

15 December 2023

Leon Doutre
Director
Policy and Statutory Planning
Department of State Development, Infrastructure,
Local Government and Planning

Dear Mr Doutre

On behalf of Property Rights Australia (PRA) please find enclosed our concerns regarding the Proposed amendments to the Regional Planning Interests Act 2014 (RPI Act).

1) About PRA

PRA was formed in 2003 to protect the property rights of those unfairly targeted by the Vegetation Management Act 1999. We are a non-profit organisation of primary producers and small business people mostly from rural and regional Queensland who are concerned about the continuing encroachment on the rights of private property owners in the development, introduction and administration of policies and legislation relating to the management of land, water, and other resources. Set up in South West Queensland, PRA's membership now extends across most states and multiple major rural industries, PRA is not affiliated to any political party.

2) Submission

The Regional Planning Interests Act should be viewed first and foremost as an important planning instrument and certainly not made subservient to resources Acts. Any amendments should reinforce neutrality where strategic environmental areas, priority living areas and priority agricultural areas are identified and protected unequivocally. Such circumstance will ensure good governance; certainty of investment; protection of people's amenity & property; environmental protections; food security and the provision of the legacy of the very best aspects of the land for future generations.

However, any such ideal is greatly tarnished by the proposed amendments in this discussion paper, especially through the continued government infatuation with the concept of coexistence. Once having identified a priority land use it is incompatible and counterintuitive to sneak in a coexistence rider to allow development activity on what should be protected.

Therefore, Property Rights Australia finds the Gasfield Commission recommendation 6 as particularly worrying as it is about re-defining good quality agricultural soils. That can ONLY be done by the Department of Agriculture. It is a specific definition any statement about or

listing of coexistence would be entirely inappropriate.

Another concerning amendment is the exclusion of subsidence from the “eligibility criteria” under the proposed amendments to the Regional Planning Interests Act 2014 and the Regional Planning Regulation 2014.

The whole point of having Priority Agricultural Areas and Strategic Cropping Land is to legislate the importance of high-quality agricultural land and to preserve its use. It also does not read as if subsidence counts towards any of the elements (eligible criteria) which contribute to the 2% allowable damage on a single property. Considering that subsidence usually cannot be remediated, the door has been left open for unlimited damage, much more than 2% to PAAs, SCLs and PALUs.

Subsidence has been removed from the RPI Act and will be solely handled under the MERCP Act which will offer no protection. Subsidence could, and should, be in both.

The consultation process involving the intersection of agricultural interests and resources industries and government, is a constant dance of one step forward and two steps back.

1.3 of discussion paper – S22

The position of Property Rights Australia (PRA) is the S22, landowner agreement, should remain.

In the Regional Interests Planning Amendment to S22, it is asking that the land should be self-assessed by the tenement holder for an exemption but without the agreement of the landowner. Obviously, there will be a code and penalties for non-compliance but landowners will have inadequate influence over the approval. The document mentions consultation and/or notification but the two seem to be conflated in some of the discussion paper. They are not the same. Consultation should be genuine with the landowner able to make changes if necessary.

Without the need for landowner agreement, this Act makes those regional interests that should be protected by this Act, no safer than landholdings in the rest of the state. Even for the best quality farming areas in the country, we can't wait to win the race to the bottom of the sludge pond.

The recommendation from the Gasfields Commission is that:-

- 1. replace the current section 22 exemption under the RPI Act (for resource activities in a priority agricultural area (PAA) or a strategic cropping area (SCA)) that applies where there is landholder agreement, with a self-assessment process.*

This process should be informed by a new code, and require the entity to notify the State when the self-assessable process has been utilised, with the notification to be placed on a publicly accessible register.

Qld government response - (3.1 of discussion paper)

“The Queensland Government will work to replace the s22 exemption (exemption-agreement of land owner) under the Regional Planning Interests Act 2014 (RPI Act) with a compliance-assessment process informed by a code. Rather than referring to a self-assessment process, it is proposed that the process be referred to as a compliance assessment process. This is in order to distinguish it from a typical self-assessment process. The proposed compliance-assessment process is different from a self-assessment process in two regards. Firstly, there will be a requirement for the authority holder to notify the administering authority (being the Department of State Development, Infrastructure, Local Government and Planning) of compliance with the code. Second, there will be a requirement for the authority holder to provide details of compliance to the administering authority. These are not a typical requirement of self-assessment processes.”

Penalties for non-compliance are not readily available in the discussion paper but they need to be a deterrent.

Property Rights Australia finds this approach entirely unacceptable even with appropriate penalties in place.

Calling the self-assessment process a compliance-assessment process is mere semantics and will not change outcomes. Self-assessment by tenement holders should not even be in the mix.

Remaining points of concern from Gasfields Commission recommendations
(1.3 of discussion paper)

3. ensure the ‘required outcomes’ provisions for PAA and SCA (currently identified in the RPI Regulation) and the provisions in the new self-assessable code to align (i.e. address the same risks), including where there are multiple interests (i.e. where the property is mapped as both PAA and SCA)

Recommendation 3 “required outcomes” for PAA and SCA are not possible if subsidence is not recognised.

6. have a lead State agency undertake a review of agricultural land use classifications, in the context of coexistence with other development

The burning question here is, “Which State Agency”?

The lead agency for this review is the Department of State Development, Infrastructure, Local Government and Planning.

The only state agency which may be remotely qualified to conduct such an assessment is the Department of Agriculture with no interference from other agencies.

In any instance, Property Rights Australia believes that current classifications, though a bit clunky, are fit for purpose. Priority Agricultural Areas and Strategic Cropping Areas must maintain agriculture as their primary purpose for the state and not allow other industries to encroach into the territory and priority uses should not include resources, renewables, or associated powerlines. That is non-negotiable.

Such a recommendation only serves to muddy the waters. Coexistence should have nothing to do with agricultural classifications.

1.3 of discussion paper – S23

We have no comment on S23

S24 brings forward some concerns.

The following paragraph is ambiguously constructed. Firstly, S24 is included in the comment and then it says it is not meant cover activities that have already commenced. That is what S24 is about.

3.3 of discussion paper

“For all exemptions under sections 22, 23 and 24: For all exempt resource activities being carried out under s22, s23 and s24, both the land owner and adjoining land owners are to be notified by the authority holder prior to the commencement of the activity. These provisions are not intended to apply for activities that have already commenced (i.e. they are not proposed to be retrospective).”

S24 does need to be included in the process of transparency and consultation.

Considering that there are already significant areas of CSG subsidence above the Condamine Alluvium, why is there any activity there at all.

Concentration should be focusing on compensating affected landowners, including for subsidence, remediating damage where possible and paying into the government mitigation fund with a moratorium on further activity.

Consultation (3.3 of discussion paper)

As is always the case with these “consultation” the devil is always in the detail and for most of it there is just not enough detail on how the legislation amendments would work on the ground.

What is evident though is that the purpose of the legislation appears to have morphed from “managing resource activity” to fostering coexistence and smoothing the path for continued incursion into these high-quality agricultural areas where landowners are forced to host these industries at personal cost including time.

They are inadequate to protect the high-quality agricultural properties of the land.

Landowner Involvement

Once again, PRA are having to advocate reimbursement for landowner time which will be considerable, even unreasonable, for the activities required. Once again, we are having to specify that landowners must have reasonable access to professional advice of their choosing, at the cost of the tenure holder. Once again, we are demanding this time, that the time-sensitive, seasonal nature and rhythm of the planting seasons is recognised and sympathetically allowed for in time frames.

The requirement to notify neighbouring landowners and others potentially affected is a step in the right direction. However, tenement holders, the government, and the Gasfields Commission (proposed to be renamed Coexistence Queensland to add renewables to their remit), need to realise that “consultation” must be real and that notification and consultation are not the same thing.

It is clear from the quoted sections below that priority agricultural areas were, under **the original Act**, to be managed for minimal disturbance and to maintain the integrity of this good quality agricultural land.

It was to be valued as important to the landowner and important to the region. It also seeks to protect the aquifer. The amendments undermine this.

The whole timbre of the Act and the Regulation has changed as demonstrated by the quote below.

The Regional Planning Interests Regulation 2014

“Part 2 Priority agricultural area

2 Required outcome 1—managing impacts on use of property for priority agricultural land use in priority agricultural area

(1) This section applies if the activity is to be carried out on a property in a priority agricultural area.

(2) The activity will not result in a material impact on the use of the property for a priority agricultural land use.

3 Prescribed solutions for required outcome 1

(1) Subsections (2) and (3) each state a prescribed solution for required outcome 1.

(2) The application demonstrates the activity will not be located on land that is used for a priority agricultural land use.

(3) The application demonstrates all of the following—

(a) if the applicant is not the owner of the land and has not entered into a voluntary agreement with the owner—

(i)the applicant has taken all reasonable steps to consult and negotiate with the owner about the expected impact of carrying out the activity on each priority agricultural land use for which the land is used; and

(ii)carrying out the activity on the property will not result in a loss of more than 2% of both—

(A)the land on the property used for a priority agricultural land use; and

(B)the productive capacity of any priority agricultural land use on the property;

(b)the activity can not be carried out on other land that is not used for a priority agricultural land use, including, for example, land elsewhere on the property, on an adjacent property or at another nearby location;

(c)the construction and operation footprint of the activity on the part of the property used for a priority agricultural land use is minimised to the greatest extent possible;

(d)the activity will not constrain, restrict or prevent the ongoing conduct on the property of a priority agricultural land use, including, for example, everyday farm practices and an activity or infrastructure essential to the operation of a priority agricultural land use on the property;

(e)the activity is not likely to have a significant impact on the priority agricultural area;

(f)the activity is not likely to have an impact on land owned by a person other than the applicant or the land owner mentioned in paragraph (a).

None of these protections should be removed or watered down. That includes that there should be no more than 2% reduction in priority land use, from all activities including subsidence AND 2% reduction in productivity.

Similar comments apply to SCLs, PALUs, regionally significant water courses and strategic environmental Areas as in Section 3 of the Regional Planning Interests Regulation 2014.

Stimulus Question as asked in the discussion paper

What do you view to be the overall impact / effect of the proposed amendments?

The overall view of Property Rights Australia is that the amendments have stripped landowner rights and any meaningful protections offered to good quality agricultural land. It has smoothed the way for resources activity. It has rendered one of the greatest problems on good quality agricultural land, subsidence, a non-problem as it is not listed anywhere and the discussion paper tells us that:-

While the Commission identifies that subsidence is one of the impacts caused by coal seam gas (CSG) activities, the draft criteria do not consider the impact of CSG-induced subsidence. As identified in part 1.4 of this paper, the Department of

Resources (DoR) are currently developing a CSG-induced subsidence framework in the Mineral and Energy Resources (Common Provisions) Act 2014 (MERCp).

The draft criteria should include subsidence and the area of subsidence must be included in the allowable 2% damage to the priority areas.

The 2% productivity reduction is not mentioned in the discussion paper but should remain.

Coexistence in the context of the RPI Act is contrary and destructive towards the principal of identifying and protecting a priority interest.

3) Submission Contact

For further information regarding this submission, please contact Dale Stiller, PRA Vice Chairman at pra1@bigpond.net.au.