Environmental Defenders Office

Submission to the Queensland Law Reform Commission Consultation Paper '*Conscious consistency: mining and other resource production tenures*'

31 January 2025

About EDO

EDO is a community legal centre specialising in public interest environmental law. We help people who want to protect the environment through law. Our reputation is built on:

Successful environmental outcomes using the law. With over 30 years' experience in environmental law, EDO has a proven track record in achieving positive environmental outcomes for the community.

Broad environmental expertise. EDO is the acknowledged expert when it comes to the law and how it applies to the environment. We help the community to solve environmental issues by providing legal and scientific advice, community legal education and proposals for better laws.

Independent and accessible services. As a non-government and not-for-profit legal centre, our services are provided without fear or favour. Anyone can contact us to get free initial legal advice about an environmental problem, with many of our services targeted at rural and regional communities.

Environmental Defenders Office is a legal centre dedicated to protecting the environment.

www.edo.org.au

Submitted to:

Queensland Law Reform Commission
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Acknowledgement of Country

The EDO recognises and pays respect to the First Nations peoples of the lands, seas and rivers of Australia. We pay our respects to the First Nations Elders past, present and emerging, and aspire to learn from traditional knowledges and customs that exist from and within First Laws so that together, we can protect our environment and First Nations cultural heritage through both First and Western laws. We recognise that First Nations Countries were never ceded and express our remorse for the injustices and inequities that have been and continue to be endured by the First Nations of Australia and the Torres Strait Islands since the beginning of colonisation.

EDO recognises self-determination as a person's right to freely determine their own political status and freely pursue their economic, social and cultural development. EDO respects all First Nations' right to be self-determined, which extends to recognising the many different First Nations within Australia and the Torres Strait Islands, as well as the multitude of languages, cultures, protocols and First Laws.

First Laws are the laws that existed prior to colonisation and continue to exist today within all First Nations. It refers to the learning and transmission of customs, traditions, kinship and heritage. First Laws are a way of living and interacting with Country that balances human needs and environmental needs to ensure the environment and ecosystems that nurture, support, and sustain human life are also nurtured, supported, and sustained. Country is sacred and spiritual, with culture, First Laws, spirituality, social obligations and kinship all stemming from relationships to and with the land.

A note on language

We acknowledge there is a legacy of writing about First Nations peoples without seeking guidance about terminology. We also acknowledge that where possible, specificity is more respectful. For the purpose of this submission, we have chosen to use the term 'First Nations'. We acknowledge that not all First Nations will identify with that term and that they may instead identify using other terms or with their immediate community or language group.

First Laws is a term used to describe the laws that exist within First Nations. It is not intended to diminish the importance or status of the customs, traditions, kinship and heritage of First Nations in Australia. The EDO respects all First Laws and values their inherit and immeasurable worth. EDO recognises there are many different terms used throughout First Nations for what is understood in the Western world as First Laws.

The Role of the EDO

EDO is a non-Indigenous community legal centre that works alongside First Nations peoples around Australia and the Torres Strait Islands in their efforts to protect their Countries and cultural heritage from damage and destruction.

EDO has and continues to work with First Nations clients who have interacted with western laws, including litigation and engaging in western law reform processes.

Out of respect for First Nations self-determination, EDO has provided high-level key recommendations for western law reform to empower First Nations to protect their Countries and cultural heritage. These high-level recommendations comply with Australia's obligations under international law and provide respectful and effective protection of First Nations' Countries and cultural heritage.

Executive Summary

The Environmental Defenders Office Ltd (**EDO**) welcomes the opportunity to contribute to the inquiry by the Queensland Law Reform Commission (**QLRC**) into the mining objection hearing process in Queensland and the application of the mining lease process to other resource tenures. Thank you for accepting this submission, and for the work of the QLRC in preparing the recommendations in the Consultation Paper released in November 2024 'Conscious consistency: mining and other resource production tenures' (**Conscious Consistency Consultation Paper**).

EDO has been working within the mining objection process for decades, assisting many clients to understand, to self-represent and to participate with our representation in this process. EDO also provides advice to community members and organisations with respect to other planning processes, including for petroleum tenures and other resource tenures.

Through this experience we have identified a range of law reform opportunities which would greatly enhance clarity, fairness, efficiency and effectiveness of the approval processes for other resource tenures.

In general EDO supports the recommended changes to the mining objection hearing process proposed in the Consultation Paper 'Reimagining decision-making processes for Queensland Mining' (July 2024).

Below we have provided a summary of our responses to the recommendations in the Conscious Consistency Consultation Paper that are formed from our experience, followed by a more detailed discussion of these recommendations. We note that we have not responded to all questions due to constraints on our capacity.

Should any element be unclear or should further information or discussion be desired with respect to any of these recommendations, please do let us know and we will gladly assist.

Summary of EDO Recommendations

Overall, the EDO supports many of the recommendations made by the QLRC and considers that they will provide for effective solutions to address some of the issues with the current assessment process for resource tenures. In particular, EDO strongly supports:

1. **The adoption of the guiding principles of 'fair, efficient, effective and contemporary' for other resource proposals.**
2. **A consistent process whereby consultation proposals for mining also apply to other resource proposals.**
3. **That all resource activities including mining resources should have similar scope and extent for public participation.**
4. **Clear and centralised information, public notification and consultation for other resource projects by way of an online portal facilitated by government.**

5. **The public interest and the views, rights and interests of First Nations peoples in land, culture and cultural heritage being mandatory considerations by decision-makers**
6. **Further work to be done to prevent piecemeal applications and failure to consider and address cumulative impacts of projects, particularly with respect to petroleum leases**

<u>Other issues and opportunities</u>

7. **The required outcomes and prescribed solutions set out in the Regional Planning Interests Regulation 2019 (Qld) be explicitly required to consider the cumulative impacts of resource activities on areas of regional interest.**
8. **Any necessary approvals under the Regional Planning Interests Act 2014 (Qld) be required to be satisfied prior to the grant of any other resource tenures or associated EAs.**
9. **Proponents should be required to provide certainty of layout of a project in order to obtain a resource tenure or associated environmental authority, to allow for fulsome assessment, and deferred assessment of impacts should not be permitted.**
10. **Cumulative impacts of projects must be required to be assessed as part of the grant of resource tenures and environmental authority.**
11. **That the use of the standard application process be limited to exploration that does not require ground disturbance and be prohibited where activities are proposed on or adjacent to heritage sensitive areas.**
12. **Any reform which reduces the burden of participation on landholders is strongly encouraged.**

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

EDO agrees that the guiding principles of 'fair, efficient, effective and contemporary' are appropriate reform principles to be applied to other resource proposal assessment and approval processes. Fairness and efficiency, in particular, are key principles underpinning administrative law, and are therefore paramount considerations for the reform. Effectiveness and contemporary considerations are key to ensuring that reform is suitable and beneficial in meeting the objectives of the relevant Acts and addressing concerns of all stakeholders. For further details we refer to our earlier submission dated 30 September 2024, specifically our response to Q1.

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

EDO supports a consistent process whereby consultation proposals for mining also apply to other resource proposals. A lack of consistency creates an avenue of inaccessibility for the community in understanding resource proposals assessment and appeals processes. The complexity created through differing approaches for different resource types is confusing for all stakeholders and

reduces the capacity of community members to participate in decision making processes and understand their rights with respect to resource proposals that may affect them, their community or the environment.

We refer to our responses to Q4 of our earlier submissions dated 30 September 2024 where EDO recommends models of public participation.

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?

The rationale for the consultation proposal for mining is also appropriate and justifiable for other resource processes, which are also of significant public interest and concern. Petroleum and gas projects, GHG storage and geothermal activities are all similar in nature to mining activities and are frequently co-located in the same areas, operated by the same proponents (eg. overlapping mining and petroleum tenures) and have similar impacts on communities and the environment.

We do not support the tailored participation process and instead encourage a consistent process for all mining proposals. The recognised benefits of creating a consistent regulatory framework,[1] outweigh any costs associated with implementing a harmonised legislative scheme and would in the future increase efficiency. We refer to our responses to Q6 of our earlier submissions dated 30 September 2024 where EDO sets out reasons why a tailored consultation process is not supported.

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

EDO submits that all resource activities including mining resources should have similar scope and extent for public participation.

As identified in the Conscious Consistency Consultation Paper, the key differences between public participation in mining proposals and other resource proposal tenures are:[2]

(a) that there is no direct notification of other resource proposals;
(b) there is no public notification of the tenure application; and
(c) the objections process does not apply and there is no public participation on the tenure application.

We refer to our responses to Q3 of our earlier submissions dated 30 September 2024 where EDO sets out key considerations with respect to changes to the public participation process.

Overall, the approval of petroleum tenures is a highly opaque process, and greater transparency would greatly improve the process. Criteria associated with assessing petroleum tenures and associated approvals in a range of contexts under the P&G Act include consideration of the 'public interest', however the public is not afforded the opportunity to scrutinise information put forward

[1] See Conscious Consistency Consultation Paper, [78].
[2] See Conscious Consistency Consultation Paper, [86].

by proponents, nor are they able to make submissions regarding those materials to inform the decision-maker of the 'public interest'.

Decisions relating to application or granting of an approval under the *Geothermal Energy Act 2010* (Qld) (with the exception of decisions relating to granting a geothermal permit) require the Minister to consider the public interest.[3] Similarly, the Minister is required to consider the public interest when making decisions under the *Greenhouse Gas Storage Act 2009* (Qld). On this basis, the public ought be afforded the opportunity to make submissions and provide comment regarding the merits of a resource proposal.

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

EDO strongly supports the proposed online portal. This will ensure there is a central place for all information before the decision maker to be transparently accessible to all.

There is significant confusion within the community about where to find notifications for resource proposals, when notification will occur, and what point of notification will give rise to a right to participate in the decision-making processes. A centralised online portal, facilitated by the government, would support informed community participation, inclusive decision-making, and transparency and accountability. Notification on proponent's websites is inconsistent and at times difficult to find. Recently we are aware of an instance where a gas proponent simply made an existing project heading on their website into a hyperlink which linked to the public notice for a gas production EA application. This minor change to the website heading was understandably missed by the community members interested and the EDO who were all actively monitoring the website to ensure public notification was not missed. This example demonstrates the clear need for a centralised website run by the government in which public notice periods and all relevant documents and information are easily and clearly accessible.

A number of other notification requirements would further improve community participation. The public should be able to sign up for email notifications, automatically alerting them of proposed developments, including when the public comment period opens and closes. Notification materials should also be publicly available on the applicant's website, social media channels, the property, and a local newspaper and easily accessible. This would better ensure broad public awareness, particularly in rural areas where reliable internet connections may not be available and public uptake of internet devices for information access may not be so widespread. Finally, all notification materials should clearly specify the deadline for submissions to be considered, and whether participation gives rise to objection rights in the Land Court.

In addition, we recommend information be housed on this centralised site for the life of the project enabling the public to easily access materials post approval to understand how projects were approved and ensure ongoing compliance with application materials and/or understand any future proposed changes to a project.

[3] Geothermal Energy Act, s 374.

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

(a) The public interest?
(b) The rights and interests of Aboriginal peoples and Torres-Strait Islander peoples in land, culture and cultural heritage?

(a) EDO supports the requirement for the public interest to be considered by a decision-maker for any resource proposals. The grant of major resources authorities, such as petroleum leases, have broad impacts, both locally and broadly, on the Australian community. There are many possible reforms and initiatives which could be undertaken to improve public participation. In particular, there is great benefit in providing for community information sessions and public meetings.

Noting that the resources associated with petroleum tenures are the property of Queenslanders, such resources should only be exploited if it is for the benefit of the many and not the private interests of a few. Therefore, with respect to decisions as to petroleum tenures, it is vital that a requirement to consider the public interest be considered, given the significant impacts to community and the environment of the industry and that the resource belongs to Queenslanders and not the resource extraction industry.

As it presently stands, the test of the public interest is not applied consistently under the P&G Act, GHG Storage Act and Geothermal Energy Act. In particular, some provision of the P&G Act require a narrow consideration of the public interest though requiring contemplation whether petroleum production under the lease will be optimised in the best interests of the State, having regard to the public interest.[4] There is also difference with the interpretation of the public interest test under the standard criteria of the *Environmental Protection Act 1994* (Qld) (**EP Act**) and other resource Acts.

EDO supports a requirement that the public have input into proposals for other resource projects, to ensure the public interest can be assessed with reference to the public's vocalised opinion. However, we note that the public interest test should not be limited to the issues in submissions, particularly as submission periods are easily missed by community members and so having no submissions should not be taken to mean there is no public interest in the application. This is particularly important as all resource proposals have broad risks of causing environmental harm, which is in the public interest to protect, and in the case of GHG storage and geothermal industries, that they are undeveloped or relatively new.

(b) EDO supports the inclusion of a criterion to help guide assessment of the public interest, and suggest it be extended to require expressly considering also the views of First Nations people. First Nations interests are often disproportionately impacted by resource proposals. In light of this fact, and of the impediments that First Nations community members face with respect to having the time, capacity, and resources to participate in decision-making processes, it is appropriate that the rights, interests and views of First Nations peoples in land, culture, and cultural heritage are cemented into resource project assessment and decision-making processes. We refer to our

[4] See for example P&G Act, ss 141, 175AC, s 370 and s 400 which requires decision makers to consider public interest in this manner or application materials to demonstrate this requirement is satisfied.

responses to Q16(c) of our earlier submissions dated 30 September 2024 where EDO provides further suggestions on the matter.

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

Review consultation should apply in the same manner for all resource activities. As noted above there are many commonalities between resource tenures that warrant a consistent approval and review process. We refer to our earlier submission dated 30 September 2024, which provides detailed commentary on the proposed review process. Presently other resource tenures have different review opportunities. Following the grant of a site-specific EA for petroleum activities, a dissatisfied person may seek internal review of the grant of the EA.[5] Internal review is a pre-requisite for commencing an appeal of the grant of the site-specific EA for petroleum activities.[6] EDO does not support the maintenance of the internal review as a prerequisite to any merits review as the process as it currently operates has incredibly truncated timeframes which prevent community members from making comprehensive applications and rather cause increased resource expenditure to stakeholders rather than providing a meaningful avenue to critique expenditure of government decisions. In our experience it is rare that the internal review process, undertaken by another department officer, leads to much change in the decision to warrant the extra process.

Unlike EAs associated with mining leases, there are no merits appeal avenues under the EP Act for EAs granted in relation to geothermal or GHG storage activities. We strongly support merits review process being provided for applications for these resource tenures as mentioned, with respect to petroleum tenures, at page 35 of the of the earlier submissions dated 30 September 2024

As noted in our earlier submission, EDO supports the change to a post-decision review process by a Court, incorporating the right to seek review on the merits or via judicial review after the grant of a resource tenure and accompanying EA.

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

Issues under the *Regional Planning Interests Act 2014* (Qld)

Failure to consider cumulative impacts

EDO recommends that the required outcomes and prescribed solutions set out in the *Regional Planning Interests Regulation 2019* (Qld) (**RPI Regulation**) be explicitly required to consider the cumulative impacts of resource activities on areas of regional interest.

The impacts and risks to petroleum and gas activities are not just localised and particularly arise from cumulative impacts for example subsidence, clearing, fragmentation of landscapes, groundwater depletion and contamination. Unfortunately, the RPI Act framework includes broad exemptions which enable proponents to avoid having to apply for a RIDA even where their activities do not conform to required outcomes and prescribed solutions and will cause an impact (eg. with

[5] EP Act, Schedule 2, s 172(2)(a)
[6] *Environmental Protection Act 1994* (Qld), ss 523 and 524.

landholder consent).[7] This is an issue, the RPI Act framework seemingly enables a proponent to limit the scope of the RIDA approval to the specific impacts of activities directly on individual properties rather than considering the cumulative impacts of the project.[8] Further, as noted below the scope of projects is often intentionally minimised to diminish the impacts of petroleum and gas activities. To remedy this, the RPI Act should be amended to expand consideration to cumulative impacts of resource activities in the region.

No requirement to satisfy RPI Act prior to grant of tenure

EDO recommends that where RIDAs are required, those RIDA applications be assessed and decided prior to the assessment of other approvals or decided at the same time, with collaboration required between the relevant government agencies.

Under the *Regional Planning Interests Act 2014* (Qld) (**RPI Act**), where an activity may impact an area of regional interest, a proponent is required to obtain a regional interests development approval (**RIDA**).[9] In practice, we have observed that proponents typically apply for RIDAs once all other approvals have been obtained, and the project has already commenced rolling out. This is problematic, especially in light of the issues relating to cumulative impacts described above, as it means the RPI Act framework does not prevent potentially harmful projects from going ahead per se because of significant impacts. It also puts landholders at a disadvantage with the momentum of the project rolling out.

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?

Poor application materials and assessment

EDO recommends that proponents be required to provide more rigorous assessment materials. In a recent example, an environmental authority was granted to a gas proponent despite the application not including any assessment of GHG emissions to be released as a result of the project. GHG emissions are a major environmental impact of gas proposals which the EP Act applies to, yet the Department somehow allowed this application to be accepted and decided based on no information on the potential emissions posed by the project. This is arguably because there is such limited regulation of the information and quality of information required in an application. EDO recommends that more specificity be provided for in regulation as to what information must be in an application for a fossil fuel project, and the standard of that information. This would greatly improve the ability of government and the community to assess the potential impacts of a project.

Further, EDO recommends that proponents be required to provide certainty of layout of a project in order to obtain a resource tenure or associated environmental authority and that deferred assessment of impacts should not be permitted.

[7] RPI Act, ss 22-25.
[8] See definition of 'resource activity' under RPI Act, s 12(3).
[9] RPI Act, s 19.

From our experience, proponents typically do not provide a project layout showing where proposed infrastructure is intended to be developed, including wells etc, as part of assessment materials. This is problematic as the true environmental impacts cannot be understood absent this information.

Deferred assessment of impacts should not be permitted

Frequently petroleum projects are approved without comprehensive or complete assessment of all the impacts. For example, proponents may not undertake full on the ground surveys of biodiversity, to ground truth mapped values. To deal with gaps in assessment materials EA conditions may require further surveys to take place prior to the permitted activities. EDO advocates that this form of deferred assessment should not be permitted as it greatly hinders the fulsome assessment of potential impacts by the government and communities prior to a final decision being made on whether the project should be allowed. *Piecemeal applications and failure to consider and address cumulative impacts*

EDO recommends reform to prevent piecemeal applications for petroleum and gas projects, which have led to limited assessment and public awareness of projects which cumulate into one very large project. Further EDO recommends that the cumulative impacts of projects be required to be assessed as part of the grant of resource tenures and environmental authority.

The nature of petroleum and gas activities means that they are typically rolled out progressively over an area. In that fashion, proponents may hold multiple petroleum tenures relating to the one project which are obtained successively.

See for example, the Mahalo Gas Project which comprises two Petroleum Lease (**PLs**) and three Prescribed Commercial Areas (**PCAs**) along with the underlying Authority to Prospect (**ATP**).

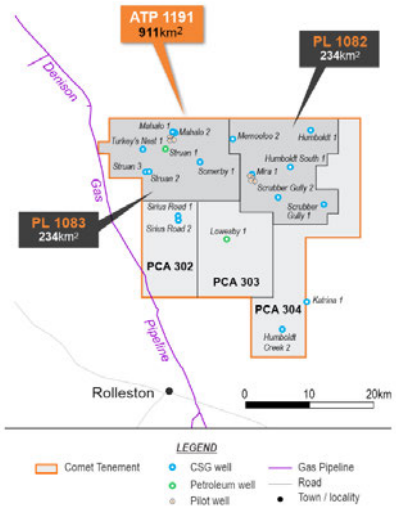

Figure 1 Mahalo Gas Project 2025 Source:https://cometridge.com.au/projects-overview/mahalo-gas-hub/mahalo-jv-project/

The proponent for the project has obtained one EA for its exploration activities on ATP 1191 and a second for production activities on PL 1082 and PL 1083, and a second EA for a further ATP, however, has not yet applied for an EA for the PCAs

The Mahalo Gas Project in turn is part of a larger project, the Mahalo Gas Hub, which covers an expansive area of 1,796km^2 and includes the following:

1. Mahalo Gas Project (ATP 1191, PL 1083, PL 1082, PCA 302, PCA 303, PCA 304) across 911km^2;
2. Mahalo North (ATP 2048, PL 1128) across 450km^2;
3. Mahalo East (ATP 2061) across 97km^2; and
4. Mahalo Far East (ATP 2063) across 338km^2.

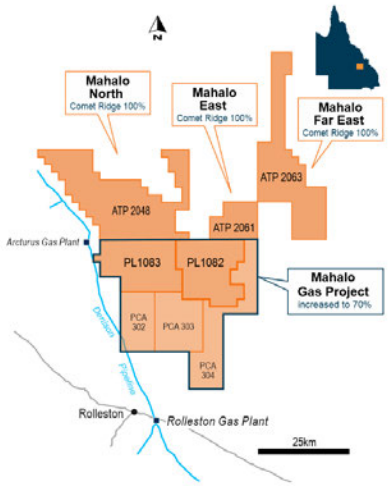

Figure 2 Mahalo Gas Hub 2025 Source: https://cometridge.com.au/projects-overview/mahalo-gas-hub/

As projects are able to be compartmentalised, and approvals sought through separate applications, the full cumulative impacts and scale of the project is not assessed, nor is it readily understood. Projects such as this, applied for in piecemeal applications, are not required to go through fulsome environmental impact statement assessment and also often avoid the need for referral under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth). This limits environment and community impact assessment and community awareness of the projects. This is particularly troubling for impacts which accrue incrementally such biodiversity loss or erosion through clearing and landscape fragmentation, depletion of aquifers, and contribution to climate change through GHG emissions.

Standard application assessment via eligibility criteria and standard conditions should be allowed only for exploration permits and only where minor impacts

EDO recommends that the instances where standard application assessment and conditions are available be limited to exploration that does not require ground disturbance and be prohibited where activities are proposed on or adjacent to heritage sensitive areas.

For exploration activities under both the P&G Act and the MR Act, where a proponent is able to satisfy the eligibility criteria, they may make a standard EA application and be granted an EA subject to standard conditions.[10] Exploration activities can be very impactful to the receiving environment.

[10] See DETSI, Eligibility criteria and standard conditions for petroleum and exploration activities available here.

In particular, the eligibility criteria and standard conditions permit the following activities which have the potential cause significant environmental harm:

(a) activities to the extent they do not cause a "total significant disturbance to more than 1% of the total land area of the relevant tenures(s) at any point of time";
(b) extraction of earthen materials of up to 100,000t/year; and
(c) extraction by dredging of up to 1000t/year from the bed of a surface waters.

Further the standard conditions do not provide for First Nations cultural heritage protection, beyond the minimum standards of the *Aboriginal Cultural Heritage Act 2003* (Qld), *Torres Strait Cultural Heritage Act 2003* and *Queensland Heritage Act 1992* (Qld). As a consequence, exploration activities may be permitted in or near to heritage sensitive areas without any specific conditions.

Assessment process is incredibly costly for members of the public

The assessment process for other resource proposals is incredibly costly on landholders in particular and can require them diverting substantial resources, both in terms of time and money, towards participating in the assessment process, seeking independent advice, negotiating with proponents and asserting their rights. Any reform which reduces the burden of participation on landholders is strongly encouraged. This includes ensuring assessment materials are easily accessible and having a centralised place for notices, so they are displayed in a uniform way.

Gag clauses should not be allowed in landholder / resource company agreements

As noted above EDO supports improved community consultation and participation in approval processes. In addition, EDO recommends that gag clauses be prohibited in landholder agreements.

The various Acts and the resource authority holders tend to treat landholders as individual entities whose decisions have no bearing on neighbouring properties. This may be partially accurate for larger grazing properties. However, for smaller, more closely settled farming communities, it is not the case. Landholder feedback has indicated that there is not enough community consultation and information as a group, and rather proponents engage with landholders on an individual basis. This is particularly fraught in the context of land access agreements and conduct and compensation agreements were confidentiality only really benefits the proponent who holds information about what has been negotiated with landholders across a project, whereas landholders themselves are not able to share of knowledge and experiences with their neighbours and greater community. With this respect, gag clauses should be banned, enabling landholders to choose whether or not to disclose information.