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The Parliament of the  
Commonwealth of Australia

THE SENATE

*Presented and read a first time*

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

**No. , 2015**

*(Senator Waters)*

**A Bill for an Act to provide Australian landholders the right to refuse the undertaking of gas and coal mining activities on their land without prior written authorisation, to ban hydraulic fracturing, and for related purposes**



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1 **A Bill for an Act to provide Australian landholders**  
2 **the right to refuse the undertaking of gas and coal**  
3 **mining activities on their land without prior written**  
4 **authorisation, to ban hydraulic fracturing, and for**  
5 **related purposes**

6 The Parliament of Australia enacts:

7 **Part 1—Preliminary**  
8

9 **1 Short title**

10 This Act may be cited as the *Landholders' Right to Refuse (Gas*  
11 *and Coal) Act 2015*.

Section 2

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1       **2 Commencement**

2                       This Act commences on the day after this Act receives the Royal  
3                       Assent.

4       **3 Simplified outline of this Act**

5                       This Act:  
6                       (a) gives Australian landholders the right to refuse mining  
7                       companies access to their land to engage in gas or coal  
8                       mining activity; and  
9                       (b) bans hydraulic fracturing operations by constitutional  
10                      corporations.

11                      It is an offence for a constitutional corporation to conduct gas or  
12                      coal mining operations, or enter or remain on land to do so, without  
13                      the prior written authorisation of each person with an ownership  
14                      interest in the land. The prior authorisation must contain certain  
15                      information and is invalid if the corporation does not advise the  
16                      person of their right to refuse authorisation.

17                      A person with an ownership interest in the land may also take  
18                      action against the corporation if they fail to obtain their  
19                      authorisation.

20                      It is a contravention of a civil penalty provision if a constitutional  
21                      corporation engages in hydraulic fracturing operations.

22                      Persons with an interest affected by any hydraulic fracturing  
23                      operations may apply for an injunction to stop a constitutional  
24                      corporation from engaging in the operations, or the Environment  
25                      Minister may apply to the Federal Court for an order that the  
26                      corporation pay a pecuniary penalty.

27       **4 Definitions**

28                      In this Act:

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Section 4

1           ***civil penalty provision***: a subsection of this Act (or a section of this  
2 Act that is not divided into subsections) is a ***civil penalty provision***  
3 if:

- 4           (a) the subsection (or section) sets out at its foot a pecuniary  
5           penalty, or penalties, indicated by the words “Civil penalty”;  
6           or  
7           (b) another provision of this Act provides that the subsection (or  
8           section) is a civil penalty provision.

9           ***constitutional corporation*** means a corporation to which  
10          paragraph 51(xx) of the Constitution applies.

11          ***court*** means the Federal Court of Australia.

12          ***Environment Minister*** means the Minister who administers the  
13          *Environment Protection and Biodiversity Conservation Act 1999*.

14          ***gas or coal*** means:

- 15           (a) coal; or  
16           (b) coal seam gas; or  
17           (c) shale gas; or  
18           (d) tight gas.

19          ***gas or coal mining activity*** includes any activity undertaken for the  
20          purpose of:

- 21           (a) exploring for gas or coal; or  
22           (b) mining or producing gas or coal (including underground coal  
23           gasification).

24          ***hydraulic fracturing operations*** means any operations that involve  
25          the recovery (or the potential or enhanced recovery) of coal seam  
26          gas, shale gas or tight gas by the high-pressure injection of fluid  
27          into a wellbore to create fractures, or enlarge existing fractures, in  
28          geological formations.

29          ***land*** includes:

- 30           (a) land within the beds and banks of streams, watercourses and  
31           inundated land; and  
32           (b) waters in, upon and above land; and  
33           (c) subterranean land.
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Section 5

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1                    *ownership interest* has the meaning given by section 5.

2                    *prior written authorisation* means an authorisation given under  
3                    section 12 that has not expired.

4                    **5 Meaning of *ownership interest***

5                    (1) A person has an *ownership interest* in land if the person has a legal  
6                    or equitable interest in it or a right to occupy it.

7                    (2) Despite subsection (1), a person does not have an ownership  
8                    interest in land if the interest or right in the land arises as a result of  
9                    a right granted under a law of the Commonwealth, a State or a  
10                    Territory to engage in gas or coal mining activities.

11                   **6 Act binds the Crown**

12                   This Act binds the Crown in each of its capacities.

13                   **7 Extension to external Territories**

14                   This Act extends to every external Territory.

15                   **8 Relationship to State and Territory laws**

16                   This Act is not intended to exclude or limit the operation of any  
17                   law of a State or Territory, to the extent that that law is capable of  
18                   operating concurrently with this Act.

1 **Part 2—Gas or coal mining**

2 **Division 1—Gas or coal mining without prior written**  
3 **authorisation from landholders is unlawful**

4 **9 Application of this Division**

5 (1) This Division applies in relation to any gas or coal mining activity  
6 engaged in by a constitutional corporation on, or in relation to, land  
7 on or after the day this section commences.

8 (2) Despite subsection (1), this Division does not apply in relation to a  
9 gas or coal mining activity engaged in by a constitutional  
10 corporation on, or in relation to, particular land after the day this  
11 section commences if:

12 (a) the activity is for the purpose of exploring for gas or coal;  
13 and

14 (b) the constitutional corporation commenced exploring for gas  
15 or coal on, or in relation to, the land before the day this  
16 section commences.

17 (3) Despite subsection (1), this Division does not apply in relation to a  
18 gas or coal mining activity engaged in by a constitutional  
19 corporation on, or in relation to, particular land after the day this  
20 section commences if:

21 (a) the activity is for the purpose of mining or producing gas or  
22 coal; and

23 (b) the constitutional corporation commenced mining or  
24 producing gas or coal on, or in relation to, the land before the  
25 day this section commences.

26 **10 Gas or coal mining without prior written authorisation from**  
27 **landholders is unlawful**

28 (1) A constitutional corporation commits an offence if:

29 (a) the corporation:

**Part 2** Gas or coal mining

**Division 1** Gas or coal mining without prior written authorisation from landholders is unlawful

**Section 11**

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- 1 (i) enters, or remains on, land for the purposes of engaging  
2 in a gas or coal mining activity; or  
3 (ii) engages in a gas or coal mining activity on, or in  
4 relation to, land; and  
5 (b) the corporation does not have an ownership interest in the  
6 land.

7 Penalty: 5,000 penalty units.

8 (2) A constitutional corporation that contravenes subsection (1)  
9 commits a separate offence in relation to each day (including a day  
10 of conviction for the offence or any later day) during which the  
11 contravention continues.

12 (3) Subsection (1) does not apply if the corporation has a prior written  
13 authorisation from each person with an ownership interest in the  
14 land to engage in the gas or coal mining activity on, or in relation  
15 to, the land.

16 Note: A defendant bears an evidential burden in relation to the matter in  
17 subsection (3): see subsection 13.3(3) of the *Criminal Code*.

18 **11 Action for gas or coal mining without prior written authorisation**  
19 **from landholders**

20 (1) A person (a *landholder*) with an ownership interest in land may  
21 bring an action against another person if:

22 (a) the other person is a constitutional corporation; and

23 (b) the other person:

24 (i) enters, or remains on, the land for the purpose of  
25 engaging in a gas or coal mining activity; or

26 (ii) engages in a gas or coal mining activity on, or in  
27 relation to, the land; and

28 (c) the other person does not have a prior written authorisation  
29 from the landholder to engage in the gas or coal mining  
30 activity on, or in relation to, the land.

31 (2) An action under subsection (1) may be commenced by the  
32 landholder at any time within 6 years after the day on which the  
33 cause of action accrued.

1 **Division 2—Prior written authorisations for gas or coal**  
2 **mining**

3 **12 Obtaining prior written authorisation**

- 4 (1) A constitutional corporation wishing to enter, or remain on, land to  
5 engage in a gas or coal mining activity may apply to a person with  
6 an ownership interest in the land for an authorisation (a *prior*  
7 *written authorisation*) to engage in that activity on that land.

8 Note: If more than one person has an ownership interest in the land, the  
9 constitutional corporation must obtain a prior written authorisation  
10 from each of them to avoid an action under section 11.

- 11 (2) A prior written authorisation must contain the following  
12 information:

- 13 (a) the names and details of the parties to the authorisation;  
14 (b) the land to which the authorisation relates;  
15 (c) the gas or coal mining activity proposed to be undertaken by  
16 the constitutional corporation in relation to the land;  
17 (d) when and where the activity is proposed to be engaged in;  
18 (e) an independent assessment of the current and future risks  
19 associated with the proposed gas or coal mining activity on,  
20 or affecting, the land and any associated groundwater  
21 systems;  
22 (f) the date the authorisation has effect and its expiry date;  
23 (g) any other information prescribed by the regulations.

- 24 (3) A prior written authorisation is invalid unless:

- 25 (a) the authorisation contains the information required by  
26 subsection (2); and  
27 (b) the authorisation is in writing; and  
28 (c) the person with the ownership interest in the land (the  
29 *landholder*) has been advised, in writing, by the  
30 constitutional corporation that is a party to the authorisation,  
31 that the landholder:  
32 (i) may refuse to sign the authorisation; and

**Part 2** Gas or coal mining

**Division 2** Prior written authorisations for gas or coal mining

**Section 12**

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- 1 (ii) should seek independent advice about the authorisation  
2 before signing it; and  
3 (d) the authorisation is signed and dated by the landholder.

1 **Division 3—Remedies**

2 **13 Remedies in actions for gas or coal mining on without prior**  
3 **written authorisation**

- 4 (1) Without limiting the relief that a court may grant to a person (the  
5 *plaintiff*) in an action under section 11 (gas or coal mining without  
6 a prior written authorisation), the relief may include an injunction  
7 (including an interim injunction).
- 8 (2) The court must order that all costs incurred by a person  
9 commencing an action under this Part are to be paid by the  
10 defendant to the action unless the court considers that:  
11 (a) the person instituted the action vexatiously or without  
12 reasonable cause; or  
13 (b) it would be unreasonable, in all the circumstances, to do so.
- 14 (3) The court may discharge or vary an injunction or other order made  
15 under this section.

Section 14

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1 **Part 3—Hydraulic fracturing operations ban**

2 **Division 1—Hydraulic fracturing operations ban**

3 **14 Hydraulic fracturing operations by constitutional corporation is**  
4 **unlawful**

5 A constitutional corporation must not engage in hydraulic  
6 fracturing operations.

7 Civil penalty: 50,000 penalty units.

1 **Division 2—Injunctions**

2 **15 Injunctions for contravention of hydraulic fracturing ban**

3 *Applications for injunctions*

4 (1) If a person has engaged, engages or proposes to engage in conduct  
5 consisting of an act or omission that constitutes a contravention of  
6 section 14:

7 (a) the Environment Minister; or

8 (b) an interested person (other than an unincorporated  
9 organisation); or

10 (c) a person acting on behalf of an unincorporated organisation  
11 that is an interested person;

12 may apply to the Federal Court for an injunction.

13 *Prohibitory injunctions*

14 (2) If a person has engaged, is engaging or is proposing to engage in  
15 conduct constituting an offence or other contravention of section  
16 14, the Court may grant an injunction restraining the person from  
17 engaging in the conduct.

18 *Additional orders with prohibitory injunctions*

19 (3) If the court grants an injunction restraining a person from engaging  
20 in conduct and in the Court's opinion it is desirable to do so, the  
21 Court may make an order requiring the person to do something  
22 (including repair or mitigate damage to the environment).

23 *Mandatory injunctions*

24 (4) If a person has refused or failed, or is refusing or failing, or is  
25 proposing to refuse or fail to do an act, and the refusal or failure  
26 did, does or would constitute an offence or other contravention of  
27 section 14, the Court may grant an injunction requiring the person  
28 to do the act.

Section 15

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*Interim injunctions*

- (5) Before deciding an application for an injunction under this section, the Court may grant an interim injunction:
- (a) restraining a person from engaging in conduct; or
  - (b) requiring a person to do an act.

*Meaning of interested person—individuals*

- (6) For the purposes of an application for an injunction relating to conduct or proposed conduct, an individual is an **interested person** if the individual is an Australian citizen or ordinarily resident in Australia or an external Territory, and:
- (a) the individual’s interests have been, are or would be affected by the conduct or proposed conduct; or
  - (b) the individual engaged in a series of activities for protection or conservation of, or research into, the environment at any time in the 2 years immediately before:
    - (i) the conduct; or
    - (ii) in the case of proposed conduct—making the application for the injunction.

*Meaning of interested person—organisations*

- (7) For the purposes of an application for an injunction relating to conduct or proposed conduct, an organisation (whether incorporated or not) is an **interested person** if it is incorporated (or was otherwise established) in Australia or an external Territory and one or more of the following conditions are met:
- (a) the organisation’s interests have been, are or would be affected by the conduct or proposed conduct;
  - (b) if the application relates to conduct—at any time during the 2 years immediately before the conduct:
    - (i) the organisation’s objects or purposes included the protection or conservation of, or research into, the environment; and
    - (ii) the organisation engaged in a series of activities related to the protection or conservation of, or research into, the environment;

- 1 (c) if the application relates to proposed conduct—at any time  
2 during the 2 years immediately before the making of the  
3 application:  
4 (i) the organisation’s objects or purposes included the  
5 protection or conservation of, or research into, the  
6 environment; and  
7 (ii) the organisation engaged in a series of activities related  
8 to the protection or conservation of, or research into, the  
9 environment.

## 10 **16 Discharge of injunctions**

11 On application, the Federal Court may discharge or vary an  
12 injunction.

## 13 **17 Certain considerations for granting injunctions not relevant**

### 14 *Prohibitory injunctions*

- 15 (1) The Federal Court may grant an injunction restraining a person  
16 from engaging in conduct:  
17 (a) whether or not it appears to the Court that the person intends  
18 to engage again, or to continue to engage, in conduct of that  
19 kind; and  
20 (b) whether or not the person has previously engaged in conduct  
21 of that kind; and  
22 (c) whether or not there is a significant risk of injury or damage  
23 to human beings or the environment if the person engages, or  
24 continues to engage, in conduct of that kind.

### 25 *Mandatory injunctions*

- 26 (2) The Federal Court may grant an injunction requiring a person to do  
27 a particular act or thing:  
28 (a) whether or not it appears to the Court that the person intends  
29 to refuse or fail again, or to continue to refuse or fail, to do  
30 the act or thing; and  
31 (b) whether or not the person has previously refused or failed to  
32 do the act or thing; and

**Part 3** Hydraulic fracturing operations ban

**Division 2** Injunctions

**Section 18**

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1 (c) whether or not there is a significant risk of injury or damage  
2 to human beings or the environment if the person refuses or  
3 fails, or continues to refuse or fail, to do the act or thing.

4 **18 Powers conferred are in addition to other powers of the Court**

5 The powers conferred on the Federal Court by this Division are in  
6 addition to (and do not limit) any other powers of the Court.

1 **Division 3—Civil penalties**

2 **Subdivision A—Obtaining an order for a civil penalty**

3 **19 Federal Court may order person to pay pecuniary penalty for**  
4 **contravening civil penalty provision**

5 *Application for order*

- 6 (1) Within 6 years of a person (the *wrongdoer*) contravening a civil  
7 penalty provision, the Environment Minister may apply on behalf  
8 of the Commonwealth to the Federal Court for an order that the  
9 wrongdoer pay the Commonwealth a pecuniary penalty.

10 *Court may order wrongdoer to pay pecuniary penalty*

- 11 (2) If the Court is satisfied that the wrongdoer has contravened a civil  
12 penalty provision, the Court may order the wrongdoer to pay to the  
13 Commonwealth for each contravention the pecuniary penalty that  
14 the Court determines is appropriate (but not more than the relevant  
15 amount specified for the provision).

16 *Determining amount of pecuniary penalty*

- 17 (3) In determining the pecuniary penalty, the Court must have regard  
18 to all relevant matters, including:  
19 (a) the nature and extent of the contravention; and  
20 (b) the nature and extent of any loss or damage suffered as a  
21 result of the contravention; and  
22 (c) the circumstances in which the contravention took place; and  
23 (d) whether the person has previously been found by a court  
24 (including a court in a foreign country) to have engaged in  
25 any similar conduct.

26 **20 Contravening a civil penalty provision is not an offence**

27 A contravention of a civil penalty provision is not an offence.

Section 21

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1       **21 Recovery of a pecuniary penalty**

2                       If the Federal Court orders a person to pay a pecuniary penalty:

3                       (a) the penalty is payable to the Commonwealth; and

4                       (b) the Commonwealth may enforce the order as if it were a  
5                       judgment of the Court.

6       **Subdivision B—Civil penalty proceedings and criminal**  
7                       **proceedings**

8       **22 Civil proceedings after criminal proceedings**

9                       The Federal Court must not make a pecuniary penalty order against  
10                      a person for a contravention of a civil penalty provision if the  
11                      person has been convicted of an offence constituted by conduct  
12                      that is substantially the same as the conduct constituting the  
13                      contravention.

14      **23 Criminal proceedings during civil proceedings**

15                      (1) Proceedings for a pecuniary penalty order against a person for a  
16                      contravention of a civil penalty provision are stayed if:

17                      (a) criminal proceedings are started or have already been started  
18                      against the person for an offence; and

19                      (b) the offence is constituted by conduct that is substantially the  
20                      same as the conduct alleged to constitute the contravention.

21                      (2) The proceedings for the order may be resumed if the person is not  
22                      convicted of the offence. Otherwise, the proceedings for the order  
23                      are dismissed.

24      **24 Criminal proceedings after civil proceedings**

25                      Criminal proceedings may be started against a person for conduct  
26                      that is substantially the same as conduct constituting a  
27                      contravention of a civil penalty provision regardless of whether a  
28                      pecuniary penalty order has been made against the person.

1 **25 Evidence given in proceedings for penalty not admissible in**  
2 **criminal proceedings**

- 3 (1) Evidence of information given or evidence of production of  
4 documents by an individual is not admissible in criminal  
5 proceedings against the individual if:  
6 (a) the individual previously gave the evidence or produced the  
7 documents in proceedings for a pecuniary penalty order  
8 against the individual for a contravention of a civil penalty  
9 provision (whether or not the order was made); and  
10 (b) the conduct alleged to constitute the offence is substantially  
11 the same as the conduct that was claimed to constitute the  
12 contravention.
- 13 (2) However, subsection (1) does not apply to a criminal proceeding in  
14 respect of the falsity of the evidence given by the individual in the  
15 proceedings for the pecuniary penalty order.

16 **Subdivision C—Miscellaneous**

17 **26 Persons involved in contravening civil penalty provision**

- 18 (1) A person must not:  
19 (a) aid, abet, counsel or procure a contravention of a civil  
20 penalty provision; or  
21 (b) induce (by threats, promises or otherwise) a contravention of  
22 a civil penalty provision; or  
23 (c) be in any way directly or indirectly knowingly concerned in,  
24 or party to, a contravention of a civil penalty provision; or  
25 (d) conspire to contravene a civil penalty provision.
- 26 (2) This Division applies to a person who contravenes subsection (1)  
27 in relation to a civil penalty provision as if the person had  
28 contravened the provision.

Section 27

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1 **27 Civil penalty provisions contravened by employees, agents or**  
2 **officers**

3 If an element of a civil penalty provision is done by an employee,  
4 agent or officer of a constitutional corporation acting within the  
5 actual or apparent scope of his or her employment, or within his or  
6 her actual or apparent authority, the element must also be attributed  
7 to the corporation.

**Part 4—Miscellaneous****28 Application of this Act to joint ventures and partnerships**

- (1) This section sets out the way this Act applies to a partnership or joint venture (an *entity*) that consists of 2 or more constitutional corporations. Those corporations are referred to in this section as *the participants*.
- (2) If this Act requires or permits something to be done by a constitutional corporation, the thing may be done by one or more of the participants on behalf of the entity.
- (3) If a provision of this Act refers to a constitutional corporation bearing any costs, the provision applies as if the provision referred to any of the participants bearing any costs.
- (4) If a provision of this Act refers to a constitutional corporation doing something, the provision applies as if the provision referred to one or more of the participants doing that thing on behalf of the entity.
- (5) If a provision of this Act requires a constitutional corporation to do something, or prohibits a constitutional corporation doing something, the provision applies as if the reference to the constitutional corporation were a reference to each participant.

**29 Regulations**

- The Governor-General may make regulations prescribing matters:
- (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.