



# QUEENSLAND FARMERS' FEDERATION

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## Submission

12 May 2017

Mr Lyall Hinrichsen  
Executive Director  
Land and Mines Policy  
Department of Natural Resources and Mines  
Level 5, 1 William Street  
BRISBANE QLD 4001

Via email: [ResourcesPolicy@dnrm.qld.gov.au](mailto:ResourcesPolicy@dnrm.qld.gov.au)

Dear Lyall

### Re: Land Access Ombudsman Bill 2017 – consultation draft

The Queensland Farmers' Federation (QFF) is the united voice of intensive agriculture in Queensland. It is a federation that represents the interests of 15 of Queensland's peak rural industry organisations, which in turn collectively represent more than 13,000 primary producers across the state. QFF engages in a broad range of economic, social, environmental and regional issues of strategic importance to the productivity, sustainability and growth of the agricultural sector. QFF's mission is to secure a strong and sustainable future for Queensland primary producers by representing the common interests of our member organisations:

- CANEGROWERS
- Cotton Australia
- Growcom
- Nursery & Garden Industry Queensland
- Queensland Chicken Growers Association
- Queensland Dairyfarmers' Organisation
- Burdekin River Irrigation Area Irrigators
- Central Downs Irrigators Ltd
- Bundaberg Regional Irrigators Group
- Flower Association
- Pioneer Valley Water Cooperative Ltd
- Pork Queensland Inc.
- Queensland Chicken Meat Council
- Queensland United Egg Producers
- Australian Organic.

QFF welcomes the opportunity to comment on the Land Access Ombudsman Bill 2017 – consultation draft (the Bill). QFF provides this submission without prejudice to any additional submission provided by our members or individual farmers.

*The united voice of intensive agriculture*



## Background

Unfortunately, in the past there have been many reported incidents of bad relations between landholders and resource companies. These incidents frequently 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.

Encouragingly, positive progress has been made to address this relationship; such as the Independent Review of the Gasfields Commission Queensland (the 'Scott Review'). In our submission to Scott Review, QFF supported investigation of alternative models for dispute resolution between landholders and resource companies, and recommended that the Queensland Government research interstate and national Ombudsman, Commission and Tribunal models as alternatives. QFF recommended the 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.

The Scott Review made several positive recommendations, including refocussing the Gasfields Commission and establishing an office to resolve disputes for existing conduct and compensation agreements (CCAs) – recommendation 10.

## Queensland Government response

To implement recommendation 10, the Queensland Government is proposing to establish the Office of the Land Access Ombudsman (LAO) to assist landholders and resource companies resolve disputes about alleged breaches of CCAs or make good agreements (MGAs). While the Scott Review focused on the petroleum and gas sector, it is proposed that the LAO will apply to all resource authority types including the coal and mineral sectors.

The LAO will provide a no-cost alternative to the dispute resolution mechanisms in a CCA or MGA, and to suing for breach of contract in a court of competent jurisdiction. The LAO will also be able to: refer disputes to the relevant regulator where the alleged breach of a CCA or MGA relates to a regulatory requirement; and identify general or systemic issues arising out of an investigation and provide advice to the relevant chief executive on these matters.

The draft Bill establishes the functions and powers of the LAO as well as the administrative arrangements such as the appointment of the Ombudsman and conditions of appointment, and the administration and staffing of the Office of the LAO. It is also proposed that the jurisdiction of the Land Court be expanded to hear matters regarding disputes on executed CCAs. Presently these matters are heard in either the District Court or Supreme Court. The benefit of extending the Land Court jurisdiction is that the Land Court has experience specific to CCAs.

## QFF Concerns

QFF principally supports the appointment of an Ombudsman and the establishment of the Office of the Land Access Ombudsman (LAO). An Ombudsman and support office is another positive step forward and enhances the framework to address some of the issues outlined above. However, QFF has several concerns about the draft Bill.

### Lack of timeframes

As outlined in our submission to the Scott Review, QFF and members consider that any alternative model for dispute resolution between landholders and resource companies must have a time bound process. 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, negatively impacting management decisions. Considering disputes before the LAO will have already progressed through CCA or MGA

dispute resolution processes, which can be ongoing for many years, detailed timeframes are particularly relevant. Specific timeframes for referral, conciliation/mediation, investigation, directions and decision should be set.

### **Lack of binding decision**

The underlying rationale for having an alternative dispute resolution process is for it to realise an outcome. Under the draft Bill, the LAO will only be able to make a recommendation. QFF considers that this process should result in a determination. Without a binding decision both parties may participate in a LAO hearing, investing considerable time and effort, without any clarity around a land access decision. This will not provide landholders or licence holders with the desired result or shorten the often-protracted nature of CCA's.

### **Privacy and other information concerns**

If either party chooses not to accept the LAO's decision, the dispute will progress to court (District, Supreme or Land Courts). Under the draft Bill, it appears that any information disclosed during the LAO process can be admitted to any subsequent court process. QFF considers that this may disadvantage landholders, as they would likely approach the LAO process differently to a court hearing process and may therefore put themselves in a compromised position. This will also potentially undermine or influence the effectiveness of the LAO process.

### **Assistance negotiating CCAs**

The draft Bill does not allow the LAO to assist landholders during CCA negotiations. QFF members continue to highlight that the development of the initial CCA is often the major cause of dispute resolution and it is a key concern. Without 'upfront' assistance for landholders, CCAs that are not in the best interest of landholders will continue to be negotiated so there will continue to be major shortcomings in the dispute resolution process. Failure to allocate resources will lead to landholders or licence holders continuing to use costly court processes to make pre-CCA determinations. QFF considers that the current framework must have an independent way to deal with dispute resolution where a CCA is not yet in place.

### **Concluding comments**

While this is positive step towards creating a framework that can underpin better and more enduring relations between landholders and resource companies, the draft Bill is a missed opportunity. An alternative dispute resolution process that does not lead to a binding decision in a timely manner, or address dispute resolution where a CCA is not yet in place, will continue to leave gaps in the framework.

Yours sincerely

Travis Tobin  
Chief Executive Officer