

**PETROLEUM AND GEOTHERMAL ENERGY RESOURCES
AMENDMENT (VETO POWERS) BILL 2017**

Introduction and First Reading

Bill introduced, on motion by **Hon Rick Mazza**, and read a first time.

Second Reading

HON RICK MAZZA (Agricultural) [10.18 am]: I move —

That the bill be now read a second time.

The petroleum and mineral resource industries are crucial to the Western Australian economy. However, access to private land to explore for and exploit those resources will always raise the question of whose rights prevail. This bill aims to put some balance into this question by giving the owners of private land used for agricultural production the right of veto over access to their land to explore for and produce petroleum. It follows the principles applied to private land used for agricultural production under the Mining Act 1978. Mining has not stopped in this state because of that.

This bill recognises the importance of private property rights because it is the ownership of private property that provides the basic economic incentive that creates wealth. But private property requires evidence of ownership because without that, it is not possible to transfer the economic good associated with that property. That is why Western Australians rely on the government to operate the register of property titles. Therefore, it is the major duty of government to protect private property rights. “Private property rights” does not just refer to the ownership of land; it also means the economic good received by virtue of owning property. In the case of land, this can mean rental income utilising the property to produce goods for sale, or proceeds from the ownership of natural resources. However, since 1 January 1899, all new grants of freehold titles in Western Australia have provided that all minerals are reserved to the Crown. This has had a far-reaching effect on private property rights in Western Australia. Private landholders no longer control the minerals found within their sub-surface soil, even though they continue to own the land itself. Although no doubt well meaning, and meant to facilitate the development of this state’s mineral wealth, this has led to tension between the mining and agricultural industries.

This bill does not stop or prevent the development of the state’s abundant reserves of petroleum and gas resources. Petroleum exploration companies are now moving onshore, after a lengthy period of developing the state’s offshore natural gas assets. These companies have had to deal only with state and commonwealth governments. Now, they must deal with private landowners, who are typically family farmers. The great majority of petroleum exploration companies act in good faith. It is in their interest to maintain good relations with the underlying landowners in their wish to explore for and develop natural gas and petroleum reservoirs. However, as the Petroleum and Geothermal Energy Resources Act 1967 now stands, the private landowner has no rights except the right for a magistrate to determine compensation because they will be deprived of the use of the surface, and for such damages as may occur. For a farmer, being deprived of the right to use their surface land is a mighty hard pill to swallow. When they farm their land, they know they own it as far as the boundary fence, and in some cases as far as the eye can see. Under the Petroleum and Geothermal Energy Resources Act 1967 as it now stands, farmers have no say if petroleum explorers and producers want to use their land—just the right to compensation.

In parts of the agricultural region of Western Australia, access to underground water can also be a critical component of farming activities, especially in the south west of the state. Farmers have fears—real or not does not matter, for it is the perception that counts—that petroleum exploration and production may have consequences on the use of their own land that may run far into the future. Compensation is all very well when something goes wrong, but for some farmers, it is a risk they do not wish to take for any amount of money. When a farmer is compelled by legislation to allow explorers on their private land, it amounts to duress.

Of all occupations, farmers are perhaps the most independent of them all. They make decisions about the weather and the markets, they borrow money against the future harvest, they decide what crop rotation to use, and how much fertiliser to use. In other words, they are used to making important choices of their own free will. It is their land to do with as they see fit, except that the right to deny entry has been taken away from them by the Petroleum and Geothermal Energy Resources Act 1967. The right to deny entry is one of the most fundamental of all property rights. If we are not careful, private property will have little to no value. The value in land is one of the main ways everyday Western Australians generate their wealth. We must protect that value. I ask members of the house to support this bill, and in doing so, put some value back into private property rights.

This bill does not seek to reallocate any existing property rights. The Crown will continue to own the petroleum, geothermal energy resources and geothermal energy. Upon the recovery of any petroleum by a petroleum explorer or producer, the petroleum will continue to be their property. However, private landowners, but more particularly farmers, will gain a small amount of leverage that will allow them to bargain land access with more equality, rather

than from a starting position of weakness. It seems that our parliamentary forebears knew this also, because the Mining Act 1978 recognises that agricultural land is deserving of some special protections. In particular, section 29(2) of the Mining Act provides that the consent of the landholder is required for land “under cultivation”.

Further, our parliamentary forebears recognised the great tradition of pastoral grazing of livestock in Western Australia by further defining land under cultivation as being land used for grazing stock in the ordinary course of management of the land. How this consent is to be achieved is best left to the farmers of private land and the petroleum explorer or producer. Like all access arrangements, negotiation and incentives will work best. If we wish to use someone else’s property, we should expect to pay the owner some form of rent, either ongoing, in kind or one-off. This bill will give farmers of private land the ability to allow access to their land, or not, depending on their own inclinations. The answer, of course, lies in negotiation. Just like all the big farming decisions, farmers can make up their own minds. Petroleum explorers and farmers will have to sit down together and talk about access. Some farmers will never agree, but some farmers will act in good faith and, on receipt of some economic rent from a petroleum explorer, allow such access as is required to exploit natural gas and petroleum reservoirs.

In conclusion, this bill has the simple objective of giving farmers of private land the same rights they already enjoy with respect to surface mining on their land in this state. That is the ability to say no, if that is their choice.

Pursuant to standing order 126(1), I advise that this bill is not a uniform legislation bill. It does not ratify or give effect to an intergovernmental or multilateral agreement to which the government of the state is a party; nor does this bill, by reason of its subject matter, introduce a uniform scheme or uniform laws through the commonwealth.

I commend the bill to the house and table an explanatory memorandum.

[See paper 1384.]

Debate adjourned, pursuant to standing orders.