scientific paper on this new genus and species of dinosaur is to be published in 2017 by lead author, paleontologist Dr Scott Hocknull.

The Eromanga Natural History Museum is producing an educational book to interpret the scientific paper in a format that our school children and all ages will enjoy. The beautifully written and illustrated book will link to the Australian curriculum and will fill a much needed gap for an education resource on our fossil heritage.

Outback Gondwana Foundation hopes to launch the book in 2017 after the Coopers scientific paper is published, but requires community support to cover the final costs of production and printing.

Tax deductible donations to the book project can be made at www.enhm.com.au/fundcooper.

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Thynne + Macartney congratulates GMRF research award winners

Thynne + Macartney is a proud sponsor of the Gallipoli Medical Research Awards, which were held on 16 November.

Bill Loughnan, Thynne + Macartney's Chairman of Partners, presented the Thynne + Macartney Discovery Award to Karen Lochran with Dame Quentin Bryce (Patron). Karen is undertaking a pilot study investigating the effectiveness of Cognitive Processing Therapy for the treatment of military-related PTSD in a Trauma Recovery Program.

"The night was not only to award grants for the next 12 months but also to acknowledge the research done over the past year. Clearly there are a number of passionate researchers and Thynne + Macartney is pleased to support their work through our sponsorship of the Gallipoli Medical Research Foundation," Bill Loughnan said.

Gallipoli Medical Research Foundation funds and facilitates medical research to prevent, cure or lessen the impact of diseases affecting the veteran and broader Australian community.

L to R: Dame Quentin Bryce, Karen Lochran, Bill Loughnan

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