



2 August 2012

Land Access Review Secretariat, Department of Natural Resources and Mines

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Submission in response to Report of the Land Access Review Panel, February 2012

The Basin Sustainability Alliance (BSA) appreciates and acknowledges the time and effort that has been put into this review process and are pleased that the Government took steps to engage a panel to review the effectiveness of the Land Access Framework against the original policy objectives.

Background

BSA was established in early 2010 to represent landholder, community groups and individuals with serious concerns about the unrestrained development of the coal seam gas industry across Queensland and the associated environmental, health and social impacts. For more than two years we have been actively traversing the many issues that are facing landholders and doing the best we can to influence policy to safeguard our farmlands, our community and our water for future generations. Committee members range from 'lifestyle' farmers, to graziers, to intensive cropping and feedlot operators from various districts across the Western Downs region.

Consideration given to the objectives

In posing our response to this report, we have taking into consideration the objectives of the review to

- facilitate improved relations between resource companies and landholders
- provide a consistent, transparent and equitable process to facilitate access to private land for resource exploration and development
- provide certainty to landholders and resource companies in terms of their rights and obligations in relation to land access for exploration and development
- define a clear and consistent process that brought resource companies and landholders together to negotiate agreed terms for conduct of resource activities and compensation, and

- provide clear dispute resolution, compliance and enforcement processes and powers,
- with legal proceedings considered only as a last resort.

Challenges faced by volunteer groups

There is enormous pressure placed on groups like ours, made up of volunteers, to respond to government reports and company environment impact statements. In just the past few months alone, we have worked on submissions to Arrow EIS, the Queensland Water Commission's Draft Underground Water Impact Management Report and the charter of Gasfields Commission.

At the same time we are all busy trying to run our on-farm and off-farm enterprises, conduct our own individual negotiations with CSG companies and in our "spare time" provide meaningful responses and submissions when given the opportunity. CSG companies, however, pay their staff and consultants an impressive salary to work on such submissions and, given the high stakes involved, no doubt have unlimited access to large legal firms and in-house lawyers. No doubt that results in industry presenting polished documents. We make this observation to demonstrate that even the open opportunity to provide submissions is representative of the imbalance of power that is evident across this whole CSG "coexistence" debate. If government is truly trying to redress the imbalance we believe it should allow sensible funding to groups such as ours.

We are hopeful that our inability to provide adequate time and resources to this submission is **not** to the detriment of the landholders and members we represent.

'Silo' mentality to CSG development planning

While this may seem out of the scope of the Land Access Review Panel's objectives, we wish to express our concern that land access is often viewed as a separate issue to underground water security. We believe it is important that the Land Access Framework is not viewed independently of basin-wide water impacts.

Our overall position on the Report

We are pleased to see some positives in the recommendations, but overall we still feel that there is an imbalance of power occurring. Further, we hold serious concerns that some of the recommendations may undermine the existing rights of landholders.

Issues regarding the “Optimal process”

BSA agrees with step one that all stakeholders should be informed that a tenure process has commenced. It is particularly important that information is communicated in plain English using terms that the landholder will easily understand. It is unfair to send a notice to a landholder using lease or authority letters and numbers that are foreign to the landholder and then expect him/her to do their own research to attempt to work out what it means. We strongly urge the Government and the resource companies to use readily-understood geographical and/or roadway descriptions (in addition to ATP numbers, lease numbers or project area descriptions) that clearly explain to the landholder the location and bounds of the tenure and if necessary for clearer understanding, to provide a map to indicate the tenure location.

The recommendation relating to “early engagement” concerns us. It is suggesting that the resource companies bring in someone who “must be skilled in the areas of negotiation” to engage with the landholder, whom has no legal representation, no experience in legal matters and obviously little to know history of dealing with industry (let alone knowing the implications of what is to follow). Again, while the intent is for goodwill and relationship building, in practice this kind of situation can often result in leaving the landholder a victim of manipulation and/or subtle bullying.

Bearing in mind that up until this point (based on the “optimal process” as outlined in the report), the landholder would have only received notification of the tenure and a brochure about land access arrangements. We fear that many farmers are strained already running their own businesses (facing time, weather and financial pressures) and do not have the resources to fully review all the ins and outs of the land access process – apart from what would be supplied in a brochure (which we assume would be limited information – an introduction only).

If they are then faced with their first meeting with the resource company where they meet with a highly paid, highly trained negotiator (who we must all recognise has the ultimate

goal is to get the CCA over the line), then BSA fears that the landholder is immediately on the back foot. This again represents an imbalance of power.

Lastly and critically, BSA is concerned that the optimal solution is portrayed by government as the favoured solution to land access and that in time it is intended to be implemented. BSA strongly believes the “optimal solution” is contrary to existing laws and if implemented, will further perpetuate inequity and the imbalance of power and aggravate stakeholder relationships. In light of this, BSA believes any implementation of the “optimal process” is not in line with the intent of the Land Access review to facilitate improved relations between resource companies and landholders and provide a consistent, transparent and equitable process to facilitate access to private land for resource exploration and development

Comments on the Recommendations:

Recommendation 1 - Government notify all landholders covered by a tenure or authority at the time of grant.

BSA supports an early notification process. As explained earlier we strenuously agree that the communication with landholders must be in plain English and the locations of tenures are explained in a common sense way. Early and clear notification assists in informed decision making by the Landowner

Given that most tenures have already been granted, we would like to see the Government take this notification process a step further and provide an “update” letter to all landholders that clearly explains the current tenures on their properties. We recognise that tenures change and therefore suggest the update letter include a web address for landholders to access up-to-date tenure information by searching on their property Lot and Plan number.

We would like to see this provided in simple language. Using only “gradicular” block or project area names, Authority to Prospect numbers and/or petroleum lease application numbers, without explaining the geographical location, can be extremely misleading and we sometimes believe is allowing the resource companies to be deliberately covert in their approach.

Recommendation 2: Government review existing information, guidelines and education programs and develop new material and programs that are better targeted to appropriate audiences.

BSA supports this recommendation. We continue to receive regular calls from landholders who are receiving their first contact with CSG companies and are not sure what to do. We are still hearing stories of landholders entering into agreements without any legal representation. Landholders MUST be made fully aware of the processes, their rights and the implications of the documents they are signing.

Government literature must never be a substitute for an individual's right to seek independent legal advice. We raise that the government has an overwhelming conflict of interest and it is imperative that landholders are at all times openly encouraged to seek legal advice with respect to resource development on their land.

We believe that the appropriate funding of landholder groups like Basin Sustainability Alliance to act as a suitable conduit of information should be considered as part of this review.

BSA would like to suggest that the panel recommend that information regarding tenures should be included on every landholders' rates notice. The cost for this should be borne by the State Government not the local councils.

RECOMMENDATION 3 - Government establish an independent panel to determine disputes arising in negotiating a CCA

BSA strongly *objects* to this recommendation. We strongly believe the Land Court is an appropriate body to settle disputes.

We would much rather see an expert panel be made available to landholders to help them in their understanding of processes, impacts and the science including professionals like hydrologists, agronomists, financial modelling, flood plain specialists, geologists etc to assist in negotiations.

Further we would like to see an independent third party mediator (not an employee of government or those from a Mining background). Perhaps this could be done using a peak body such as the Queensland Law Society or the Institute of Arbitrators and Mediators.

Further to this we feel very strongly that access to land by the resource company should not be granted until disputes are either resolved, or determined in the Land Court.

Recommendation 4 Government implement a mechanism to support landholders and resource companies to develop and use a detailed work plan describing both parties' activities on the land.

Whilst BSA supports, in principle, the *intent* of this recommendation that would see the development of a property strategic plan which takes into account both parties' activities on the land, it is our strong view that the landholders' plan/s must hold **priority**. Further the mechanism must recognise and provide the flexibility for landholders' plans to change. Recommendation 4 needs to reflect this priority otherwise this recommendation has the potential to interfere with fundamental existing landholder rights.

We believe it's important that the resource companies come to the table with a genuine interest in adapting **their** plans to fit the landholder's business, land use, lifestyle.

Consideration should be given to the fact that the resource companies' plans are for a 20 year block, in a landscape that has been evolving and producing food and fibre for over a century and will be required to continue to do so infinitely.

Furthermore, it is vital that "detailed work plans" are not just "property by property" but rather an area wide plan is provided to affected landholders. Activities on neighbouring properties can have equal or even more impact.

Landholders must not be put in a position where they do not have the freedom to pursue new opportunities or farm management practices for their farm. It is impossible for landholders to predict how farm management practices may change in 30-70 years.

There must be provision for CCAs to be reviewed periodically to take into account changing management practices and the impact that that resource companies' plans will have on the landholder's ability to change and adapt his/her business practices.

Recommendation 5 - Government appoint an independent third party or organisation to clarify what are 'reasonable and necessary professional costs to negotiate a CCA', initially by establishing a database of legal and other professional fees

BSA strongly *objects* to Recommendation 5. We are very concerned about introducing a one-size-sits-fits-all approach to the legal and professional costs. No two properties are the same, no two agricultural operations are the same and no two resource developments are the same. Landholders have a wide variance of requirements and expectations in relation to impacts on their business, family, lifestyle and operations. It is impossible to have a standardised approach.

We strongly believe that the terms “reasonable and necessary” should give all parties comfort that there are appropriate safeguards in place. Any attempt to cap or curtail professional and legal fees would erode the rights of landholders and will further perpetuate the power imbalance.

If there are concerns about the fee structures or ethical conduct of legal firms, that should be addressed as per existing legislation. (We understand this would be under the Legal Professional Act 2007 Qld).

RECOMMENDATION 6: Government work with the resource and agricultural sectors to develop 'standard conduct and compensation agreements' by industry for coal, CSG and minerals

While BSA can see merit in developing standardised terminology and set clauses that must be included in CCAs to ensure “quality control” of agreements, we urge the Government to ensure that this is in no way creating one “standard” agreement, or a “one size fits all” approach.

If standard clauses, templates and/or check lists are developed to assist with consistency across the industry agreements, they must be developed in a way that allows significant levels of flexibility to ensure landholders and resource companies have suitable freedom to adapt agreements to individual circumstances.

Where the recommendation refers to “working with agricultural sectors”, we again raise the point relating to the strain on volunteer landholder groups. Such groups, like BSA, believe it

is vital to be a part of the discussion to ensure the right information is feed into the process, however, the time spent on consultation processes is creating great pressure on people's business and families. Working with the agriculture sector may require suitable funding and or compensation for landholders time.

Recommendation 7 Government progress the development of a mechanism to enable the notification of CCAs on land titles

We support Recommendation 7 as it is important that potential buyers are informed just as information regarding Easements, for example, are included on titles. We do caution the panel, though, that this kind of description must respect the confidentiality of landholders and resource companies. Our suggestion is that the existence of a CCA is included on the title but the details are excluded.

Recommendation 8 – Government introduce a way for parties to opt-out of the requirement to sign a CCA for advanced activities

BSA appreciates the intent of this recommendation, as we do recognise that there are circumstances where a fully informed landholder has a good relationship with a resource company and is happy to progress on certain activities without a CCA.

However, we do hold serious reservations. We don't want to stand in the way of improved relations between resource companies and landholders. However we are still regularly hearing cases of landholders who have been "tricked", "sweet talked" into allowing something to occur without fully understanding the implications. We could only support this recommendation if we could feel certain that this "opt out" provision would not be used by the companies as a negotiation tool or a way to manipulate landholders and take advantage of their naivety about the in the real impacts.

We fear resource companies could use highly skilled negotiators to "sell" the benefits of Opting Out, which could leave vulnerable landholders unprotected. We suggest that the 'Opt Out' option should only be available when independent legal advice has been provided to the landholder.

Recommendation 9 – Government review the scope of ‘compensatable effects’

We are not adverse to the idea of this review however this must be one in a way that does not result in a further erosion of landholders’ rights. The definition of compensatable effects should be expanded, not reduced.

We welcome the Action item 2 which recommends the inclusion of landholders’ time and social amenity in compensatable effects. Our experience is that most landholders significantly underestimate the amount of time they will spend dealing with CSG companies. The social impacts are often intangible, and it is vital that landholders are not left feeling that the impact that the CSG activity has on their chosen way of life is irrelevant.

We do have some reservations about Action item 3 - to work with stakeholders to develop case studies identifying different types of compensation. Whilst we are not adverse to the development of case studies, these should be approached with extreme caution. We need to be sure that case studies do not result in landholders being not locked into a one-size-fits-all “solution” to addressing compensation. Case studies must be presented as examples only and not the only way to calculate compensation. It is vital to recognise that impacts can vary greatly depending on individual circumstances. Again, for example, for some people, social impact may be greater than a business impact.

Further, we raise that to date, there has been no legal interpretation of the existing legislation which is the only way to provide certainty around the interpretation of ‘compensatable effects’. BSA is adamant that this recommendation must not in any way erode the current common law system to determine such matters.

Recommendation 10 - Government review technical issues to make improvements in the process.

BSA appreciates the importance of providing clarity technical issues (as listed on page 18 of the panel report), however, we urge extreme caution with respect to this recommendation as we fear that defining or over-prescribing technical issues and terms could limit their interpretation and ultimately erode landholders’ rights. As an example we raise that there has been no legal interpretation of many of “unreasonable interference” within the existing legislation which is the only way to provide certainty and clarity around its interpretation. BSA is adamant that this recommendation must not in any way erode the current common law system to determine such matters.

If any such review as to proceed it would be vital that any such review involve consultation with legal representatives (those in private practice and legal aid) who are working on the ground with landholders and have first-hand experience with the legislation.

It is essential that peak landholder and agricultural groups should also be involved in this process. However, it is important that when Government is enlisting the expertise and knowledge of landholder groups and private business owners to assist in a review, they should be adequately remunerated. The heavy reliance on volunteers within the agricultural sector to inform government policy places a personal and financial strain on those people. We do not wish to see this 'CSG fatigue' result in important stakeholders not being a part of review processes.

Recommendation 11 - Government review the land access framework in three (3) years

There needs to be formal and informal opportunities for ongoing communication and feedback on the Land Access framework.

Considering just how fast this industry is moving, and how much activities will increase in the next 12 months, we believe it is completely unreasonable to wait three years for another comprehensive review.

We would like to see the Gasfields Commission be empowered to call for public submissions at least once every 12 months.

Recommendation 12

We commend the panel for taking the time to note other issues raised and strongly encourage the government to address these matters through an appropriate forum. Perhaps it would be appropriate to refer them to the Gasfields Commission?



In conclusion

BSA thanks the Government for this opportunity to respond to the Land Access Review Panel Report and we are happy to make ourselves available should you wish to discuss any of the comments and suggestions within our submission.

Kind regards

A handwritten signature in black ink, appearing to read 'Ian Hayllor', is written over a horizontal line.

Ian Hayllor
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