



QUEENSLAND FARMERS' FEDERATION

Submission No. 13

11.1.24

14 August 2014

**SUBMISSION TO STATE DEVELOPMENT INFRASTRUCTURE AND
INDUSTRY COMMITTEE –**

REGIONAL PLANNING INTERESTS REGULATION 2014

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The Research Director
State Development, Infrastructure and Industry Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Sir,

Thank you for the opportunity to provide a submission on the *Regional Planning Interests Regulation 2014* (the RPI Regulation).

Queensland Farmers' Federation (QFF) is the peak body representing and uniting fifteen of Queensland's rural industry organisations who work on behalf of primary producers across the state. The 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. The 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 Dairyfarmers' 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, and
- Burdekin River Irrigators Area Committee.

General Comments

QFF believes that the *Regional Planning Interests Act and Regulation 2014* is a significant step forward in managing the interaction between resource companies and agricultural activities on the best agricultural land in Queensland. However, we are concerned that the cumulative impact of resource activities on agricultural land and production activities will

not be monitored or taken into account when decisions are made under the current regulations.

The objective of the Regulation is to give effect to the provisions in the *Regional Planning Interests Act 2014* by detailing the land use planning policy which supports the Act.

The Regulation prescribes:

- a regionally significant water source
- Strategic Environmental Areas and their environmental attributes
- regulated activities
- referable assessment applications
- assessing agencies and their functions
- notifiable assessment applications
- assessment criteria
- strategic cropping land mitigation requirements
- application fees, and
- assessment timeframes.

This submission raises a number of issues in relation to the assessment criteria (Part 5, Section 14 and Schedule 2), and mitigation (Part 6 and Schedule 2) that are set out in the Regulation. These issues relate to the lack of definition of certain terms and the inconsistency of criteria that apply to activities proposed on a priority agricultural area (PAA) or a strategic cropping area (SCA).

1. Definition of ‘significant impact’ and ‘impact’

The RPIA s22 (2) states that a resource activity is an exempt resource activity if, among other things, ‘(b) the activity is not likely to have a significant impact on the priority agricultural land or area that is in the strategic cropping area; and (c) the activity is not likely to have an impact on land owned by a person other than the land owner.’

The terms ‘significant impact’ and ‘impact’ are not defined in the Act or the Regulation (Schedule 2 Part 2 s3 (e), (f)). Without a clear definition of these terms there is a high degree of uncertainty about whether a resource activity conducted under a conduct and compensation agreement or a voluntary written agreement is in fact an exempt activity. The RPI Act Guideline 02/14 and Guideline 03/14 provides some explanation of these terms with reference to the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*, but this is not adequate.

This uncertainty is enhanced by the lack of guidance on what details or standards are required in a voluntary written agreement that would satisfy s22 of the Act.

QFF recommends that the Regulation should include definitions of measurable thresholds for ‘significant impact’ and ‘impact’ and also include criteria for an adequate voluntary written agreement to clarify s22 of the RPI Act.

2. Definition of 'footprint'

Schedule 2 Part 2 s3 (c) and Part 4 s11 (c) require that the construction and operation footprint of an activity is minimised to the greatest extent possible. QFF is concerned that the term 'footprint' is not defined in the Regulation which will lead to uncertainty regarding the meaning of the term. QFF believes that the term 'footprint' should not be limited to the physical extent of infrastructure but must also include the legal and operational extent of resource activities that will constrain, restrict or limit agricultural activities on a priority agricultural land use.

For example while an operating gas well may physically impact an area of 100m² on the ground, the need for regular access for monitoring and maintenance by a resource company means a larger area of at least 10,000m² (1 ha) is impacted by the gas well in terms of the ability for a land owner to manage land for agricultural production. A similar situation applies to buried infrastructure where a legal 'right of way' of at least 40m wide is required at ground level to allow regular access by the resource company.

Hence it is recommended that the term 'footprint' be defined in the Regulation to include physical, legal and other encumbrances that will impact on agricultural operations.

3. Reference to Overland Flow.

During negotiations in good faith with the State Government on the content of the proposed assessment criteria, QFF was assured that there would be a reference to avoiding impact on 'overland flow' in the Regulation. The control of overland flow of surface water is a major concern to intensive, irrigated farming operations to avoid soil erosion, waterlogging and interference with irrigation activities.

While the Regulation (Schedule 2 Part 2 s3 (d) and s 5 (e)) includes an assessment criteria regarding the need to 'not constrain, restrict or prevent the ongoing conduct of a priority agricultural land use' there is no direct mention of impact on 'overland flow', despite examples in the Regulation of 'everyday farm practices' or 'infrastructure'

QFF recommends that a criterion is included in the assessment criteria for an activity on a priority agricultural area that explicitly requires that there is no change or interference with existing patterns or volume of overland flow on the property or affecting neighbouring properties.

4. Limits of impact on PAA and SCL

The Regulation includes an inconsistent approach regarding impacts from a resource activity between priority agricultural areas and strategic cropping areas. This is particularly an issue where there is an overlap of both PAA and SCA where only the PAA criteria will apply as set out in the Regulation Part 5 s14 (4).

Whereas Schedule 2 Part 2 s3 (3) restricts any loss of land from any impacts on a PALU to less than 2%, Part 4 s11 (d) restricts only the permanent impact on SCL to less than 2% and there are no limits to temporary impact on SCL.

This difference in approach implies that the area of temporary impact from a resource activity on SCL is unlimited apart from needing to meet other criteria regarding minimising the footprint of an activity. This could have the effect of providing an incentive for a resource activity to locate as much temporary impact activities as possible on areas of SCA that are not PALU thus increasing the area of impact on SCA.

QFF recommends that a consistent approach should be adopted in the Regulation by limiting any impacts from a resource activity on SCL or PALU to less than 2%.

5. No maximum limits of impact on PALU or SCA where the applicant is also the land owner.

Due to the wording of the Regulation, there are no maximum limits of impact where the applicant for an activity affecting 2 or more properties on SCA is also the land owner or where the applicant for an activity on PAA is also the land owner.

The effect of Part 4 s13 (2) is that s13 (3) does not apply where the applicant is also the land owner. This means that the prescribed solutions for outcome 2, which include the maximum permanent impact of 2% of SCL on the property, do not apply to activities affecting 2 or more properties where the applicant is also the land owner.

In the same way, Part 2 s3 (3) (a) has the effect of removing any limit on the loss of PALU from activities on PAA set out in s3 (3) (a) (ii) carried out where the applicant is also the land owner.

These provisions will have the effect of encouraging resource authority holders to acquire rural properties to avoid limits on their activities and result in larger and widespread impacts of resource activities on PALU and SCA. This will be contrary to the intended outcome of the Regulation and against the interests of State, the community and industry.

QFF recommends that the Regulation be amended so that the limits of impact from activities on PALU and SCA apply to all applicants, regardless of whether they are the land owner or not.

6. Mitigation for permanent impact on SCA and PAA

The Regulation includes an inconsistent approach to mitigation for permanent impact from a resource activity between PAA and SCA.

Whereas a mitigation condition may apply to permanent impact from an activity carried out on SCA (Schedule 2 Part 4 S 13 (d)), there are no mitigation provisions for the permanent impact resulting from any loss of land on a priority agricultural land use on PAA. Thus where

there is an overlap of PAA and SCA, there is no mitigation for permanent impact on the area of SCA that is occupied by a PALU.

QFF recommends that the mitigation provisions for permanent impact from resource activities should apply equally to both PAA and SCA to ensure that the community is compensated for the loss of agricultural productivity that will result from these permanent impacts.

7. Monitoring and assessment of cumulative impact on PAA and SCA.

QFF is concerned that the cumulative impacts from both exempt and approved activities on PAA and SCA will not be monitored or considered in assessing applications under the RPI Act.

It is unknown how many resource activities will meet the criteria set out in s22 of the RPI Act to be an exempt resource activity because there is no requirement to register or notify these exemptions. However knowledge of the number and extent of impacts represented by exempt activities is necessary if there is to be a true protection of the regional interests defined in the RPI Act.

The outcomes set out in the Regulation for PAA (Schedule 2 Part 2 s4 Required outcome 2) and SCA (Schedule 2 Part 4 s12 Required outcome 3) require that activities will not result in a material impact on the region (PAA) or on SCL in an area (SCA). However in assessing whether this outcome is achieved, the assessment criteria set out in the Regulation do not allow an assessing agency to consider activities other than the activity that is the subject of the application. Under these assessment criteria, QFF believes that the assessing agency will be unable to determine whether these regional outcomes are being met due to their narrow focus on a particular application.

QFF recommends two solutions to this shortcoming. The first is that there be a requirement for an activity that meets the exemption criteria in s22 of the RPI Act to register their activity with the Gasfields Commission. The second is that the Regulation be amended to require the Gasfields Commission to consider the cumulative impact of exempt and approved activities on the regional interest in question.

An alternative approach could be to require the Gasfields Commission to monitor the cumulative impacts of the exempt and approved activities under the RPI Act and to report to the State Government within two years and annually thereafter on the cumulative impact of resource activities on areas of regional interest.

8. Reduction in complexity

QFF believes that the RPI Act and Regulation is overly complex due the incremental process of development of the final framework for dealing with conflict between resource activities and agriculture. This process has involved the original SCL framework, the initial drafting of new regional plans and creation of the PAA designation, the development of coexistence criteria for PALU and the final regional interests framework. The resulting complexity that

involves overlapping regional interests, particularly the PAA and SCA regional interests, results in confusion and unnecessary complexity for dealing with the protection of productive agricultural resources and agricultural land uses. The attached summary of these overlapping assessment criteria illustrates this complexity.

QFF would urge the State Government to consider the necessity for identifying two overlapping and similar regional interests. QFF believes that satisfactory outcomes of protecting agricultural land and agricultural land uses could be achieved by reducing the regional interests to the SCA mapping and have separate but consistent criteria for current and potential agricultural land within the SCA regional interest area.

The Regulation should define outcomes and criteria for current agricultural land that is both SCA and PALU (PALU outcomes) and potential agricultural land that is SCA and not PALU (SCA outcomes). In addition the outcomes and criteria should be revised so that they are consistent and complementary as recommended in points 4, 5 and 6 above relating to mitigation and impact limits.

QFF recognises that any new regulation is likely to include some unforeseen issues during implementation, and therefore recommends that there be a further review (including of the Act) 18 months after its commencement, to ensure that any issues that emerge during its early implementation are recognised and rectified and that cumulative impacts referred to in our submission are documented and assessed.

We would welcome any further opportunities to assist the Committee with its consideration of the Regional Planning Interests Regulation.

Yours sincerely

A handwritten signature in black ink, appearing to read 'D Galligan', with a long horizontal flourish extending to the right.

Dan Galligan
Chief Executive Officer

enc (1): Summary of RPIA Assessment Criteria

**Regional Interest Development Approval for a Resource Activity on
Priority Agricultural Area (PAA) or Strategic Cropping Area (SCA)**

Provided a **resource activity** is not an **exempt resource activity**, the authority holder for a resource activity on a Priority Agricultural Area (PAA) or a Strategic Cropping Area (SCA) must apply for a Regional Interest Development Approval.

Assessment criteria set out in the Regional Planning Interest Regulation for applications for a Regional Interest Development Approval are summarized in the following tables.

Exemption provided by S 22 of the Regional Planning Interests Act

The exemption applies if –

The authority holder is complying with a conduct and compensation agreement with the land owner

or

The authority holder is operating in accordance with a written agreement voluntarily entered into by the land owner

and

the activity is not likely to have a ‘significant impact’ on the PAA or area that is in the SCA;

and

the activity is not likely to have an ‘impact’ on land owned by a person other than the land owner.

There is no specified maximum percentage area of impact for either a voluntary written agreement or a CCA.

The exemption does not apply if the authority holder for a resource activity is also the land owner.

Exemption provided by S 23 and 24 of the Regional Planning Interests Act

An exemption also applies if a resource activity is carried out on a property for less than one year from the start of the first activity permitted under the resource authority or if the resource activity is a pre-existing resource activity.

Note: A Conduct and Compensation Agreement is required for all resource activities under the Land Access Framework.

A. RPIA Assessment Criteria for resource activity over a single property RO: Required outcome; PS: Prescribed solution

CRITERIA	Land is PAA and PALU	Land is SCA and PAA but not PALU	Land is SCA and not PAA	Land is not SCA Land is PAA but not PALU	Land is not SCA and not PAA
Mapping validation	PAA RO1 PS(2): PALU criteria apply to demonstrate land is PALU	SCA RO1 PS: SCL criteria apply PAA RO1 PS(2): PALU criteria apply to demonstrate land not PALU.	SCA RO1 PS: SCL criteria apply	PAA RO1 PS(2): PALU criteria apply to demonstrate land is not PALU	Not applicable
Evidence of negotiation	PAA RO1 PS(3) (a)(i)	SCA RO2 PS (a)	SCA RO2 PS (a)	Not applicable	Not applicable
Max. impact	PAA RO1 PS(3) (a) (ii): Max 2% loss of both PALU and productive capacity of PALU PAA RO1 PS(3) (a): If applicant is the land owner, no limit on loss of PALU	SCA RO2 PS (d): Max 2% permanent impact on area of SCL on the property; No temporary impact limit.	SCA RO2 PS (d): Max 2% permanent impact on area of SCL on the property; No temporary impact limit.	No limit	No limit
Cannot avoid PALU or SCL	PAA RO1 PS(3) (b)	SCA RO2 PS (b)	SCA RO2 PS (b)	Not applicable	Not applicable
Minimise footprint on PALU or SCL	PAA RO1 PS(3) (c)	SCA RO2 PS (c)	SCA RO2 PS (c)	Not applicable	Not applicable
Mitigation	Not applicable	SCA RO3 (1) (a) SCA RO3 PS1 (d) Mitigation applies to any permanent impact on area SCL.	SCA RO3 (1) (a) SCA RO3 PS1 (d) Mitigation applies to any permanent impact on area SCL.	Not applicable	Not applicable
Regional outcomes addressed	Not applicable	SCA RO3 (1) (a) SCA RO3 PS1 (b)	SCA RO3 (1) (a) SCA RO3 PS1 (b)	Not applicable	Not applicable
Not constrain ongoing conduct	PAA RO1 PS(3) (d)	Not applicable	Not applicable	Not applicable	Not applicable
Significant impact on PAA	PAA RO1 PS(3) (e)	PAA RO1 PS(3) (e)	Not applicable	PAA RO1 PS(3) (e)	Not applicable
Impact on land not owned by applicant or land owner	PAA RO1 PS(3) (f)	PAA RO1 PS(3) (f)	Not applicable	PAA RO1 PS(3) (f)	Not applicable

B. RPIA Assessment Criteria for resource activity over two or more properties RO: Required outcome; PS: Prescribed solution

CRITERIA	PAA and PALU	Land is SCA and PAA but not PALU	Land is SCA and not PAA	Land is not SCA Land is PAA but not PALU	Land is not SCA and not PAA
Mapping validation	PAA RO2 PS(6): PALU criteria apply	SCA RO1 PS: SCL criteria apply PAA RO1 PS(2): PALU criteria apply to demonstrate not PALU.	SCA RO1 PS: SCL criteria apply	PAA RO1 PS(2): PALU criteria apply to demonstrate not PALU	Not applicable
Evidence of negotiation	PAA RO2 PS(6)	SCA RO3 PS(3)	SCA RO3 PS(3)	Not applicable	Not applicable
Max. impact	PAA RO2 PS(6) Max 2% loss of both PALU and productive capacity of PALU; PAA RO1 PS(3) (a): If applicant is the land owner, no limit on loss of PALU	SCA RO3 PS(3): Max 2% permanent impact on property SCL; RO3 (2): If applicant is the land owner, no limit on permanent impact on property SCL; No temporary impact limit.	SCA RO3 PS(3): Max 2% permanent impact on property SCL; RO3 (2): If applicant is the land owner, no limit on permanent impact on property SCL; No temporary impact limit.	No limit	No limit
Regional outcomes addressed	PAA RO2 PS(1) (a)	SCA RO3 PS(1) (b)	SCA RO3 PS(1) (b)	PAA RO2 PS(1) (a)	Not applicable
Cannot avoid PALU or SCL	PAA RO2 PS(1) (b)	SCA RO3 PS(1) (a)	SCA RO3 PS(1) (a)	Not applicable	Not applicable
Minimise footprint on PALU or SCL	PAA RO2 PS(1) (c)	SCA RO3 PS(1) (c)	SCA RO3 PS(1) (c)	Not applicable	Not applicable
Mitigation	Not applicable	SCA RO3 PS(1) (d) Mitigation applies to any permanent impact on area SCL.	SCA RO3 PS(1) (d) Mitigation applies to any permanent impact on area SCL.	Not applicable	Not applicable
No significant impact on PAA; No widespread or irreversible impact on PALU	PAA RO2 PS(1) (d) and PAA RO2 PS(6)	PAA RO2 PS(6)	Not applicable	PAA RO2 PS(6)	Not applicable
Not constrain ongoing conduct	PAA RO2 PS(1) (e)	Not applicable	Not applicable	Not applicable	Not applicable
Impact on land not owned by applicant or land owner	PAA RO2 PS(6)	PAA RO2 PS(6)	Not applicable	PAA RO2 PS(6)	Not applicable
Impact on regional water resources	PAA RO2 PS(3): Net replenishment strategy	PAA RO2 PS(3): Net replenishment strategy	Not applicable	PAA RO2 PS(3): Net replenishment strategy	Not applicable

Figure 1: Application of Assessment Criteria depends on existence and distribution of regional interests.

