PRA Est. 2003
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Property Rights Australia Inc submission to QLRC's consultation paper 4.

Conscious consistency: mining and other resource production tenures

Reform of government regulations is a complex area, often beyond the working knowledge of many landowners. The rights of title-holding landowners and primary producers continues to be undermined by the surge of other land uses, associated access and infrastructure. Some uses are supposedly co-existing, some are competitive, some diminish existing productivity and can pose biosecurity and water security risks.

Property Rights Australia Inc. (PRA) is a not-for-profit, apolitical organisation which formed in 2003, to protect the property rights of landowners adversely affected by the actions of government, private companies and others who negatively impact their properties and their right to do business. Our members are small, medium and large enterprises, mostly in Queensland and few are from other states. PRA strives for ecologically and economically sustainable natural resource management, whilst protecting private property rights. PRA wants to ensure government policies and natural resource management decisions are based on sound science and responsible economic management.

PRA offers the following feedback to the nine questions in QLRC's consultation paper 4.

Q1 Are the guiding principles of 'fair, efficient, effective and contemporary' appropriate for considering reforms to the processes for deciding other resource proposals?

The goals are mostly appropriate but does the process being discussed achieve the goals?

This process does not read as "fair". One of the most affected groups, landowners, particularly those who will be directly affected and their neighbours, seem to be mostly cut out of the process, even if they have grave concerns, until a possible merits-based review in the Land Court after the government has already made a decision.

The principles are probably not efficient.

With the addition of every committee comes an opportunity to reduce efficiency. The Independent Expert Committee can probably be made fairly concise, if expertise on the committee is limited to necessary scientific and legal advice.

The Aboriginal and Torres Strait Islander Cultural Committee has the potential to slow the process down and introduces a heightened potential for "lawfare".

Effective depends on the aims of the government. Such aims we are not privy to.

"Contemporary", it probably is, but why do we need to be contemporary? Our adversarial system of law has been developed over hundreds of years and is designed to let everyone put their case. It is also designed to an extent, to make allowances for the considerable imbalances of power which sometimes exist. It has some drawbacks, but they can be tweaked.

One drawback of the present system, outlined in the original discussion, that landowners are not permitted to change their evidence in the Land Court in spite of changes to knowledge or circumstances, could easily be changed by a simple amendment to align with the rights of miners.

Costs for expert advice are another drawback but that is a problem that should be able to be solved. A possible solution is for the expert advice of the Independent Expert Committee to be made available for landowners.

Changing the timing of a merits-based review in the Land Court changes the focus from the landowner objecting to the mining company or some of its conditions to taking on the government and its policy positions. One would think that would be a more formidable task.

PRA cannot, at this stage, support the removal of the pre-decision Land Court objections hearing.

The prosed models and iterations of the models are purely abstract and seem to incorporate few protections for landowners.

Q2 Should we recommend that there is a consistent process by applying the consultation proposals for mining to other resource proposals?

It would be advantageous to have consistency across all resources. Landowners certainly need more rights to submit on a proposal or to object than are currently part of the other resources legislation. They need reform.

However, this process is not yet even fully formed, much less tried. The Commission's recommendations have not yet been put forward. Why would we want to put a totally new and untested proposal across multiple areas, unless and until it has proven itself?

Q3 Is the rationale for the consultation proposals for mining also appropriate and justifiable for other resource proposals? If so, would the consultation proposals need to be tailored, and if so, how?

Consultation needs to be applicable to all resources. However, as with the mining objections, it must keep individual landowners, particularly those directly affected and their neighbours, front and centre of the process. This seems to be not the case until the very end of the process.

They should not have to concede power to some other body or individual. Landowners who are affected are their own best advocates and this needs recognition.

However, there does need to be a submissions and objections process for landowners with respect to other resources' Acts, as well as mining. This is a shortcoming. However, PRA cannot see this process filling that gap.

Q4 What should be the scope and extent of public participation in processes to decide other resource proposals?

Landowners, for all resource types, should be able to object in the Land Court without the present limitations on evidence. If there is an Independent Expert Committee their advice should be available. Landowners should have access to, and be able to use that advice in their evidence if they wish.

Queensland Environmental Law Association stated: "*The nature of the appeal being in essence a rehearing on the record, unless exceptional circumstances are established, recognises the quality of the application material necessary at first instance for mining lease applications. However, there may be occasions where the interests of justice favour fresh evidence being admitted which do not reach the relatively high threshold of "exceptional circumstances". That would be consistent with ensuring decisions are made on the most current and best evidence available at the time of the decision. This will be more important if the Court is to have a power to substitute its own decision for that of the original decision-maker.*"[5].

Landowners, as well as miners and other resources must have the option of adding fresh evidence.

Q5 Should the consultation proposal for an online portal apply for other resource proposals? Are there any additional notification requirements?

Yes. The addition of a modern and up to date online portal would be beneficial.

Other resources do not presently not have all the notification requirements that miners do. That is clearly not "fair" nor transparent. The requirements need to mirror those for mining.

There should be a requirement for publication of notices in a suitable local newspaper. Landowners are not going to sit in front of an online portal their whole lives.

Individual notifications need to be sent to affected, or potentially affected landowners. This includes those who may be affected by directional drilling as well as those hosting the well. Those affected by this operation seem to be poorly served under the present system and/or its administration.

There also needs to be included any further information about a project, including relevant scientific information.

Deliberations of the Independent Expert Committee should be included.

Q6 How should the following interests be considered in the decision-making processes for other resource proposals:

(a) **the public interest?**

i. Public interest needs to be nuanced and consider present and future needs.

ii. conduct the review on the evidence before the primary decision-makers, unless exceptional circumstances are established.

iii. The threshold for 'exceptional circumstances' in too high. Landowners, as well as miners, should be able to introduce new evidence. This has never been remedied, in spite of recognition of its unfairness, and is unacceptable.

iv. Up to date evidence, including recent scientific evidence needs to be able to be introduced.

(b) the rights and interests of Aboriginal peoples and Torres Strait Islander peoples in land, culture and cultural heritage?

The interests of Aboriginal and Torres Strait Islander peoples are protected under the *Native Title (Qld) Act 1993*, *Aboriginal Cultural Heritage Act 2003* and the *Torres Strait Islander Cultural Heritage Act 2003*. Only those who have maintained ties in the subject area should be able to get involved. A dedicated committee introduces another process that can be exploited for "lawfare".

Q7 Should the review consultation proposal for mining apply for other resource proposals?

Yes. The consultation process should be in addition to whatever other protections landowners have for interactions with non-mining resources. Other resources also need to have a submission and merits-based review process which landowners can undertake similar to the objections review in the Land Court. That this does not already exist is unacceptable. The new model is entirely untested at this point in time and should not be rolled out across the entire landscape without trial.

Q8 Are there any issues or opportunities arising from interactions with decisions made under other Acts that we should consider?

Other acts which protect Priority Agricultural Land and Strategic Cropping Land such as the *Regional Planning Interests Act 2014* and others need to be maintained. Possibly a Regional Interests Development Application RIDA could before applied for early in the process rather than later. Queensland Government should not allow gas resource companies to self-assess when a RIDA is required, nor permit a RIDA exemption if the company has negotiated Conduct and Compensation Agreements CCA's (as per Section 22 of the *RPI Act 2014*). The current Queensland Government land use planning rules have failed to protect agricultural landowners. Resource activities are not to have significant impact to agricultural land, irrigation bores, overland water flow or induce subsidence on a landowner's land, nor neighbouring land. This issue was highlighted in a recent case between four Darling Downs farmers and Arrow Energy's CSG application (https://www.abc.net.au/news/2025-01-28/arrow-energy-coal-seam-gas-farmers-fight/104863334)

Q9 Is there anything else you would like to tell us about the current processes for deciding other resource proposals or any additional options for reform of these processes you would like us to consider?

Proposals under other resources Acts should be open to submission and objection by landowners and have access to a merits-based review.

After the Land Court, the Court of Appeal should also allow a merits-based review.

Independent Expert Advisory Committee

PRA strongly believes that it should be made up predominantly of scientific experts with experience in hydrogeology, subsidence, and hydrology and other resource associated fields where necessary.

Why is the job of this committee limited to the Environmental Authority only? Surely there are considerations to do with the application for the resources lease as well, which are not strictly "environmental".

Many of the landowner concerns centre around their water supply and use and what effects the resources tenement will have on it, air quality and amenity.

Some experience in the fields of resources law and how it interacts with other acts including the *RPI Act* and will also be necessary. Agricultural farming expertise to be included on the committee, when there is potential impact to farming practices, water security, overland flow, biosecurity, etc.

There has been insufficient discussion about how this committee should be appointed.

Coexistence and cooperation

The whole direction of the new proposal balances on an assumption that all parties, including resource companies will carry out their obligations in good faith.

What has been found in practice is the reality of a huge imbalance of power, time and resources between companies and landowners.

This imbalance shows itself often in some companies. This whole discussion has not addressed the subject of enforcement of commitments and agreements. That needs to be addressed.

Very large companies can, and sometimes do, game landowners. They need some strong recourse from time to time.

Undoubtedly, the legislation governing CSG and other resources offers very little protection for owners and neighbours who are forced to co-host them. However, we are yet to be convinced that the proposed model will offer protection either.

Standing and Lawfare

Lawfare and standing are issues brought up by submitters.

It is an issue that needs to be tackled head on. The most affected are the landowners and their neighbours. They should never be denied standing. Although there have been cases of landowners standing strongly against a mining lease, it is neither common nor frivolous.

The emerging trend is “lawfare” conducted by environmental groups. Courts should have more discretion to not hear cases which are brought by such groups, have no local interest, or have no prospect of success (QRC).

It should always be acknowledged that of all the affected groups, landowners, rather than working full time at this issue, are the only ones taking time from their job and are not adequately funded.

Some submitters have made suggestions on how limit ‘lawfare” is designed to disrupt and delay.

Including subjects such as climate change and scope three emissions, as suggested by the EDO submission will simply facilitate the “disrupt and delay” tactics and will prove to be not efficient.

The QRC position on “standing” should be given positive consideration.

Similarly, the concept of lawfare was central to the Queensland Resources Council’s position that standing should be restricted. They defined lawfare as the manifestation of lengthy and complex objections cases and judicial reviews, leading to ongoing uncertainty, higher costs, delays and inefficiencies [57].

They stated:

> *"There is a long list of cases initiated and run, in substance, by organisations whose personal interests are not directly affected by the specific project or decision. These organisations are rarely the party on record, and some have been found by Courts to act unethically in the way they present evidence or coach witnesses. [58]"*

The suggestion of Dale Forrester cannot be supported by PRA under present conditions where we do not yet know what the decision-making process will be, at what stage individuals or groups will need to "participate" in order to qualify, nor how intense the process may be. A scenario can be envisioned where individual landowners cannot participate or do not participate early but green groups will turn up for every process.

Affected landowners, and their neighbours, as those required to host the resources, should never be denied standing.

Environmental groups should have strict rules around their participation. For example, they must have a track record for "on the ground" projects in the target area.

Dale Forrester, a mining and exploration consultant, submitted:

> *"Standing to engage in the combined review process should be granted only to those who have formally participated in the decision-making process before a decision is made. This ensures that all parties involved have a genuine interest in the matter and have contributed to the discourse surrounding the application. [59]"*

Water

Not too much can ever be said about the importance of water to agricultural landowners.

Its use, its quality, its accessibility and possible depletion are of immense importance to landowners. It should not sit solely under an environmental umbrella but part of the consultation, submission and objections process in its own right.

The Independent Expert Committee should devote considerable resources and expertise to this topic and advice made available to landowners via the portal. All advice of this committee should also be contestable, if a landowner or his advisors believe it is wrong or prejudiced.

Strict water licencing conditions must apply to all leases, "make good" agreements must be robust with a fair and efficient process to enforce them.

Subsidence

Subsidence is a serious emerging issue. There are NO effective, efficient, fair or robust means of dealing with this issue.

Government needs to rapidly insert itself in this issue with a robust means of averting or compensating affected landowners on an ongoing basis. Limiting the liability of resource companies is not the job of government.

Just as there is "make good" for depleted bores, there must be substantive compensation scheme for subsidence.

Government and its agencies must recognize what constitutes serious subsidence for a landowner where sites are finely levelled, often with co-operation between owners. It is high value, precisely managed, high value land for high value cropping.

Bureaucrats should not be deciding what is minor and what is not and government reports making assumptions about complainants' "ideology" is not becoming of a government authority.

In conclusion

Property Rights Australia thank Queensland Law Reform Commission for the opportunity to provide feedback to the conscious consistency consultation paper. If you require clarification or further information on any of the points raised in this submission, please contact PRA Board member [redacted] by email [redacted]) or phone [redacted].

Yours sincerely

Property Rights Australia Inc.