

Property Rights Australia's (PRA) Submission to Gasfields Commission Bill 2012

Submission to: State Development, Infrastructure and Industry Committee
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Property Rights Australia was formed in 2003 to provide a strong voice for landowners with regard to property rights issues. It aims to promote fair treatment of landowners in their dealings with government, other businesses and the community.

Our philosophy is that if the community (or other business) wants our resource for any other purpose such as environmental protection then the community must pay fair and unsterilised value for it.

PRA has considered the Bill and makes the following submissions by reference to the numbered sections of the Bill:

A copy of the Bill can be found at the following web address-

<http://www.legislation.qld.gov.au/Bills/54PDF/2012/GasfieldsComB12.pdf>

2. Purpose

The purpose of the Gasfield Commission in the Bill should be more clearly defined as it could be interpreted in a somewhat limiting manner of coexistence being the Gasfield Commissions primary focus. A preferable definition should include, to manage minimal impacts on long term sustainability including soil and water and to improve coexistence.

The primary role of the Gasfield Commission should be to protect the interests of a) the State b) the affected Landholders c) the general community. It should be recognised that in protecting these interests that coexistence may not always be possible.

6. Commission functions

The Bill fails to mention the most important function that the Gasfield Commission should hold as a vision on which to base all of its decisions, that of at the end of the finite resource on which the gas industry is based i.e., 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 and on land set aside for environmental purposes that these values are preserved.

The Explanatory Notes make the following observation but there no provision for meeting these concerns in the Bill itself.

Landholders and communities have expressed concerns associated with this industry, including apprehension about water and land contamination and the impact on social infrastructure.

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.

7. Commission Powers

This section is very poorly defined. The powers given to the Commission must be transparent and if these powers are included in another part of the Bill or are contained within another Act, specific reference should be made and inserted at this point.

8. Membership of Commission

Property Rights Australia proposes the addition under (2) (b) of a fourth commissioner to include a person which recognised qualifications or extensive experience in the field of water hydrology and a sound understanding of underground aquifers. Preferably someone qualified or highly experienced in the field of hydrogeology.

Water is the most important resource available for our use and is the resource most impacted by the coal seam gas industry. Impacts upon water in underground aquifers is the least understood aspects that surround the coal seam gas industry and should be given a very high priority by the Gasfield Commission, at least equal to the Commission's other functions..

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There is need for information to be publically available and for the process to be transparent.

20. Conduct of Commission Board meetings

A further requirement should be that the venue and time for any meeting should be publicised on the Gasfield Commission web site 14 days prior to any meeting and the public given the opportunity to attend as observers only. The Commission should have the power to eject a person if a member of the public interrupts proceedings.

24. Power to require particular information from prescribed entities

This section of the Bill has been drafted to apply equally to Landholders and on shore gas operators however it is PRA's belief that the prescribed entities have as to date existed with Landholders at a noticeable disadvantage.

The primary role of the Gasfield Commission should be to protect the interests of a) the state
b) the affected landholders c) the general community

The clauses (3) d & e provide a convenient vehicle for the entities to escape their responsibility to disclose critically, pertinent, relevant material to the commission. This section has a neutering affect upon the powers of the Commission. Therefore clauses (3) d & e are counterproductive to open and transparent governance and should be removed

A suggested balance would be to limit the Commission's power of reporting of information that may incriminate or might be commercially confident, but (particularly with respect to information that may incriminate), acting upon such information should be precisely the sort of function for which the Commission is designed. Balances to the removal of these two clauses already exist in the Bill and should be emphasised. They are - 25 Publishing Information; 33 Annual Report (6) and 37 Use of confidential Information.

Because of the removal of clauses (3) d & e, those people who are or have been Commissioners, General Manager or a staff member of the Commission should be subjected to maximum plenty units so as to provide the prescribed entities greater confidence.

Criminal liability should be imposed upon an entity or its Directors for withholding information about incriminating activity. The Commission must be empowered to refer incriminating activity to the relevant authority for prosecution.

25. Publishing information

Penalty units should be applied to a breach of (2)

27. Gasfield community leaders council

PRA highly recommends a further clause be added -

(4) Any motion passed at a meeting of the Community leaders council must be tabled at the next meeting of the Gasfield Commission and be deliberated upon.

It is important that some process is put into place in the Bill to ensure that the community leaders council has the confidence that its meetings have a real purpose and an official avenue through which to have a real purpose and to make a practical contribution.

PRA also believes that the selection process for the Community leaders council should be open and transparent. That a list of names of those on the community leaders council to be made publically available.

Part 5 General offences and legal proceeding

The Gasfield Commission has the powers as outlined in Part 3 and at 33 Annual Report (c), mention in this clause is made of prosecutions. The Bill does not outline, but must specify how it will execute these powers or to bring about a prosecution. The Bill says at 43 Commission is a statutory body.

PRA believes that there are dangers when judicial powers are devolved to other individuals or bodies. We have seen this unacceptable devolution of power through delegation in the Vegetation Management Act for example with respect to Compliance Notices and Restoration Notices where the power has been used by departmental officers in ways that have been deemed by magistrates to be oppressive and unable to be complied with.

Therefore PRA strongly recommends that the Bill must provide Landholders access to a court of law or appeal (including penalties imposed by the statutory body).

This Submission has been produced in consultation with others on behalf of Property Rights Australia by

Dale Stiller

Vice Chairman