

Submission to the

GasFields Commission Independent Review

22 April 2016

Queensland Farmers' Federation (QFF) is the peak body representing and uniting 17 of Queensland's rural industry organisations who work on behalf of primary producers across the state. QFF's mission is to secure a sustainable future for Queensland primary producers within a favourable social, economic and political environment by representing the common interests of its member organisations'. QFF's core business centres on resource security; water resources; environment and natural resources; industry development; economics; quarantine and trade.

Our goal is to secure a sustainable and profitable future for our members, as a core growth sector of the economy. Our members include:

- CANEGROWERS,
- Cotton Australia,
- Growcom,
- Nursery and Garden Industry Queensland,
- Queensland Aquaculture Industries Federation,
- Queensland Chicken Growers Association,
- Queensland Dairyfarmer's Organisation,
- Queensland Chicken Meat Council,
- Queensland United Egg Producers,
- Flower Association of Queensland Inc.,
- Pork Queensland Inc.,
- Australian Organic,
- Pioneer Valley Water Co-operative Limited,
- Central Downs Irrigators Limited,
- Bundaberg Regional Irrigators Group,
- Burdekin River Irrigation Area Limited, and
- Fitzroy Food and Fibre Association

PREAMBLE:

The QFF provided a submission in May 2012 which outlined the principles we believed should inform the establishment of the GasFields Commission (the Commission) and a copy of that submission is attached (Attachment A).

The QFF appreciates the opportunity to provide a written submission to the current review of the Commission and meet with the Independent Reviewer to provide input into the process. Please note that this submission should be viewed without prejudice to additional submissions that may be received from our member organisations who may take the opportunity to provide their own views.

We have reviewed the *Gasfields Commission Act 2013* (the Act) which established the Commission and have considered the Terms of Reference for the review. The QFF will provide comment on those areas of particular relevance to our member organisations and the rural landholders that they represent.

RECOMMENDATIONS:

1. The QFF asserts that the Commission has lost the trust of landholders and that it will be very difficult for a restructure in to regain that trust. As such, QFF recommends a judicial review of the Gasfields Commission Act 2013 with particular regard to the following sections - *s7 Commission's Functions; s9 Membership; and Part 3 covering the Powers of the Commission*. QFF can provide further comment on these sections but notes that the current Act does not provide jurisdictional powers in the context of genuine settlement negotiations or mandated timeframes for arbitration processes.
2. The QFF supports investigation into alternative models to the Commission.
3. The QFF contends that landholders must be supported and resourced to enable them to reach agreement with the onshore gas industry.
4. The QFF asserts that where agreement is not possible, any new model must have clear mechanisms for managing complaints and resolving conflicts within specific timeframes. New powers should include:
 - Referral
 - Conciliation/Mediation
 - Investigation
 - Directions
 - Arbitration/Determination
5. The QFF supports the CSG Compliance Unit remaining as the primary point of reference for audits and inspections relating to; CSG and land access, investigations of landholder complaints including bore and water impact investigations, and groundwater monitoring.

GENERAL STATEMENT:

The Commission has strong potential to deal with the complex issues associated with coal seam gas (CSG) development in Queensland. The purpose and functions prescribed in the Act should allow it to manage and improve the sustainable co-existence of landholders, regional communities and the onshore gas industry in Queensland. Unfortunately, a very real perception has arisen amongst many landholders and their communities that the Commission no longer acts impartially. Instead, there is concern that it has become an advocate for the onshore gas industry rather than, a strong independent source of information and voice of reason in this sensitive area.

In our 2012 submission on the establishment of the Commission, the QFF noted that the new Commission had strong potential but that it would have to engage the right people, have the right powers, and be in a position to earn the trust and respect of industries and the community. The QFF asserts that the Commission has failed to earn the trust of landholders since its establishment and relationships between landholders and onshore gas companies remain problematic with little positive change in this critical policy area of State development.

RESPONSE TO THE TERMS OF REFERENCE:

Evaluate whether the GasFields Commission is achieving its purpose

The QFF recognises that there are significant resources available from the Commission to rural landholders who are required to co-exist with gas companies; about developments on or near their landholdings. Despite these resources being available electronically, when a landholder is approached by a gas company to negotiate access to their land, an often stressful process is commenced. Most landholders feel as though they have little control over the process and many will not seek information via a website. Most would prefer personal access to information, where they are able to ask questions, seek clarification and to feel assured that their concerns will be addressed.

The QFF contends that Commission activities have not helped manage or improve relationships between landholders, communities and the onshore gas industry. Landholders have reported to the QFF that they feel that their questions and concerns have been downplayed or disregarded at public meetings and that the Commission has not properly followed up on personal enquiries to the Commission for information or assistance. This has exacerbated the already strong view of many landholders that the Commission advocates for the onshore gas industry and that their interests will not receive appropriate recognition.

The QFF has not had significant direct engagement with the GasFields Commission but we have been represented at various consultations and regional community briefings convened by the Commission. The QFF believes there should be a formal process for consultation with industry representative bodies. This could take the form of an Advisory Committee that meets at least twice each year or bi-annual meetings between the Commission and industry representatives structured around Commission meetings.

We appreciate the efforts that the Commission takes to provide updates on developments and make regional communities aware of new and emerging business opportunities that may arise from the industry's activity. However, criticism has been directed at the Commission for appearing to promote the expansion of the onshore gas industry at these briefings rather than provide balanced information about the potential impacts of the development.

Evaluate whether the functions given to the GasFields Commission are sufficient to allow it to effectively manage disputes about land access and other disputes between resource companies and landholders

The QFF is not aware of any instance where the Commission has assisted landholders to manage disputes with gas companies. Landholders are often unwillingly drawn into negotiations with the onshore gas industry. When the Commission was established, landholders expected that the powers and functions given to the Commission in the GasFields Commission Act 2013 would provide assistance to them to help manage disputes. Unfortunately, there is no evidence that this has occurred and most landholders seek independent legal advice and rely on their legal representative to guide them through the process rather than approach the Commission required to engage with a gas company.

Evaluate whether the functions given to the GasFields Commission should include a role in managing or facilitating responses to public health and community concerns arising from onshore gas activities

The functions prescribed for the Commission should be sufficient to allow it to obtain relevant and up to date information on potential public health and other impacts and disseminate this to the community. Unfortunately, the perception that the Commission has become an advocate for the gas industry has made it difficult for it to perform its role under this function. Most landholders would not be prepared to accept the information provided by the Commission and many communities have been alarmed by public campaigns about the potential adverse impacts on health and the environment of the industry.

It is the QFF's opinion that it will be very difficult for the Commission to this function satisfactorily. The Chief Health Officer should include information on any potential health impacts from the onshore gas industry in their report which is published every two years.

Investigate whether an alternative model, such as an independent Resources Ombudsman is needed to provide a mechanism for dispute resolution between resource companies and landholders

The QFF supports investigation of alternative models for dispute resolution between landholders and resource companies. This should include researching interstate and national Ombudsman, Commission and Tribunal models as alternatives. These models have powers to provide independent advice to landholders, resources companies, the community and government about onshore gas activities in the State. Additionally, they also have the capacity to refer parties to mediation/conciliation, investigation and arbitral/ decision making. The QFF recommends investigation of models such as a Commissioner with support staff to assist in the delivery of powers, and Tribunals with a small number of Members and support staff.

Many reported incidents of bad relations between landholders and resource companies have their basis in landholders feeling powerless to negotiate on equitable terms with resource companies. Landholders are often "unwilling" participants in a process which they see as weighted against them. They see resource companies as being well resourced and with access to information which allows them to prepare well in advance of engagement with landholders. Although there is information and advice available to landholders which should be obtained before any on-the-ground access and negotiation commences, many are unaware of, or unable to access this assistance.

A consistent complaint from QFF members is the lack of appreciation of the impact that negotiations have on landholders' ability to plan for the future. Landholders must take a long term view of investment in cropping rotations, forward trading on commodity markets and equipment purchases, etc. These are interrupted if a resource company indicates that it has an interest in development on their land, but no firm timeframe for reaching agreement about how and when they will proceed.

Landholders are seeking a time bound process. This must include: adequate lead time to ensure sourcing of information on the process, independent valuations, access to expert and legal advice and to undertake negotiation about land access and compensation. Additionally, it must provide a pathway forward if agreement cannot be reached. It is in the interest of companies to get their exploration and production underway so considerations for timeframes will be different for both parties, but it is critical that a process is implemented to restore landholders' confidence that their rights will be recognized and respected.

Currently, the Commission does not have the capacity to direct parties to resolve disputes in a timely manner, enforce compliance with the Land Access Code, negotiate in good faith, or bind parties to agreements. There are however, examples of other consumer and government models that have clear pathways for managing complaints and resolving conflicts within specific timeframes:

- Referral
- Conciliation/mediation – assistance to reach agreement
- Investigation – gathering of evidence from both parties
- Directions – about the conduct of an inquiry
- Decision – Ombudsman/Tribunal Member hands down a decision binding on all parties within a specified period

The QFF contends that a Resources Ombudsman or Tribunal with such powers would ensure that parties are supported to reach agreement. However, where agreement is not possible, the parties are required to participate in a dispute resolution process that leads in a timely manner to a binding decision.

Investigate whether harmonisation between the CSG Compliance Unit and the GasFields Commission would provide efficiencies and improve dispute resolution between resource companies and landholders

The CSG Compliance Unit is a key component of the Queensland Government's overall strategy for the responsible management of the CSG industry in Queensland. This unit is a one-stop-shop for community and landholder enquiries, concerns and assistance, and as a government entity employs staff who are independent and respected by both resource companies and landholders. These staff have expertise in groundwater monitoring and management as well as environment and land access issues. This results in a degree of confidence by all stakeholders that the unit will coordinate and deliver the CSG engagement and compliance plans without fear or favour.

The QFF is aware that landholders hold the CSG Compliance Unit in high regard and that they continue to refer issues and concerns to them for investigation and resolution. The QFF does not believe that the Commission in its current form would have the confidence of the majority of landholders to undertake the regulatory functions of the CSG Compliance Unit.

The QFF would prefer that the CSG Compliance Unit remain as the primary point of reference for audits and inspections relating to CSG and land access, investigations of landholder complaints (including bore and water impact investigations), and groundwater monitoring.

CONCLUSION:

The QFF in our 2012 submission on the principles for the establishment of the GasFields Commission, noted that to deliver upon the expectations of the agricultural sector the Commission must be given room to grow incrementally as trust will build slowly but extinguish swiftly within the community. Unfortunately, despite a significant investment in the GasFields Commission, there appears to be little change in the level of concern amongst landholders about the onshore gas industry. The QFF maintains that the Commission has lost the trust of landholders and that a simple restructuring will not be sufficient to regain that trust.

Additionally we, support investigation into alternative models to the Commission. These may include a Commissioner, Ombudsman or Tribunal structure. This structure would retain most of the functions of the Commission and provide a “shop front” for landholders to source information on; the process, independent valuations, other expert and legal advice as well as undertake negotiations about land access and compensation and provide a pathway forward if agreement is reached. Additionally, it must also have clear pathways for managing complaints and resolving conflicts within specific timeframes:

- Referral
- Conciliation/Mediation
- Investigation
- Directions
- Arbitration/Determination

The QFF also strongly supports the CSG Compliance Unit remaining as the primary point of reference for audits and inspections relating to CSG and land access, investigations of landholder complaints, and groundwater monitoring.

Attachment A:

QFF Submission to the Gasfields Commissioner

The principles for the establishment of the Queensland Gasfields Commission

May 25 2012

Queensland Farmers' Federation (QFF) is the peak body representing and uniting 17 of Queensland's rural industry organisations who work on behalf of primary producers across the state. QFF's mission is to secure a sustainable future for Queensland primary producers within a favourable social, economic and political environment by representing the common interests of its member organisations'. QFF's core business centres on resource security; water resources; environment and natural resources; industry development; economics; quarantine and trade.

Our goal is to secure a sustainable and profitable future for our members, as a core growth sector of the economy. Our members include:

- Australian Prawn Farmers' Association,
- CANEGROWERS,
- Cotton Australia,
- Growcom,
- Nursery and Garden Industry Queensland,
- Queensland Chicken Growers Association,
- Queensland Dairyfarmer's Organisation,
- Queensland Chicken Meat Council,
- Flower Association of Queensland Inc.,
- Pork Queensland Inc.,
- Qld United Egg Producers
- Biological Farmers of Australia
- Fitzroy Food and Fibre Association,
- Pioneer Valley Water Co-operative Limited,
- Central Downs Irrigators Limited, and
- Burdekin River Irrigators Association
- Queensland Aquaculture Industry Federation

PREAMBLE:

QFF congratulates you and the State Government on moving swiftly to establish the Qld GasFields Commission. The QFF provides this submission in the hope that we perform a valuable and positive role of informing this important process as the commission is established. In so doing this submission should be viewed without prejudice to submissions

that may be received by our members organisations who may take the opportunity to provide their own views.

THE new Queensland GasFields Commission has strong potential to deal with the complex issues associated with coal seam gas (CSG) development in Queensland. QFF has been actively, involved in discussing the policy issues associated with the interactions between CSG and farming since 2007. This has required us to consult with Government, resource industry peak bodies, project proponents, regional landholder groups and individual farmers. Along the way, many people and many organisations have exposed themselves to greater risk, with little reward in an attempt to find appropriate middle ground. That ground essentially being a position that sees a sustainable CSG industry, developing with minimal risk to the environment and without hindrance to the existing primary industries in the regions. It is now an opportunity for an appropriately structured GasField Commission to take on this role. To do so, it must engage the right people, have the right powers and be in a position to earn the trust and respect of the industries and community.

Farmers and the public appreciate the new Government's mandate for action and we all know action is required. However this should not occur to the point where it risks policy shortcomings or a loss of faith in the process in the interests of expediency. We trust that the submissions received through this process will be treated with due respect, consideration and where practicable incorporation either immediately or over time.

THE COMMISSIONERS:

Clearly the success of the commission will be closely linked to the commissioners. In the view of the QFF these commissioners should be:

- Appointed on the basis of skills
- Be asked to conduct themselves and their deliberations in an independent way with a view to solely acting in the interests of the fair execution of the charter of the commission
- Appointed for a period of time, and collectively on a rolling schedule of appointments to ensure corporate history is maintained
- Selected by a small committee consisting of a cross section of industry and local Government stakeholders within the region of interest as well as responsible Ministers. The Commissioners should in the end be appointed by the Government from names recommended by the selection committee.
- Appointed only after those who have expressed an interest in becoming a commissioner are made fully aware of their potential roles and responsibilities under the final charter and legislation that governs the functioning of the Commission itself.

PRINCIPLES BEHIND THE OPERATIONS OF THE COMMISSION:

- The Commission should stand impartial from government and government agencies. It must stand the test of time in a political and a planning sense, and therefore its structures should not be tied to the political support of a Minister or a political party.

- As a primary and fundamental objective the Commission must facilitate transparent access to information for all in the community. This should include but not be limited to:
 - groundwater impact risk assessments and make good provisions on a regional, project and cumulative scale,
 - resources to support the development of land access agreements and regionally aggregated compensation thresholds aligned against compensable affects,
 - development plans across regions for the major gas projects that shows the future footprint of the industry
- The commission must be given a mandate and powers to inform Government decision making in approving projects and setting development conditions, based on the information it collects and analyses. This is particularly the case where it comes to the assessment and management of the risks to groundwater resources and the treatment and use of CSG associated water and extends to the need to develop a regional groundwater management plan
- The Commission's must not take over the role but instead mesh with the proposed Government regional planning framework for the Surat and Central Queensland regions
- In this way to achieve, approval a CSG projects must be considered in the context of regional plans and the GasFields Commission's information
- The GasFields Commission must take a leadership role within the community. Its functions must support improved communication and resolution of issues in the industry, bringing together stakeholders at all levels, and providing an avenue to discuss the impacts of CSG projects and solutions to such issues by providing the forum to have the parties work together on a regular basis

TRANSPARENCY AND REPORTING:

Trust in the commission will be built from a combination of actions and transparency. To that end the community must know how we are tracking on this issue and whether improvements are being made. For this to happen the commission should:

- Report annually to the Qld Parliament and more frequently on specific resource issues such as ground water monitoring, or as requested by relevant Ministers
- Hold regular informative community based activities with key regional decision makers to provide progress updates,
- Present a publicly available communique on its deliberations, agenda and decisions after each commission meeting or hearing
- Be underpinned by legislated, referable powers to require action from Government departments and thereby have little need for a large bureaucracy.

CLOSING REMARKS

QFF is of the view that the Government has good intent in this endeavor, and the establishment of this commission provides significant opportunity for positive change in this critical policy area of State development. To deliver upon this expectation the commission

must be given room to grow incrementally as trust will build slowly but extinguish swiftly within the community. The QFF stands by to assist the Government and the Commissioners to assist in any way possible to facilitate a positive beginning to the Commission and we thank you for your efforts and consideration of our opinions to date.