

**SUBMISSION TO THE LAND ACCESS REVIEW
COMMITTEE
21 DECEMBER 2011**

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Chair
Land Access Review Committee
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Queensland Farmers' Federation (QFF) is the peak body representing and uniting 16 of Queensland's rural industry organisations who work on behalf of primary producers across the state. 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'. 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:

- Australian Prawn Farmers' Association,
- CANEGROWERS,
- Cotton Australia,
- Growcom,
- Nursery and Garden Industry Queensland,
- Queensland Chicken Growers Association,
- Queensland Dairyfarmer's Organisation,
- Queensland Chicken Meat Council,
- Flower Association of Queensland Inc.,
- Pork Queensland Inc.,
- Biological Farmers of Australia
- Fitzroy Food and Fibre Association,
- Pioneer Valley Water Co-operative Limited,
- Queensland Aquaculture Industries Federation,
- Central Downs Irrigators Limited, and
- Burdekin River Irrigators Area Committee

In response to your request received via email to us on the 2 December, please find below our initial contribution to your review of the land access code. We have responded directly to the questions you have posed but we would welcome the opportunity to discuss these matters further with you or your committee at any stage during the review period.

Regards



Dan Galligan
CEO

Has implementation of the land access framework improved relations between landholders and resource companies?

This is an almost impossible question to answer. There are no set measures for satisfaction with respect to the general relationship between landholders and resource companies. There was no benchmark information obtained prior to the finalisation of the new framework and thus there is no fair mechanism to ascertain the general improvement.

Further there is no agreed market intelligence to inform the level of acceptance of the framework or agreements drafted under its guidance.

A case by case assessment is the only realistic measure.

The reality is that for many landholders they may not have had any experience in dealing with a resource company under the old regime so there is limited ability to make a reasonable comparison.

It is a moot point in the current circumstances. This review should endeavour to build on the current framework to ensure it provides the opportunity to improve relationship outcomes hence forth.

With respect to the headline issues associated with the original Government commitment, there is no doubt that the existing framework does not satisfy the desires of all parties. There remain a number of areas of contention. Just some of these include:

- Confidentiality or disclosure to be insisted upon, versus terms on disclosure agreed between both parties
- Strict time frames for negotiation versus open ended and flexible stages
- Standards terms and schedules for compensation arrangements versus negotiated outcomes
- Standard figures, ranges or schedules for legal costs versus negotiated outcomes based on “reasonable terms”
- The payment of landholder time with respect to quantum and when the “clock starts” to determine terms of payment
- Standard review periods versus a review period placed in agreements based on agreed timeframes or material change of activity
- Compensation for affects (actual loss) to business versus compensation for possible impact on the farm business, risk to the future development of the farm business (loss of certainty / flexibility).

QFF has received a reasonable amount of anecdotal advice that indicates that each of these dot points are issues. This is by no means an exhaustive list, but there is opportunity for remedy under an agreement that can be developed within the guidance provided for by the existing framework. Unfortunately there is a very inconsistent understanding of how to use the land access framework.

QFF and others have long provided the advice to landholders that they should seek legal advice in drafting access and compensation agreements. Unfortunately some people hold the view that this legal advice is being provided at an exorbitant rate.

This fee, subsequently passed on to the resource company, is often raised as justification to ensure “lawyers have less involvement in the process” not more. QFF would recommend the committee receive some objective information with regards to this issue to put some real analysis behind these claims. It is clear that landholders need more assistance, not less in respect to developing agreements. A principle behind the revision of the land access framework was to improve the equity between the negotiating parties. Unfortunately on the contrary, the reality of the situation on the ground is that the resources companies have a greater ability to analyse existing agreements (based on experience gained thus far), obtain expert services either through recruitment or outsourcing, manage the timeframes of instigating agreements, and they understand what it is about their business on that property that is most important to them. In essence they know and understand almost all there is to know about negotiating a successful agreement.

On the other hand, the landholder has generally never done this before. They have had to independently or through the very helpful assistance of an Agforward / Qld Govt workshop come up to speed on the process of both drafting an agreement and just as importantly the process of gas / mining extraction. The landholder has either through a perceived or actual restriction, felt hindered in their ability to learn from their peers and they ostensibly still have no power to reject, delay or circumvent the requirement to enter into an agreement. In essence the landholder has limited knowledge about negotiating a satisfactory agreement.

Ideally this knowledge and experience gap may in time reach parity. However in the meanwhile agreements are being signed and terms agreed to that may in the end lead to even more legacy issues that will need to be resolved at a later date.

QFF poses this fundamental question for the committee to consider. Are there legal amendments required to the land access framework or is there a greater effort and investment required in ensuring the framework is applied and implemented to its fullest possible benefit? This question needs to be considered in light of actual feedback from people in the field and always cognisant of the fact that landholders did not request for this problem to be part of their business or personal plans.

Generally, in that vein of assessing whether or not the framework has been successful so far, it also poses the ultimate question of what does a better outcome (for all parties) look like. QFF has heard many times that from a landholder perspective, a successful agreement should evolve itself to a point where the gas development (for this example) is seen as just another commodity that they see coming from the productive landscape of their properties. Like any other commodity, the environmental risks, financial returns and long term security of its production need to be carefully measured and understood. But with these considerations in hand and agreed to, the landholder needs to be engaged to establish a fair return against risk, productive return and long term security. It is these types of measures that the land access framework should be guided by.

Are you clear about your rights and obligations in relation to land access for resource activities on private land?

The question is not particularly relevant to QFF as a peak body and is clearly targeted towards individual landholders.

QFF would make the observation that in all likelihood there is a very wide variation in the understanding of the right and obligations from the perspective of landholders and individuals who work within or in association with resources companies.

Have you been involved in the negotiation of a Conduct and Compensation Agreement? Did you have concerns about the process?

This is not a relevant question to QFF.

Was the entry notification process satisfactory? If not how could this be improved?

This is not a relevant question for QFF to answer but we would encourage the review panel to seek feedback from landholders in relation to this matter. It must be said that with little say over the notification process landholders would always seek for companies to go beyond their minimum standards and extend the earliest possible courtesy to farmers they need to enter agreements with. It is clearly the case that the earlier the negotiation begins, the more possibilities there may for a landholder to have some influence over the design of the resource extraction activity so as to minimise its disruption to their other business or personal activities. This ability to “have a say” in what goes on is very justified and demonstrably leads to a better long term relationship between the company and landholder involved.

Have you been involved in a dispute resolution process associated with private land access? Were you satisfied with the result?

This is not a relevant question for QFF to answer but we would encourage the review panel to seek feedback from landholders, legal practitioners and advocates in relation to this matter.

Have you had experience with the compliance and enforcement provisions or processes of the land access laws? Any suggestions for improvement?

This is not a relevant question for QFF to answer but we would encourage the review panel to seek feedback from landholders in relation to this matter.

How could the land access code be improved?

QFF would like to talk further to the review panel in relation to options for improvement of the framework based on the feedback received.