



QUEENSLAND FARMERS' FEDERATION

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Submission

27 February 2023

Department of Resources
Queensland Government
BRISBANE QLD 4000

Submitted via email: resourcespolicy@resources.qld.gov.au

To Whom It May Concern

Re: Land access and coexistence: A review of coexistence principles and coexistence institutions

The Queensland Farmers' Federation (QFF) is the united voice of intensive and irrigated agriculture in Queensland. It is a federation that represents the interests of 20 peak state and national agriculture industry organisations and 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 farmers by representing the common interests of our member organisations:

- CANEGROWERS
- Cotton Australia
- Growcom
- Nursery & Garden Industry Queensland (NGIQ)
- EastAUSmilk (formerly QDO)
- Australian Cane Farmers Association (ACFA)
- Turf Queensland
- Queensland United Egg Producers (QUEP)
- Queensland Chicken Meat Council (QCMC)
- Pork Queensland Inc
- Bundaberg Regional Irrigators Group (BRIG)
- Burdekin River Irrigation Area Irrigators Ltd (BRIA)
- Central Downs Irrigators Ltd (CDIL)
- Fairbairn Irrigation Network Ltd
- Mallowa Irrigation Ltd
- Pioneer Valley Water Cooperative Ltd (PV Water)
- Theodore Water Pty Ltd
- Eton Irrigation Co-operative Ltd
- Lockyer Water Users Forum (LWUF)
- Queensland Oyster Growers Association (QOGA)

QFF welcomes the opportunity to provide comment on the *Land access and coexistence: A review of coexistence principles and coexistence institutions* discussion paper. We provide this submission without prejudice to any additional submission from our members or individual farmers.

The united voice of intensive and irrigated agriculture



Introduction

Queensland's highly productive and valuable agricultural sector is facing increasing challenges due to competing land use demands ranging from mining, gas and urban encroachment, through to energy infrastructure and emerging carbon capture and storage interests. QFF is increasingly concerned about the uncoordinated and inconsistent approach to the protection of agricultural resources provided by the various pieces of legislation and policy, particularly considering the significant increases to land use competition.

QFF believes that the government's review of coexistence institutions is timely and there is an intensifying need to be able to better plan for and address issues resulting from increasing competing land use pressures. Ensuring coexistence institutions are appropriately established, resourced and operating in the most effective way to provide information, education and support certainly plays a key role. However further reform to address existing legislative barriers and inconsistencies that make it difficult for an effective coexistence framework to operate is also urgently required.

While QFF supports in principle co-existence and recognises the importance of appropriate co-existence institutions, it must be recognised that co-existence cannot, and should not be mandated.

Co-existence, by its definition is a relationship between two or more parties, and this relationship must be consensual in nature.

It needs to be recognised, that some landholders have no desire at all to engage with resource companies, and their wishes need to be respected.

Question: Are the four foundations reflective of the key requirements for sustainable coexistence?

The four foundations of Regulation and Compliance, Impact Assessment and Management, Information and Education, and Dispute Resolution as described in the discussion paper have been developed over time and generally underpin industry and government's approach to navigating coexistence. Whilst who the 'owners' are of each of the foundations is fairly clear, the applicable and/or governing legislation relevant to each of the foundations is less clear and, in many cases, confusing and particularly unclear.

QFF makes the following points of note in relation to each of the foundations as follows:

- 1) **Regulation and Compliance:** With multiple pieces of legislation applying throughout the difference aspects of the co-existence journey, regulation and compliance can become confusing. Timelines and process are not always clear and farmers often find themselves at a distinct power imbalance simply due to their lack of resources, expertise and ability to be across relevant regulation and compliance matters when negotiating with large proponents. QFF submits that farmers would benefit from having access to a truly independent point of advice to assist them in navigating the existing legislative frameworks.
- 2) **Impact Assessment and Management:** the importance of being able to access and trust independent science is beneficial and valued by all stakeholders and is critical in understanding scale and timing of impacts for landholders and the environment. The role of independent, reliable, trusted science cannot be understated and should be clearly articulated as central to this foundation.
- 3) **Information and Education:** The Gasfields Commission is well placed to play a critical role in this, and peak bodies can also assist. Improvements can be made here in leveraging and coordination of resources, better utilising digital resources that can be reused, involving peak bodies and

supporting them to support their members in making more informed decisions. A one-stop shop or easily identified area to go to for coexistence information would be useful. The introduction of an independent point of advice for landholders in relation to understanding the legislative framework would add to the more general information that the Gasfields Commission is able to provide.

- 4) Dispute Resolution: A trusted; transparent dispute resolution process is very important. Currently there are a number of entities playing a role in relation to dispute resolution and often confusion arises in relation to entity role clarity and the correct process for a landholder to take. Additional confusion often applies in relation to process when the dispute is at different stages along the CCA journey. Simplification and clarification in the role of entities and the processes a landholder has available to them at the varying stages of their coexistence journey is required.

QFF submits that these four foundations remain relevant and should be applied to new industries to underpin the development of best practice and sustainable co-existence frameworks in addressing emerging and future land use pressures from industries including such as renewable energy and carbon capture and storage.

While generally supportive of the Four Principles, QFF submits there should be a Fifth Principle that acknowledges co-existence cannot be mandated, and it is in fact a consensual arrangement between two or more parties.

It is important to note that the principles and frameworks reflect that coexistence is ultimately the outcome, but that they do not acknowledge the fact that there is inadequate certainty and strength in protection that is needed to ensure remaining areas of high-quality agricultural land are safeguarded from inappropriate development. This remains an imbalance for landholders in negotiating with resource companies and continues to be an underlying source of concern for agriculture.

Question: In what ways could the principles be improved to deliver better coexistence outcomes? Are there other ways in which the government could make its expectations about conduct of resource companies and landholders clear?

QFF submits that the principles must be supported by clearly defined legislation, coexistence organisations with clearly defined roles and delegations and must be underpinned by an understanding of operational limitations of key stakeholders. QFF makes the following key considerations important to improving the effectiveness of the principles in achieving better coexistence outcomes:

- 1) The imbalance of resourcing and expertise between a farmer and a proponent must be continually recognised and considered. Currently farmers are facing a severe workforce shortage, and most are working extremely long hours on farm in an effort to continue production and business as usual. The time and expertise required to effectively engage in negotiations with a proponent often places farmers under enormous pressure. Expectations placed on the conduct of farmers must be fair and reasonable and reflect the resourcing and expertise imbalance that exists between a large proponent company and a family farming enterprise.
- 2) Improved legislative and coexistence entity role clarity would strengthen the principles. It is often not just the fact that there are so many pieces of legislation and coexistence entities that apply that causes the confusion, but more the perceived or real overlapping jurisdictions which makes the complex nature of the land use space even harder to navigate.
- 3) As competition for land use continues to grow and emerging industries such as renewable energy and carbon capture and storage developments ramp up, it is likely that the principles may need reviewing to ensure they meet the needs of new or complex coexistence issues e.g. multiple competing land uses across one landholding, multiple land tenures etc.

- 4) All parties must recognise that co-existence is a consensual relationship between two or more parties, and a landholder should have the right not to engage with resource companies if that is their choice.

Question: What is working well with the current institutional arrangements and should be retained?

The Office of Groundwater Assessment is working well in providing science based, independent, trusted information. The work that OGIA does is invaluable and should be considered.

The review function provided by the GasFields Commission has also been a positive. The recent GasFields Commission review of the RPI Act is a good example of the organisation being able to play a valuable role in leading review processes and subsequently making recommendations to government for change.

The GasFields Commission plays an important role in bringing stakeholders together, coordinating and providing information to assist.

The Land Court user group has been a useful step in facilitating and improving industry and community engagement.

Support for industry and peak bodies to play a role in educating and building capacity amongst farmers and the agricultural sector. For example, industry workshops to support farmers to build their understanding and strengthen their capacity to deal with resource companies and other proponents. Support for the development of industry lead tools e.g., the Renewable Energy Toolkit currently being developed by QFF with funding support from Dept EPW.

Question: Would it improve coexistence outcomes if the jurisdiction of the LAO was expanded to include other dispute resolution functions relating to resource company and landholder interactions, for example, when negotiating CCAs and MGAs?

When reviewing the high number of complaints that are lodged with the LAO but subsequently deemed to sit outside the LAO's scope points to the potential need for a review of the LAO's jurisdiction, and a widespread demand for an expanded remit. Reviewing the range of disputes and their subject matter may provide further insights into what demand there may be to expand the functions of the LAO.

QFF and members consider that any model for dispute resolution between landholders and resource companies must have a time bound process. A consistent concern 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.

The dispute resolution processes, which can be ongoing for many years, detailed timeframes are particularly relevant and specific timeframes for referral, conciliation/mediation, investigation, directions and decision need to be set. In setting these timeframes, consideration must be given to the resource/time imbalance between landholders and resource companies, and therefore, among other things, landholders must be provided with more time to respond to an issue, than required by a resource company.

QFF continues 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.

Whether it is an expanded role of the LAO, Gasfields Commission, or an independent body, there is a need for landholders to be able to access specialised advice on how best to negotiate with resource companies (over and above their right to engage their own advisors (e.g.: lawyers, agronomists and accountants)).

Question: Are there other ways the coexistence institutions could help to empower landholders in their dealings with resource companies? What information and independent assessments are required to empower landholders in negotiations with resource companies?

Access to independent science: the ability for landholders to access trusted, independent science plays a critical role in empowering landholders to deal with resource companies. Important information including baseline data and reliable modelling regarding potential and scale of impacts, expected timelines for identified impacts are critical in landholders feeling more empowered to negotiate with resource companies. The science must be trusted and considered to be coming from a truly independent source in order for landholders to have confidence in this information. Good baseline data is essential for farmers when trying to ascertain impact. Landholders need to be able to access information and data that will accurately help them to understand, measure and monitor the impacts of resource activity on and near their property.

The role of the Office of Groundwater Impact Assessment (OGIA) has played an invaluable role in undertaking evidence-based independent scientific assessment of cumulative groundwater impacts from resource operations and has been a trusted source of independent science.

Whilst it is important that OGIA's focus remains on managing the impacts of petroleum, gas and mining, there is merit in exploring the possible expansion of OGIA's role to include a broader range of impacts such as subsidence, free gas migration and carbon capture and storage. There is also merit in considering a geographical expansion to enable OGIA to have the opportunity to proactively conduct regional assessments, conduct baseline work in other regions that would assist landholders and to have the ability to update previous work to ensure it is current.

Irrespective of the efforts of coexistence institutions, landholders often feel disempowered in dealings with resource companies simply due to the current inability to have 'no go' areas identified. The current RPIA does not provide adequate protection for priority agricultural and strategic cropping land areas in Queensland and until these important agricultural land use areas are recognised by future reforms, landholders will not be empowered. Should reform see consideration given to the allowance of a risk assessment process where there is the option that a risk may be deemed too high for development to go ahead in certain circumstances, then this would go a long way to empowering landholders in their dealings with resource companies.

The NSW 2014 Land Access Agreement is a working example of a process which prioritises the relationship before developments are progressed. This agreement empowers landholders in dealing with resource companies.

The lack of publicly available, free legal advice on land access is also a major concern. By its nature the Gasfields Commission is pro-coexistence, and therefore its communication is slanted that way.

What is required, is a return to the service provide by the Rural Legal Service (or something similarly independent) where landholders can get free, unbiased advice on their legal rights and obligations when it comes to land access issues.

Question: How could the design of the institutional arrangements be future- proofed to accommodate emerging coexistence issues and new industries?

As competition for land use across Queensland increases, coexistence issues will also increase. It will be an evolving and changing space. The following considerations may help in future – proofing institutions:

- The establishment of a single, overarching entity with the remit of coexistence across all industries
- A streamlined framework of institutions that interact effectively and are clear in purpose and remit
- Expanding the remit of OGIA from a geographical perspective and also enabling them to regularly review their work, be proactive in determining baseline data in other regions that will be useful for industry and stakeholders, ensure that data and science is as up to date as possible
- Legislative review that reduces the confusion and gaps in current legislation including the provision to support a risk assessment process that includes ‘no go’ decisions when the risk is deemed to great
- Stronger legislative frameworks that clearly articulate and protection strategic cropping land and priority agricultural land
- Provision of an independent advice service for landholders to understand their legal rights, the legal framework in relation to all and any coexistence matters. Similar to the Rural Legal Aid function which used to be in place. This service would be invaluable in helping landholders understand the different legal frameworks pertinent to different industries in regard to coexistence and land access.

Question: Why is it important to have an independent ombudsman to assist in resolving disputes on coexistence matters?

Recent Land Access Ombudsman Annual Reports make interesting reading. A relatively large number of issues are raised with the Ombudsman, but very few are eligible for investigation by the Ombudsman under the current legislative framework.

The large number of issues point to a need for the service, and the reports received over the past 5 years should be analysed carefully as they should provide guidance on the need for and the required direction of the LAO.

Question: Are there too many institutions operating in the coexistence space or would clarifying the roles and functions of the current institutions assist stakeholders in understanding where to go for relevant information and services?

The space is generally considered to be crowded, but often it is the overlapping jurisdictions of the various institutions that causes the confusion. The roles of existing institutions could be streamlined, clarity of roles and jurisdiction improved. Taking a more coordinated and centralised approach to coexistence matters across the various land uses and industries would assist stakeholders in navigating and knowing where to go for information.

However, while there maybe some scope to rationalise the number of institution, there will remain a need for very specific functions within an institution, and those function will need to maintain a high degree of independence and autonomy.

For example if legal advice was to be offered (in a similar way to the old Rural Legal Aid Office) by the Gasfields Commission, then the Legal Aid section would have to be able to provide independent advice, that was completely neutral on coexistence.

Question: Would a single land access entity that included dispute resolution, information and education services and impact assessment and management functions be an effective and efficient arrangement to promote coexistence?

Dispute resolution should sit separately to other functions. In terms of other functions, they have been address above.

Question: Would you be supportive of a revised institutional arrangement that required greater levels of funding but provided better coexistence outcomes?

QFF submits that there is an important ongoing role for independent and trusted land access institutions, however the current arrangements fail to provide enough or appropriate support across all land access negotiations and a review of the institutional arrangements is warranted to cover off on the following:

- There are currently a number of institutions operating in the land access space, some are voluntary in terms of participation requirements of each party, whilst others are compulsory as part of the legislated dispute resolution process. It is not just the number of institutions that can cause confusion, but more the lack of clarity over each institution's different roles and jurisdictions, which sometimes overlap. Streamlining and clarifying the roles of the institutions would assist reduce confusion and increase potential efficiencies.
- Issues pertaining to coexistence continue to grow as new matters come to the fore, for example the issue of CSG induced subsidence, and emerging industries, for example renewable energy and carbon capture and storage, expanding in project development activity across the state. The SuperGrid Infrastructure Blueprint, as part of the Queensland Energy and Jobs Plan, outlines 540,000 hectares for 2,700 new wind turbines and over 40,000 hectares for 25 million new solar PV modules will be required over the next 13 years.
- An ability to provide a single pathway for landholders who are seeking information and support in relation to coexistence issues, no matter what industry these issues apply to
- The need to include emerging growth industries (e.g., renewables, CCS etc) under an umbrella organisation with a combined remit of coexistence in a single unified organisation.

QFF believes there is a need to investigate the establishment of a single institution which covers off on the remit of coexistence and includes all relating industries. Such an organisation would need to have an appropriate governance, staffing and resourcing structure with the appropriate skill sets, geographical representation etc. There would be several benefits to establishing a single institution including:

- Streamlining, operational and cost efficiencies
- Information sharing
- Cross learnings from different industries and the ability to work towards a best practice approach.
- Clarity and one pathway for landholders, community and other stakeholders when seeking support on any coexistence issue.

In terms of resourcing, the cost must be met either by government or by the proponents, and not by landholders.

Landholders are not pursuing coexistence, they are reacting, either positively or negatively, to approaches. They should not be expected to fund the resources they need to respond.

Yours sincerely

Ms Jo Sheppard
Chief Executive Officer