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STAND YOUR GROUND

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Department of Resources Queensland resources industry development plan
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**PROPERTY RIGHTS AUSTRALIA**

**Property Rights Australia Inc Submission into Queensland Resources Industry Development Plan**

Property Rights Australia (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 businesspeople mostly from rural and regional Queensland who are concerned about continuing encroachments on the rights of private property owners. The organisation was formed to seek recognition and protection of 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 natural resources. Set up in South West Queensland, PRA's membership now extends across most states and multiple major rural industries. PRA is not affiliated with any political party.

Property Rights Australia (PRA) is greatly disappointed by what has been omitted from the consultation for the 'Queensland Resources Industry Development Plan'.

While the video on the web page does mention landholders, farming groups and a farmer does feature for a part of the video, both the Forum and the Survey only has a passing reference to landholders. There are no references to key issues that PRA believes to be of utmost importance during mineral & petroleum exploration or the approval process leading to mining or gas production.
These issues include:

1. the continued lack of recognition for landowners in government planning and policy development
2. the recognition of the need to protect high quality soils, including strategic cropping land and to ensure food security
3. the disempowerment of landowners in the mining or petroleum lease approval process and lack of respect for the agriculture as the pre-existing land use
4. the property rights of the landowner which are in the main family farms.
5. the unreserved availability of full compensation and assurance of restitution for any future liabilities as a result of resource sector activity, even those currently unknown.

**Coexistence – lack of equality for landowners**

To be clear the use of the words such as "coexists" and "partnership" has to date not resulted in equality or balanced legislative or on the ground outcomes for landowners. A landowner is often poorly equipped against large companies with far greater capital backing, in-house specialised personnel and the withholding of critical information. Too many times landowners are misled and pressured into making decisions, not helped by a legislative framework that is not conducive to fairness.

Furthermore, the use of the word coexistence or the alternative sustainable coexistence has never been satisfactorily defined. The reality is that the "measures" for coexistence are opening doors for exploration and resource extraction. Landowners have never felt any comfort that any such arrangement would allow for full farming production and efficiency. The use of this term provides no legal or compensable protection for landowners.

Recent research into the planning and land use decision making process in Australia for unconventional gas has identified that 10 years into the new export industry, there are still concerns relating to procedural fairness and distributive justice. [1]

**Planning Policy – protection of quality soils**

Any resources development must be built from the foundation of good planning policy. Terms such as prime cropping country, strategic soils, etc are widely used. The concept of food security is often spoken about. Statistics are also readily available of the very small percentage of high quality soils. But, in practice, protection of soils is little understood and a highly underrated issue.

The Regional Planning Interest Act (RPI) is good by concept but is in need of improvement. The protection of very best soils is paramount. PRA believes that a number of very important points are made in the attached policy document that PRA developed about the RPI in 2015. We ask that these points are considered.[2]

**Approval Process**

The approval of a mine or a gas field especially the Environmental Impact Study is a long drawn out, expensive, complex exercise that serves neither landowners nor resource companies well. PRA notes that media reports[3] in May of this year of the debate within the Labor party for the introduction of an "independent scientific body" to monitor resources projects. The Queensland State government already has the ability to get advice from the Federal government's Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development (IESC). [4] An independent review does have merit, but only if the entire system is overhauled. Such an idea if only an addition would just add to the red tape. Regulation is

[1] (Galloway, 2012; Hull & Evensen, 2020; Taylor & Soliman Hunter, 2019; Witt, Whitton, et al., 2018)
[2] Attached PRA policy document - Regional Planning Interests Act
[3] https://www.theaustralian.com.au/nation/politics/red-tape-alarm-on-queensland-alp-mine-proposal/news-story/59e315c650a7fce86f8daeaf4e8875de
[4] https://iesc.environment.gov.au/

red tape if unnecessary, onerous & ties you up. On the other hand, regulation is necessary when targeted to protect the vulnerable.
Gas fields approvals and monitoring are geared to the large tenement area which often disadvantages the individual rights of single landowners who find themselves under a very much extensive blanket overlay of an approved gas project tenement area. The Resource Tenement Approval Process recognises large tenement areas with scant regard for individual and separate business owners of the land over which the tenement approvals occur. The approval processes and ownership of resources is at odds with the ownership of private property and in order for the two to align and have the ability to resolve individual landowner issues, there needs to be greater flexibility.
Throughout development processes the landowner directly affected, the near neighbours, or the local community have limited avenues to make objections to secure satisfactory outcomes to very real impacts.

**Property Rights v's Social Licence**

The Australian Law Reform Commission has an extensive entry about property rights which states, *"7.16 A 'property right' may take different forms depending on the type of property. Implicit in a property right, generally, are all or some of the following rights: the right to use or enjoy the property, the right to exclude others, and the right to sell or give away."*[5]

In May 2014 the then Human Rights Commissioner observed, *"Property rights are regularly compromised by legislation and regulation, such as native vegetation legislation that restricts how legitimate property owners can use their land."*[6]
Far too readily governments are prepared to legislate away landowner protections and property rights. Even though the Legislative Standards Act 1992[7] requires the question to be asked of new legislation of 'Consistency with fundamental legislative principles' which includes property rights related criteria, inconsistencies are justified "in order to achieve the policy objective".
In public statements both government and resource advocacy organisations ignore and sideline property rights with the concept of resource sector "social licence." Just in the case of coexistence, social licence has never been satisfactorily defined. The term social licence has been used to confer legitimacy upon the industry outside of the ties of regulatory, legal and commercial licences.[8] The term is misused to attempt to establish an unlegislated social contract with society.[9] It is also used as a means of restoring the lost confidence of the wider impacted communities, stakeholders and to attempt to pacify pressure groups.[10]
What is missing in this discourse is the specific engagement with the actual farmer as an individual, as a directly impacted near neighbour, having to leave in the case of a mine, or required to host the gas industry.

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[5] https://www.alrc.gov.au/publication/traditional-rights-and-freedoms-encroachments-by-commonwealth-laws-alrc-report-129/18-property-rights/definitions-of-property-3
[6] https://www.humanrights.gov.au/news/speeches/forgotten-freedoms

[7] https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/L/LegisStandA92.pdf
[8] (Curran, 2017)
[9] (Lacey & Lamont, 2014)
[10] (Boudet et al., 2018; Coles, 2018; Graham et al., 2015; Hine et al., 2019; Luke et al., 2018; McLaughlin & Cutts, 2018; Owen & Kemp, 2013; Paragreen & Woodley, 2013; Saunders et al., 2018; Thomas et al., 2018; Walsh & Haggerty, 2020; Witt, Kelemen, et al., 2018)

There is currently an unmet need to properly address issues relating to land access and host farmers experiencing deep loss of self-autonomy and power.[11]

**Full Compensation & Protection from Future Liabilities**

Landowners need to be guaranteed complete indemnity for all demonstrable and quantifiable adverse financial impacts, both immediate and consequential, upon their business, land and assets for the life of the mining project. This needs to be whether such losses or claims are brought about by an act of negligence or omission or just the product of the mining company's normal lawful activities.
Under the present agreements being signed up this is not the case. Access to remedy for consequential business losses and any future diminution of asset value is specifically being denied. Landowners are not participating in profit from the uninvited project and yet are being exposed to and required to carry considerable risk for the mining company's activities.
Government policies advance supposed public interests for the commencement of a resource projects often fail to address negative external costs that end up being borne by the individual landowner or the local community as a whole.[12] [13] Research relating to the individual farmer hosting the gas industry showed that an average loss of revenue for the agricultural industry per host farm could be as much as $2 million over a 20 year period. This was in addition to the elements that were compensated under legislation. [14]

**Compliance & Rehabilitation**

The ongoing Environmental Authority (EA) approval process is not open and accountable, and because of this many issues are not made public or adequately rectified.
Government continually claims in public statements that the resource sector is governed by very strict legislation. Compliance and penalties are allowed for in the legislation at multiple levels but enforcement is visibly lacking. Landowners have had by experience little reason to trust that infringements by resource companies will be dealt with by government Department(s). This was reinforced by the Queensland Audit Office audit of the coal seam gas industry where it found that government departments had inadequate records of activity and limited ability for enforcement.[15] Another example is the Linc Energy contamination where former senior scientist in the state Environmental Protection Agency, Munro Mortimer stated, *"In theory the Queensland Environmental Protection Agency was monitoring Linc, but former EPA staff say the agency was so overstretched by the mining boom that it was incapable of scrutinising such complex technology. "I can pretty confidently say that the EPA would have known nothing other than what the company and its consultants told them,"*[16]

[11] Luke (Luke & Emmanouil, 2019)
[12] (Boulle et al., 2014)
[13] (Barlow et al., 2017; Marlin-Tackie & Smith, 2020)
[14] (Marinoni & Navarro Garcia, 2016)
[15] https://www.qao.qld.gov.au/reports-resources/reports-parliament/managing-coal-seam-gas-activities
[16] https://www.theaustralian.com.au/life/weekend-australian-magazine/linc-energys-ucg-plant-at-chinchilla-a-smart-state-disaster/news-story/89096454ced60874c5d8e2e967fb9c1c

## Role of State Government

The Queensland Resources Industry Development Plan survey asks – "What role do you think the state government needs to play?" PRA believes the government most certainly has a role to play. Additional to the options offered in the survey the government needs to:

- ensure good planning policy;
- improve the approval system including better objection pathways for landowners;
- ensure better compliance of resource companies' requirements to landowners and
- ensure that the human and property rights of the landowners and vulnerable are protected.

## Appendix A

### Regional Planning Interests Act

PRA endorses the underlying concept of the Regional Planning Interests Act (RPI Act) as a planning instrument. This Act repealed and incorporated the functions of two previous Acts, the Wild Rivers Act and the Strategic Cropping Land Act. PRA believes that the functions of these previous two Acts can be better served in the RPI Act especially with further amendments to the RPI.

The RPI Act does have some flaws that would prevent it being a very good piece of legislation.
As a planning instrument it should be an overarching mechanism that has pre-determined priority areas for living, agriculture and environment. This should be the base from which any new development application would be assessed as a possible appropriate land use.

The RPI should not be primarily about proposed resource developments. However, this emerges as priority of the Act in its current form and prevents it becoming a credible, fair and stable planning instrument. For example, the RPI works through Regional Plans; with the Darling Downs and Central Queensland Regional Plans that were put into place just before the release of the RPI Bill, it was quite striking how the strong emphasis for resource development overpowered those Plans and hampered them from being about all development proposals or alternative land uses.

This Act has the potential, through the use of sound science, to map areas that have high quality soils essential for high value agriculture, as well as areas of high conservation values. This would help negate protest groups making vexing and misleading claims about the consequence of a new development proposal, including a resource project.

In the area of soil science, much of the work has been done over many decades starting with the old Lands Department. This continued under the Department of Primary Industries. The work was based on true science without the influence of any other agenda. The classification mechanisms for identifying priority agriculture areas within the RPI Act and the Regional Plans are overly complex and simplifying them would create a more workable piece of legislation.

Having identified priority areas for living, agriculture and environment, the RPI contains far too many loopholes which would allow new development – with a clear focus on resource development – to proceed anyway. The Act would have more credibility if it identified priority areas based on science and provided for their protection. Either an area is of high value deserving protection or it is not.

The RPI is “framework legislation” and many important provisions are not protected by being in the actual Act but are contained in the associated regulations. The Act has to be amended through Parliament while regulations can be changed at the whim of the Minister.

PRA is prepared on request to supply further details of how the overall situation can be improved.

Regards

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