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## GasFields Commission Review

Property Rights Australia (PRA) is a not for profit organisation with members in all states but mostly in Queensland. PRA was formed primarily to protect a range of property rights, including rural property rights. It aims to promote fair treatment of landowners in their dealings with government, businesses and the community. Our philosophy is that if the community (or business) wants our resource for any other purpose such as environmental protection then the community must pay fair and unsterilised value for it.

PRA covered many aspects surrounding the Gasfield Commission in its recent submission to the Senate Select Committee on Unconventional Gas Mining.<sup>1</sup> [Submission 301] We respectfully ask the indulgence of the Independent reviewer, Mr Robert (Bob) Scott, that those relevant sections are copied and pasted for this review.

### **Background that saw rise of the need of the Gasfield Commission**

Sub 301 page 12 < There appears to have been very little planning in Queensland that would give a holistic view of how the new CSG industry should fit in with existing communities, homes and businesses. There was no proper attempt to discover if there would be any impacts on health, social, business, agriculture, environment and landholder. There would have been most certainly issues on the peripheral vision of government that could be called “known unknowns” – but these were ignored.> Sub 301

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<sup>1</sup> Submission 301 Property Rights Australia -  
[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Gasmining/Gasmining/Submissions](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Gasmining/Gasmining/Submissions)

Sub 301 page 16 < 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.

Landowners are very isolated in government legislations and the divide and conquer situation occurs continuously because of the compulsory legislation requirements to engage. Landowners feel very alone and deal with issues as best they can, often less than adequately.

Meanwhile the unconventional gas industry has an extremely large business structure to support them with expert legal advice and group support. Those engaging with the landowner are on full wages without the concern of who will pay for their time or their expert advice. It is the Government's apparent expectation that the landowner will monitor the resource industry free of charge while it impacts heavily on the landowner's time, business, family, home life and privacy, and creates enormous anger and angst. > Sub 301

The gas industry itself in retrospect recently acknowledged it did not get it right with Consultants Deloitte engaged and after a survey released a report called 'The good, the bad and the ugly; the changing face of Australia's LNG production' released at the 18th International LNG Conference on April 11, 2016.

*“The consequences of several independent projects prosecuting a similar resources in parallel, and a failure to collaborate in some instances, has led to a dramatic overbuilding of infrastructure.*

*There were also practices those surveyed said should never be pursued again, including a 'get it done at all costs' mentality.”<sup>2</sup>*

### **Establishment of the Gasfield Commission**

By 2009 it was becoming very apparent that there were considerable problems in the interaction between very large new business that, over an extensive area, overlaid over the pre-existing agricultural businesses and other landowners. PRA was already involved in advocating for landowners rights. In 2010 new organisations were formed: the Basin Sustainability Alliance and Lock the Gate. When the Newman government was elected these problems were gaining attention in the media and it became a priority that a mechanism for finding solutions be developed.

Deputy Premier, Minister for State Development, Infrastructure and Planning, Jeff Seeney, in a media statement on April 19, 2012 announced the formation of the Gasfield Commission.

*“The Queensland Government fully supports the CSG industry, but it must live up to the world's best practice and work with the community, landholders and the Government to achieve the best outcomes for the state,” Mr Seeney said.*

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<sup>2</sup> <http://www.abc.net.au/news/2016-04-11/lessons-learned-from-lng-mega-builds/7315156>

*“The Gasfields Commission will be established to restore confidence in the CSG industry and meet the needs of the communities involved with and affected by CSG growth in Queensland.*

*“The group will comprise Chairman John Cotter and six commissioners to represent the community.*

*“The Council will act as a direct voice to the Government to advise if Government programs and services match community priorities in CSG regions.”<sup>3</sup>*

Then on June 19, 2012 the Minister announced:

*“Mr Seeney said Chairman Cotter would bring the group together in July to review the 55 public submissions and provide feedback on how the Gasfields Commission should operate.*

*“This input from the GasFields Commission will shape the legislation which will be introduced in Parliament later this year,” he said.*

*Mr Seeney said more than 80 expressions of interest were received for the role as a GasFields Commissioner.”<sup>4</sup>*

On November 27, 2012, the Gasfield Commission Bill 2012 was introduced:

*“While this industry is pumping billions of dollars into the local economy and will generate significant royalty revenue, it must co-exist with the agricultural sector and better work with the rural landholders and regional communities that we depend on for food and fibre.*

*“The agricultural industry has been the backbone of regional Queensland since settlement and is worth \$12 billion to the State. The Newman Government is committed to doubling the value of food production by 2040.*

*“It’s essential that we strike the right balance between these two pillars of our economy.”<sup>5</sup>*

Then on April 17 2013 in a media statement Mr Seeney outlined some of the Commissions powers under their new Act:

*““This legislation gives the GasFields Commission the teeth to do its job of managing and improving co-existence between the gas industry, landholders and communities,” Mr Seeney said.*

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<sup>3</sup> <http://statements.qld.gov.au/Statement/2012/4/19/new-commission-to-restore-csg-confidence>

<sup>4</sup> <http://statements.qld.gov.au/Statement/2012/6/19/deputy-premier-appoints-gasfields-commissioners>

<sup>5</sup> <http://statements.qld.gov.au/Statement/2012/11/27/gasfields-commission-powers-established>

*“Those powers include the ability to compel government agencies, gas companies and landholders to provide information so the commission has the evidence it needs to fully understand issues and make informed recommendations and provide an independent, balanced point of view on the industry.*

*“It is already facilitating negotiations between gas companies and landowners, has had input into government policy on coal seam gas water management and land access arrangements, collated scientific research into groundwater impacts and held lengthy public consultations across Queensland.”<sup>6</sup>*

### **Community Expectations**

Landowners felt that no one was listening to their concerns. They had a sense of not having any control of the situation which leads to stress. They needed solutions and may have developed too great of an expectation of what the Gasfield Commission was going to provide for them as an individual.

Reading the Minister’s statements in the establishment of the Gasfield Commission phrases would have been picked up on such as to “restore confidence”; “shape legislation”; “the right balance that would not impede the doubling of food value by 2040” and the “ability to compel government agencies, gas companies.”

Expectations may have differed if what was in the Gasfield Commission Act<sup>7</sup> was communicated – the key words being facilitate and co-existence.

The Gasfield Commissioners largely wrote their own Act, a task given to them by the Minister and revealed in the media statement on June 19, 2012.

The purpose and function of the Commission was one of oversight or at the **macro** level and not so much the **micro** level of a single individual’s complaint.

At the February 13 2013 State Development, Infrastructure and Industry Committee<sup>8</sup> hearing in Brisbane<sup>9</sup> for the Bill on page 5 the Committee Chair asked the Commissioner Mr John Cotter:

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<sup>6</sup> <http://statements.qld.gov.au/Statement/2013/4/17/gas-commission-to-hold-cca-register>

<sup>7</sup> <https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/G/GasfieldsComA13.pdf>

<sup>8</sup> <https://www.parliament.qld.gov.au/work-of-committees/former-committees/SDIIC/inquiries/past-inquiries/08-GasfieldsCommission>

<sup>9</sup> <https://www.parliament.qld.gov.au/documents/committees/SDIIC/2012/08-GasfieldsCommission/Finaltrans13Feb.pdf>

*“I would be interested in your view, because the bill does not have an obligation on a duty of referral. Do you believe that it should put that onus on the commission so that if something is brought to you there is that obligation to refer?  
Or do you believe it should be the current way in which the bill is worded, where you would go back to the people bringing it to your attention and advise them of what actions they should take?”*

To which Mr Cotter replied:

*“I believe that the best action for the commission is to see that that information is referred by the person putting it forward, not necessarily the commission, because I believe that that would place far too much legal onus on the commission to validate that information and I do not believe that that would be in the best interests of the objective of the commission.”*

Mr Cotter’s reply may very well be a major problem why the Gas Field Commission is not fulfilling a role expected by the community. Landowners do have an expectation that when bringing a matter before the Gas Field Commission is that the Commission would be referring matters; standing up for the landowner; reprimanding inappropriate behaviour by Coal Seam Gas Company representatives or their management and proposing legislative change that is in the best interest of the landowner. Landowners needed stronger rights than previously proposed in the Petroleum & Gas Act, but instead new legislative change was further eroding landowner rights which saw many landowners sell & leave our communities. Other landowners had no such option and are significantly stressed and continued to be pressured by resource legislation and attitudes of a very skilled coal seam gas negotiation team.

The then vice chairman of PRA, Dale Stiller, attended the Brisbane hearing and observed the entire proceedings. Published on the Committee’s web page for the Gasfield Commission Bill as Submission 15, PRA recommended changes to the Bill including –

*Purpose of the Gasfield Commission be expanded to “to manage minimal impacts on long term sustainability including soil and water and to improve coexistence.”*

*Function of the Commission should ensure “when a Resource Authority has finished its activities in any one place, that there are no or very limited residual impacts upon the sustainable resources especially soil and water on which the agricultural industry is based”*

*“The Bill must also acknowledge the unequal nature of the relationship between the entities; the legislated benefits enjoyed by one of the parties; the time taken, business interruption, stress and loss of amenity for the Landholder.”*

These recommendations were largely ignored.

In the following years confidence in the Commission declined. While they did go and see individual landowner’s problem from the time to time, they did not always respond, or people were far from satisfied with the response. If the Commission was to help shape legislation, they were either not listened to, or were party to the tabling of what was amongst the worst

erosion of landowner rights in legislation with the Mineral & Energy Resources (Common Provisions) Bill.<sup>10</sup> There is real difficulty in finding substantive evidence that the facilitation of the gas industry increased agricultural production. To determine the amount payable in a Conduct and Compensation Agreement (CCA) calculations are made to how much loss of agricultural production was going to occur for the life of the agreement. Gas companies also purchased large areas of agricultural land and it stands to reason that if your major interest is gas that any agricultural activity would run a poor second.

Agricultural operations are unique in many aspects because most are family operated self-employed businesses so legislation must protect both the amenity of family life and the legalities of an agricultural business. A profitable farm business builds communities long after the coal seam gas industry will have been and gone. How the government was proposing to double food production by 2040 is still a mystery under the proposed legislative changes that placed further pressure on landowners & their families and provided greater freedom to the coal seam gas industry.

The Gasfield Commission did play the role of facilitating the expansion of the gas industry. The word coexistence was used in such a context that there was never any consideration that coexistence in certain cases is impossible.

In September 2013, the then vice chairman of PRA, Dale Stiller wrote:

*“In the legislation that gave the Gasfield Commission its powers it was stated that the purpose of this new statutory body was to facilitate sustainable coexistence. However there was no definition provided of what sustainable coexistence is and I’m unaware of the Gasfield Commission developing any satisfactory definition since.*

*Coexistence infers some kind of mutually beneficially arrangement. However, farmers are not experiencing the joy of a mutually beneficial arrangement, rather they are facing stress, heartache, loss of time, loss of amenity, impacts on land, business, lifestyle, and fear for the future of underground water impacts, from an industry thrust upon them.*

*Currently coexistence could be defined as primary producers finding a way to adapt their businesses to accommodate the CSG activities.”<sup>11</sup>*

The term co-existence often espoused was never adequate and does not meet or address the concerns of those landowners negatively affected under current legislation which does give rise to bullying and intimidation by a well trained and well informed coal seam gas industry, who have many landowners on whom to practise their technique of getting what they want. Co-existence in a landowner’s opinion was they should be able to continue with a profitable agricultural business without constant intrusion or risk of liability by the gas industry. They

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<sup>10</sup> <http://evacuationgrounds.blogspot.com.au/2014/09/praregionalqueenslanddeservesbetter.html>

<sup>11</sup> <http://evacuationgrounds.blogspot.com.au/2013/09/the-elusive-coexistence-definition.html>

found they had to fund their own necessary expert advice with gas companies saying we will only reimburse what is reasonable or necessary, and because some of these companies financial advisors see this as a reimbursement even when they can pay the expert directly, expect the landowner to cover all GST components. This is a loophole that needs closing. All legal advice is necessary and reasonable and a landowner is significantly disadvantaged if they cannot afford to engage a solicitor or other necessary experts

PRA at one time used to refer people to take their complaint to the Gasfield Commission but as time went on and confidence in the Commission fell landowners would generally refuse to do so or even scoff at the idea.

### **Terms of Reference Gasfield Commission Review**

The purpose of this review is to:<sup>12</sup>

- evaluate whether the Gasfields Commission is achieving its purpose
- 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.

These two points have been covered in comments previously in this submission. With apologies the following are further comments copied & pasted from the PRA submission to the Senate Select Committee on Unconventional Gas Mining.

Sub 301 page 50 < The Gasfields Commission in Queensland is charged with solving the problems of “co-existence”, an oxymoron of the highest order – it is a failed policy and one which should now be acknowledged as such. The Gas Field Commission is seen by many as facilitating only the Coal Seam Gas Industry and there is no representative body to independently facilitate the ever evolving Agricultural Industry in its own right.

When talking to people across the Surat and Bowen Basin after three years that the Gasfield Commission has been operating there is little confidence that approaching the Gasfield Commission will solve any problem that is being faced. Some of the commissioners appear to be outright contemptuous of any small lifestyle block holder who is highly impacted by diminution of value and amenity of living due to CSG infrastructure. As far as PRA is concerned all landowners have a property right regardless of the size of the property or if any enterprise is being conducted on that land.

By evidence of their action the Gasfield Commission is more interested in facilitating the gas industry and works at damage control to ensure that no issue arising from CSG becomes an embarrassment to government.>Sub 301

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<sup>12</sup> <http://www.statedevelopment.qld.gov.au/resources/terms-of-reference/terms-of-reference-gfcq-review.pdf>

•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.

PRA is of the opinion that while the Gasfield Commission should have had a role in alerting Government agencies and the relevant Minister, that to expand their role to managing a health response is too wide a brief. Quite simply the current health services should be directed, enabled and resourced to fulfil this role.

Sub 301 page 21 <Health is a major issue and successive Queensland Governments have taken minimal action while claiming that they have done studies. For the government to commission QGC to do studies into health problems on the gasfields is to show once again their contempt for the residents who at the very least deserve impartiality and thoroughness. Property Rights Australia would like to express our support and admiration for the self-funded studies and investigations of Dr. Geralyn McCarron. She has expressed so much more thoroughly and professionally what we would like known by the community and we commend her submission number 12 to this Inquiry.<sup>13</sup>

One of the many travesties to have occurred in the course of the rollout of this industry is that an individual has to carry out what should be the responsibility of government and be supported by government.

The submissions Mr & Mrs Nood and Narelle Nothdurft and Mr John Jenkyns to this Inquiry should be read in regards to health impacts on their families; as should the transcript to the Dalby hearing on 17 February, 2016.<sup>14</sup> The situation where the health service will not provide health care to their children is deplorable. The roundabout between the local health care service and a 1300 phone number is farcical. The abandonment of these families is a situation that a first world country such as Australia should be ashamed of.

In August 2015 four staff from the Department of Environment investigating the Linc Energy Underground Coal Gasification plant admitted themselves to the Chinchilla hospital experiencing nausea. Blood tests showed elevated levels of carbon monoxide.<sup>15</sup>

Despite this, it has apparently not occurred to the Queensland government that those who live permanently near the Linc Energy site may also have health needs. >Sub 301

There is no representation for landowners issues on either large or small landholdings. Landowners who are both dealing with living in their family environment and many are separate businesses with legal obligations in their own. There is no respect or empathy in current legislation for the privacy, safety & environmental impacts of noise, dust, lights,

<sup>13</sup> [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Gasmining/Gasmining/Submissions](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Gasmining/Gasmining/Submissions)

<sup>14</sup>

[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Gasmining/Gasmining/Public\\_Hearings](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Gasmining/Gasmining/Public_Hearings)

<sup>15</sup> <http://www.abc.net.au/news/2015-08-10/the-effects-of-ucg-dept-investigator/6685818>

traffic, underground water impacts under proposed legislation around people's homes, lifestyles and businesses. This is something the Gasfield Commission should have addressed and proposed positive change in legislation yet not once have we seen a written submission from the Gas Field Commission in the legislative committee processes available for current proposed legislative changes for the Coal Seam Gas Industry in either the MERCPC or the MOLA Bills.

•investigate whether harmonisation between the CSG Compliance Unit and the Gasfields Commission would provide efficiencies and improve dispute resolution between resource companies and landholders

### Balanced Legislation; good regulation; monitoring and compliance

Before moving to what services or agencies that Government may offer it must be acknowledged that a handicap is placed on any current service or any future model where landowners may seek redress if there remains unbalanced legislation in favour of resource companies; inadequate regulation and a lack of will to monitor or enforce compliance to the regulation that is in place. This is, if you like, the elephant in the room.

Sub 301 page 53 < The State Government needs to change any such legislation and recognise the property rights and business requirements of landowners. Any such legislation or parts of legislation where individual property owners are not given

- full recognition of their ownership with property notification,
- consultation, with mutually agreed outcomes,
- agreed commercial compensation (not presently enforced) and objection rights, and
- does not allow issues to be addressed openly and rectified

Such legislative deficiencies need to be rectified.

Government continually claims that the CSG industry is governed by very strict legislation and indeed the word compliance features in the Petroleum and Gas Act almost 200 times. However, it has been the experience of landowners that it is they who must remain vigilant in order for compliance to occur. There is very little evidence of government intervention which follows on from a rushed approvals process where it would seem some companies did not even have a basic groundwater assessment

Any complaints to a Compliance Unit are simply referred back to the company and if the complaint is about noise or dust the company has an opportunity to modify its practices while monitoring is taking place. Previous data from the complained about period is always unavailable. The Government is noticeably complicit in these activities.

Compliance and penalties are allowed for in the legislation at multiple levels but enforcement is visibly lacking.

Time and time again PRA talks to landowners impacted by CSG activity. They relate how, after going to the company with their complaint and after much persistence by the landowner,

DEHP will finally (in the case of dust and noise issues) come with (monitoring equipment. However the departmental staff have already communicated with the gas company; the monitoring equipment is only in place for a short period and the gas company has either stopped or reduced their activity. In one case where activity continued when the monitoring equipment was in place, the landowner was refused details of the result of the data.> Sub 301

Complaints must be able to be dealt with in a much stronger way. The only way to ensure a coal seam company stops and addresses an issue, is for a moratorium over further development on the landowner's property or on the CSG land that is creating the problem until the matter is addressed and a resolution reached. A landowner is rather like a single ant in a large ant nest to large multinational owned coal seam gas companies and very few of those working within this organisation are aware of the true ownership of the land and the possible impacts on an agricultural business or a person's home. Many landowners have found themselves squashed as the result of no understanding or respect to the many separate businesses & families they are working over in one Environmental Authority.

The Gas Fields Commission, CSG Compliance Unit or DEHP have not been publicly known to take such action even though many issues have arisen. Any such penalties should be publicly detailed so that a landowner does know they have rights and protection backed up by government office.

### Compliance Unit

In the current circumstances any review cannot look at the Gasfield Commission alone but must also consider other services and agencies that the Government has in place. PRA believes that the biggest issue is that there is not a single service offered that is completely onside with the landowner. There is a mishmash that is not harmonised and all as far as landowners are concerned are missing the target.

The compliance unit does have well qualified and experienced staff. PRA believes that the Compliance Unit are hamstrung in the fulfilling of a role that landowners would have more confidence in. There is undue pressure placed on this unit by government who would much prefer the unit not find anything too embarrassing and would also like this unit to, as the Gasfield Commission does, be an agent for damage control for the government. This is an unacceptable expectation to place on these public servants.

The Compliance Unit by the nature of its work cannot be completely onside with landowners but it should be allowed to fulfil its role fairly and timely.

It is no reflection of many of the Compliance Unit staff that PRA wrote on page 49 Sub 301< The CSG Compliance Unit is not highly regarded and has lost the trust of landowners. Its website is truly a lesson in spin for any student of journalism. It contains summaries of legislation and compliance regulation designed to protect landowners and the environment. It shows how landowner's water is protected by "make good" and how responsibly the salt laden produced water is disposed of including for "beneficial use.

As a resource, it is entirely useless. >Sub 301

•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 Gasfield Commission has lost the trust of the majority of landowners. PRA believes that it should be removed.

In the section above titled 'Community Expectations' this submission introduced the concept that there are macro and micro areas to be addressed. Macro - being oversight of the interaction of different industries competing on the same space with very different needs. Micro - being problems that an individual landowner is facing.

#### Micro issues

An independent Resources Ombudsman should be established solely for the needs of individual agricultural producers and other landowners. The Ombudsman should have a staffed office with personnel of various expertise to cover the breadth of the wide variety of issues that landowners face with the gas industry. The ombudsman and staff must be approachable with pathways to seek resolution as uncomplicated as possible. The Ombudsman should have some understanding of rural issues and willingness to get out in the field.

A consultancy review needs to be undertaken into the purpose and function for an independent Resources Ombudsman. There needs to be careful consideration in defining this role so it can be effective. The Ombudsman could investigate a single case or conduct an investigation of a group of individuals with a very similar issue. As a result of an investigation, depending on the nature of the issue, the Ombudsman could make recommendation to a relevant Minister or order mediation. Mechanisms should be examined to how the Ombudsman could if necessary refer a matter to a court. The need to go to court should be the point of last resort. The emphasis should be on resolving matters speedily and at low cost.

The Ombudsman should have the power to impose a moratorium placed on any further activities on an individual landowner's property by the coal seam gas company until the matter is resolved. The immediate stopping of activity would provide greater incentive to the company to reach settlement against the current prospect of future small fines or a threat of court action in the future that most likely the individual landowner cannot fund.

Macro issues

Oversight of the macro issues can be achieved by setting up a mechanism of scheduled regular meeting possibly monthly but certainly no less than every three months between advocacy organisations and the Director –General of the Department of Infrastructure and Planning together with the Minister, when available. A full time staff member should be attached to the Department to be a point of contact between meetings, coordinate meetings, and disseminate relevant documents to other Departments such as Agriculture, NR&M and EHP.

Meetings with the resource advocacy groups may if necessary be held separately to the agriculture, landowner and local government organisations. These advocacy groups who take part in this process should be directly involved and limited in number. For example the likes of QRC, APPEA, Agforce, QFF, Basin Sustainability Alliance and the Local Government Association should all be part of this process. Other groups such as PRA can be provided with the ability to write submissions on issues they considered important. The full time staff member can ensure any correspondence is an item of discussion for these meetings.

The above is a rough outline of a possible alternative model. PRA believes it at this stage presents the best possibilities. PRA is open to reasoned thought on modification to this model.

PRA looks forward to any other alternative models suggested that perhaps bring further improvements.

We thank you for consideration of this submission and are available for any further interviews.

Regards,  
*Dale Stiller*

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Property Rights Australia Inc.