Submission on:

Towards a standardised consent framework for restricted land across all resources types

Consultation Regulatory Impact Statement

Submission to:

MQRA Program
PO Box 15216
City East, Brisbane, QLD 4001.
Email: mqra@dnrm.qld.gov.au

Submission from:

Property Rights Australia
PO Box 609, Rockhampton, Qld, 4700
Phone (07) 4921 3430
Email: Pra1@bigpond.net.au

Property Rights Australia (PRA) is a not for profit organisation formed to protect the property rights of landowners. We represent many rural businesses in Queensland in particular but have members in all states.

Summary

Property Rights Australia supports the advancement of rights afforded to impacts on neighbours outside a resource authority boundary or a property boundary in this Consultation RIS. It is long overdue and should be standard across all policies, regulations and legislation.

It is laudable that efforts are made for effective simplified, standardised regulation across all resource activities but PRA believes that on balance that the alternative option in this Consultation RIS is an erosion of landowner's current rights.

Queries for stakeholders [page 12 Consultation RIS]

 Do you support a consistent approach across the resources sector for companies to gain access to private land near homes and other critical infrastructure? If not, why not?

Many landowners are experiencing concurrent different resource activity and standardised conditions would save some confusion. However this must be weighed up against any loss of rights for landowners in the proposed changes.

 Do you support a consistent implementation of restricted land across resource types? If not, why not?

The concept sounds good and the Consultation RIS gives Option 2 a good sales pitch but for all activity to be allowed up to 200 metres away would for example in the case of a coal seam gas compressor station be unbearable for a residence.

The provisions in an Environmental Authority must not be subservient to restricted land distance. The monitoring for the likes of noise and dust must be more transparent and landowners have the assurance that they will be enforced.
The determination for the site of major infrastructure should be subjected to greater study before a CCA is signed. The landowner should be able to claim compensation for professional expert services such as an acoustic engineer. The Queensland government should amend the appropriate policies and legislations to expand the professional expert advice to which a land owner can claim compensation.

Landowners access to the courts must not be impeded.

 Do you agree with the distances proposed for restricted land? If not, why not? Is another distance more appropriate?

Although Option 2 in the Consultation RIS makes it sound good, what are the benefits at 200 metres?

Under the Mineral & resource act according to the Consultation RIS for exploration permits and mineral development the 600 metre rule applies. But once the a mining lease is granted it will make no difference in the ability for someone to live the current 100 or 200 metres away from the likes of a coal mine. The infrastructure will either have to be relocated or to be replaced at another location on the property or the resource company purchase the property at fair and unsterilized value for the land itself and provide compensation for relocation.

Activity subjected to the petroleum and Gas Act currently has a 600 metre distance.

It appears that there will be greater protections under the 200 metre restricted land but landowners are asked to give a lot away to achieve this outcome. For landowners it is too great of a price to lose liveable households, safety for young children and amenity.

A more appropriate distance – 600 metres**.**

 Do you agree with the identified infrastructure to which restricted land is proposed to apply? If not, why not? What infrastructure should be included/excluded?

In reference to table 3, a bore or artesian well currently in Restricted Land Category B should be transferred to Category A and be granted the greater restricted distance. This is needed particularly for coal seam gas and especially to allow for a greater distance from CSG well when they are fracked. The possibility of damage at 50 metres is too great to put at risk an essential infrastructure for landowners.

Special mention should be made for stockyards in CCA's. They may not be an infrastructure used all the time but certain resource activity could make handling of livestock difficult due to animal behaviour issues and the aspect of animal welfare should be considered.

Clarification is need that covered in Category A (a) are sheds and rental accommodation including buildings used for holiday homes and farmstays.

Clarification is also needed that watering points including tanks and troughs and location of polypipe interconnectivity should be included in Category B (d).

 Do you have another proposed approach?

Queries for stakeholders [page 18 Consultation RIS]

 Do you agree with proposed parallel amendments to the threshold for requiring a CCA, in particular with for no/low impact activities regardless of distance from a residence? If not, why not?

It appears the greatest advantage for the removal of CCA's for low impact activities will be the resource companies. There is never no impact; the phrase to landowners who live with resource activity on their land and in the same business space is an oxymoron. Low activity will result in fewer provisions to be included in a CCA and less time needed to complete one. The greatest cost to landowners is time since it is not yet an industry practice to give full compensation for the landowner's time. All other professional costs used by the landowner in negotiating a CCA are recouped. An unwanted result of removing CCA's for landowners will be their ability to freely access legal advice. This is a major erosion of landowner rights which can lead to exploitation by the resource companies.

Landowners have learnt at their cost that they can take no notice of any verbal undertakings. Simple agreement with the landowner is not sufficient. Resource companies use various tactics and sleight of hand to gain agreement from a landowner whether by unauthorised assurances from access officers, misinformation, non-disclosure of the full extent of the project, enticements, engender obligations and intimidation. No meaningful agreement will have any value unless written down.

If CCA's are removed for low impact activity landowners must be afforded protections. In any case the Queensland government should amend the appropriate policies and legislations that the liability for any weed outbreak and the contamination of farm product rests with the resource companies.

Another option is that if a CCA is removed for low impact activity, that a licence agreement is written in its place with all legal costs covered by the resource company. This will ensure the resource company is aware of agreed protocol while accessing the land and there are time limits for the access in order to reduce disturbance for the landholder. An appropriate licence fee can be negotiated for expected landholder time needed for the consultation process and to ensure that all activity is clearly defined as low impact.

 Are there any on-ground scenarios where the proposed approach will result in 'unintended' or 'unworkable' outcomes? Please provide examples.

Even low impact resource activity has the ability to damage roads, leave chemical residues for which it appears landholders will be liable under an NVD, leave open pits for animals to fall into, garbage which sometimes finds its way to an animal's stomach or wrapped around it, spread weeds or unauthorised use of landowner water from watering facilities. There must be an agreement so that a landowner has recourse if his business is affected.

All access needs to have clearly defined access conditions such as fresh weed washdown certificates reroute to property(unintentional weed spread), acceptable agreed access roads(dust nuisance),defined speed limits e.g. 30 km per hour (dust nuisance/safey/livestock disturbance), when ground conditions are wet, suspend all entry to Land until sufficiently dry that vehicle movements will not leave wheel ruts (erosion or deterioration of road networks),leaving gates as found (open or shut). Access should be defined in mapping to ensure no wandering at large over the land which can add to disturbance on businesses.

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Summary of approach (Sub heading from the Consultation RIS)

Certainty is no more than a known fixed outcome; it can be good bad or indifferent. PRA does not support the certainty of a loss of rights.

Proactive discussion between resource companies and landowners can only produce good outcomes for all parties if they have equal negotiation power. This situation does not exist currently and the proposals in this Consultation RIS would not improve the situation.

PRA supports the advancement of rights afforded to impacts on neighbours outside a resource authority boundary or a property boundary in this Consultation RIS. It is long overdue and should be standard across all policy, regulation and legislation.

Identification of the problem

It is laudable that efforts are made for effective simplified, standardised regulation across all resource activities but PRA believes that on balance that the alternative option in this Consultation RIS is an erosion of landowner's current rights.

Landowners must not be forced into shorter timeframes to consider an agreement because the resource company is worried about delays to starting a project. The resource company has the advantage of a long timeframe of planning before the landowner is even aware that activity will occur on their property. Landowners need time to consider the impacts on their future business and the alternatives to where resource infrastructure is sited.

We also are of the opinion that limiting the timeframes will most disadvantage landholders who have to fit it around work schedules and often have poor communications including easily disrupted mail services and poor internet connections. The justifications given of providing certainty and improving business efficiencies for resource companies is disingenuous considering the small amount of cost to any medium to large mine or coal seam gas project seems insubstantial in the overall cost and time to establishment of any such mine but can result in substantial constraints on rural business.

Table 5: benefits and Costs of Options

PRA believes that both the benefits and costs in this table have been inflated. Already covered in this submission is the lesser relevance for landowners the concepts of certainty and the saving of 20 days against something that may have an impact for decades. Based on past performance of resource companies PRA rejects the concept of no impacts and the encouraging of verbal "informal negotiation".

Recommendations

- The provisions for neighbours to be protected outside a resource authority boundary or a property boundary should be included in all resource regulation and legislation.

- The restricted land distance should be 600 metres

- Landowners bores must be afforded a greater protection with a restricted land distance of 600 metres

- Resource companies must be made to bear the full liability for weed infestations and for farm product contamination. Changes to appropriate regulation and legislation should be made to bring this into effect.

- Improvements must be made to dust noise monitoring and be strongly enforced. Landowners protections under Environmental Authorities must not be diminished.

- Compensation of professional costs should be broadened under the appropriate regulations and legislations to enable the landowner to access qualified experts. Currently arrangements are ineffective to enable the determination of how far to site infrastructure from a residence because of noise.
    - *"While the EA provides a level of protection to landholders, the buffer between sensitive receptors and resource activities generally required to meet environmental nuisance conditions can vary significantly and* ***is often not readily discernible on-ground."*** page 10 Consultation RIS

Yours Faithfully,

Joanne Rea

Joanne Rea
Chairman
Property Rights Australia Inc.