



# LAND ACCESS AND COEXISTENCE: A review of coexistence principles and coexistence institutions

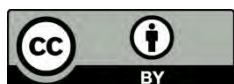
Discussion paper | November 2022

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## Acknowledgement of Country

The Department of Resources acknowledges the First Nations peoples in Queensland: Aboriginal and Torres Strait Islander peoples and their connections to the lands, winds and waters we now all share. We pay our respect to Elders, past and present.

We also acknowledge the continuous living culture of First Nations Queenslanders – their diverse languages, customs and traditions, knowledges and systems. We acknowledge the deep relationship, connection and responsibility to land, sea, sky and Country as an integral element of First Nations identity and culture.

The Country is sacred. Everything on the land has meaning and all people are one with it. We acknowledge First Nations peoples' sacred connection as central to culture and being.

We acknowledge the stories, traditions and living cultures of First Nations peoples and commit to shaping our state's future together. The Department of Resources recognises the contribution of First Nations peoples and communities to the State of Queensland and how this continues to enrich our society more broadly.

## Introduction

Sustainable coexistence is a key ingredient for the resource industry growing over the long term. The Queensland Government's coexistence framework seeks to balance the rights and interests of the resource sector with those of landholders so that resource activities can effectively coexist with agricultural activities and other land uses.

However, coexistence is not just about balancing the rights and obligations of parties looking to exist together. It requires arrangements that will support the behaviours necessary to foster mutually beneficial and enduring relationships throughout the life of a resource project. In Queensland, institutions such as the GasFields Commission and the Land Access Ombudsman have been established to support coexistence outcomes for landholders and resource companies.

The Queensland Resources Industry Development Plan (QRIDP) was released on 24 June 2022 following public consultation (see Appendix A). The QRIDP presents an ambitious 30-year vision for a resilient, responsible, and sustainable Queensland resources industry that grows as it transforms. The plan sets out six key focus areas with associated actions. Key focus area 3 of the QRIDP relates to fostering coexistence and sustainable communities and outlines the expectations of government as well as actions to foster coexistence.

This paper progresses two of the key coexistence actions contained in the QRIDP.

Part A of this discussion paper relates to Action 23 and outlines principles for strong coexistence relationships, which are intended to set government's expectations of the behaviours required from industry and landholders when they interact.

## Action 23 – Publish and implement principles for coexistence in the land access code

Positive relationships between resources companies, landholders, First Nations Peoples, and the community are essential for sustainable development.

In response to stakeholder feedback, the government will revise the land access principles and integrate them into the Land Access Code.

The Land Access Code is a best-practice guideline for communication and negotiation between resource companies and landholders. It applies to most resource authority types in Queensland.

The relevant resource company must provide a copy of the Land Access Code to landholders with an initial entry notice and negotiation notice, this will ensure that both parties are aware of government's expectations.

Part B of this discussion paper relates to Action 24 of the QRIDP and is part of the review of the State's land access and coexistence institutions to ensure that they are well aligned, contemporary and efficient.

## Action 24 – Review land access and coexistence institutions

The Queensland Government will review the land access institutions to ensure they are well aligned, contemporary and efficient. In particular, the review will investigate the scope and functions of the Land Access Ombudsman and GasFields Commission Queensland, including whether:

- their functions could be expanded to assist in more circumstances
- these entities could perform their functions under the banner of a single entity.

While the focus will be on land access institutions, the government will also review:

- whether roles and responsibilities across agencies and institutions are clear
- whether some roles could be better aligned
- how to reduce duplication and overlap for key coexistence issues such as water, subsidence, and make-good arrangements.

Stakeholder views and comments are encouraged on both parts of this paper. All feedback received will inform government's thinking on the implementation of these QRIDP actions.

## Have your say

The Department of Resources conducted public consultation on the draft QRIDP from November 2021 to February 2022. The feedback received has been considered in developing this paper.

We are now seeking feedback on the coexistence principles and institutional review set out in this paper. Questions have been included throughout the paper for you to consider. Please note, it is not necessary to provide feedback on every question set out in the paper. We welcome any other feedback you may wish to provide in relation to the coexistence principles or institutions.

Submissions can be emailed to [ResourcesPolicy@resources.qld.gov.au](mailto:ResourcesPolicy@resources.qld.gov.au). You can also provide feedback by completing the [online survey](#). Consultation closes 24 February 2023.

Stakeholders should also note that the Queensland Government is progressing work on several related matters independent of this review. For more details, see Appendix D.

## Next steps

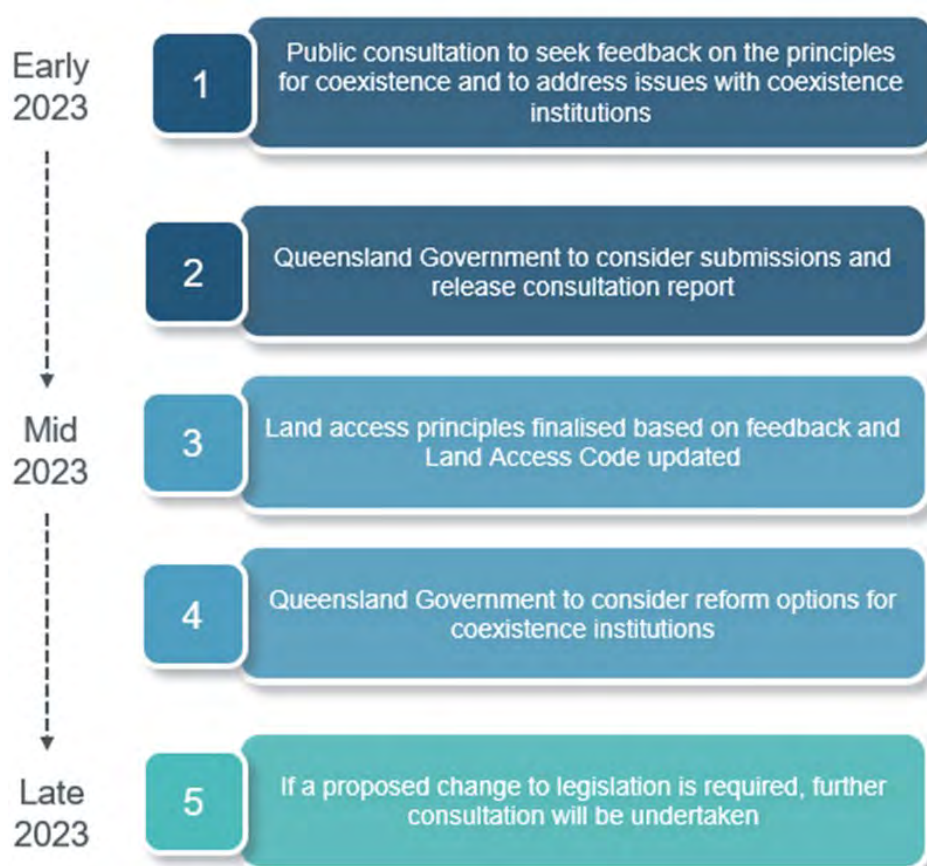
After consultation closes, the Department of Resources will release a consultation report detailing how feedback on this discussion paper was considered.

Feedback on Part A of this discussion paper will be used to finalise the principles for coexistence, which will be integrated into the Land Access Code 2016 (Land Access Code) by mid-2023.

Feedback on Part B of this discussion paper will be used to inform the preparation of options to improve the design of the State's land access and coexistence institutions. If changes are required to the design of the institutional arrangement, legislative amendments are likely to be required. The Department of Resources is committed to transparency, and it is anticipated that key stakeholders will be consulted on any proposed legislative amendments in 2023.

Key milestones are highlighted in the following timeline.

Figure 1 – Key milestones



## Why is coexistence important to the Queensland economy?

Queensland’s resource and agricultural sectors are vital to our economy and the success of our regions. Our resource sector contributes to both national and international energy needs, steel making and manufacturing, and are staples in the goods and products that we use every day such as televisions, mobile phones, and computers. The State’s agricultural industries are also a key strength of our economy, providing quality food and agricultural products to national and international markets. It is the foundation of livelihoods for many Queenslanders and the backbone of many rural and regional communities across the State.

Both industries contribute to the economy through their substantial exports and added value, and both represent large sectors of employment in regional Queensland. A significant amount of Queensland’s mineral and energy resources are found in the State’s agricultural regions. For example, in the Darling Downs-Maranoa region, where the agricultural sector is the region’s biggest employer<sup>1</sup>, there are large natural gas reserves.

Figures 2 and 3 below provide a snapshot of the broad economic benefits the State realises from our agricultural and resource sectors.

Figure 2 – The value of Queensland’s primary industries<sup>2</sup>



Figure 3 – The value of Queensland’s resource industry



<sup>1</sup> [Agriculture \(About My Region\), Darling Downs – Maranoa - 2016 \(daff.gov.au\)](http://daff.gov.au)

<sup>2</sup> [Data Farm \(daff.gov.au\)](http://daff.gov.au)

## Mutual benefits between sectors

There are some flow-on benefits from the resource sector to the landholders who host resource activities. These include non-monetary benefits such as the construction of on-farm roads, fences, and the provision of water for farm use. Landholders receive monetary compensation designed to offset the impacts of certain resource activities that are undertaken on their property. For example, The GasFields Commission Queensland's Industry Snapshot – Shared Landscapes from April 2021, states that 4,504 Conduct and Compensation Agreements were in place in Queensland in financial year 2020, with more than \$702 million paid in total cumulative compensation to landholders that host onshore gas activities. This compensation is used in a variety of ways by landholders but can be an important mechanism to support farming operations, including for example, in times of drought.

To strike a balance between the benefits and management of any impacts, the Queensland Government remains committed to delivering a coexistence framework that provides for the ongoing realisation of benefits from both sectors. For the resource industry to continue to thrive in Queensland, companies must coexist effectively with host landholders and communities along with other industries in the areas where they operate. This will also be necessary for emerging sectors within the resource industry, such as critical minerals and carbon capture, use and storage projects, and other types of critical industries such as the renewables sector.

## Coexistence framework

Queensland has multiple pieces of legislation, administered by different government agencies, that set out regulatory requirements that support sustainable coexistence. We refer to this as the 'coexistence framework'. It consists of:

- Resources Acts (including the *Mineral Resources Act 1989*, the *Petroleum and Gas (Production and Safety) Act 2004*, the *Greenhouse Gas Storage Act 2009*, the *Geothermal Energy Act 2010*, and the *Mineral and Energy Resources (Common Provisions) Act 2014* (MERCPC)), administered by the Department of Resources.
- *Environmental Protection Act 1994* (EP Act), administered by the Department of Environment and Science (DES).
- *Water Act 2000* (Water Act), administered by the Department of Regional Development, Manufacturing and Water (DRDMW) other than Chapter 3, which is administered by DES; and
- *Regional Planning Interests Act 2014* (RPI Act), administered by the Department of State Development, Infrastructure, Local Government and Planning (DSDILGP).

Companies looking to undertake resource activities require a resource authority (for example a mining lease or petroleum lease) from the Department of Resources, and an environmental authority, which is issued under the EP Act. A resource company may also require other approvals to undertake resource activities, including for example, an approval to take or interfere with water under the Water Act.

Generally, a resource authority provides the right to enter land to undertake authorised activities for exploration or extraction of resources which are owned by the Crown on behalf of all Queenslanders. An environmental authority sets out the conditions under which an authorised activity must operate to protect Queensland's environment. There are limited circumstances where an authority holder and



landowner may negotiate a different outcome to an environmental authority condition. These alternative arrangements are generally reserved for the management of environmental nuisance.

Land access laws provided for in MERCAP establish the mandatory requirements that the holder of a specified resource authority must adhere to in order to enter private or public land to undertake authorised activities. These include mandatory conditions concerning the conduct of authorised activities on private and public land, land access notification requirements and the statutory process for the negotiation of Conduct and Compensation Agreements, where relevant. It should be noted that different requirements apply in relation to prospecting permits, mining claims and mining leases under the *Mineral Resources Act 1989*.

Chapter 3 of the Water Act provides the framework for the assessment and management of impacts on underground water caused by the exercise of underground water rights by resource tenure holders including an independent assessment and management of cumulative impacts. Amongst other things, it includes modelling and monitoring of groundwater impacts, and a make good arrangement that incorporates an agreement about groundwater impacts associated with a water bore, which are legally binding agreements entered into by a resource tenure holder and a bore owner. The Water Act also provides the framework for taking or interfering with groundwater that is not caused by the exercise of underground water rights by resource tenure holders. This is usually authorised through a water licence.

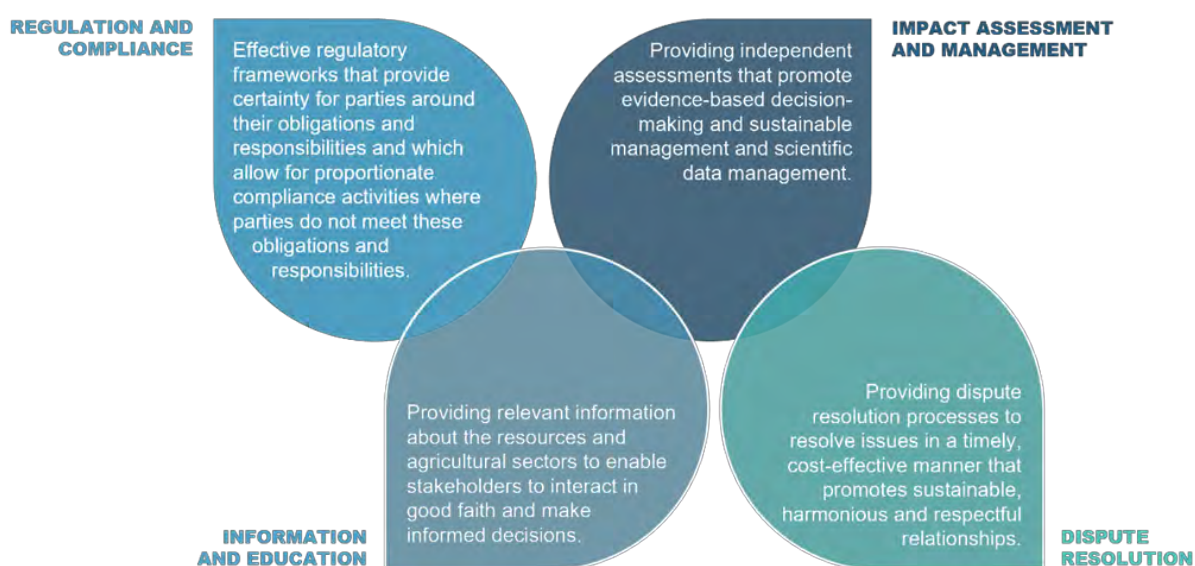
The RPI Act identifies and protects areas of regional interest throughout Queensland. Its purpose includes managing the impact of resource and other types of regulated activities and assisting in resolving land use conflict between key activities which contribute to the State's economy. A resource activity cannot be carried out in an area of regional interest unless a person holds, or is acting under, a Regional Interests Development Approval for the activity or is otherwise exempt under the framework.

## Foundations for sustainable coexistence

Regulation alone does not ensure sustainable coexistence. Supporting arrangements are needed to complement the regulatory framework to encourage positive and enduring relationships based on the principles of mutual benefit.

Submissions on the draft QRIDP, feedback from key stakeholders, and historical reviews have suggested that there are four foundations necessary for harmonious and sustainable coexistence between resource companies, landholders, and regional communities:

Figure 4 – Foundations for sustainable coexistence



These foundations are critical to the success of the coexistence framework. If they are not delivered effectively, it may give rise to issues that jeopardise sustainable coexistence.

These foundations, as well as the land access and coexistence institutions, are vital to the success of the State's coexistence framework. Feedback on the foundations will be used to help government refine its coexistence institutional arrangements to ensure they are effective. The proposed coexistence principles complement the foundations and set government's expectations around the behaviours of landholders and resource companies as they engage throughout the life of a resource project.

### Have your say

1. Are the four foundations reflective of the key requirements for sustainable coexistence?

## Part A: Coexistence principles

To support stronger relationships, the Queensland Government is developing a set of principles that will be added to the Land Access Code. The Land Access Code is a best practice guideline for communication and negotiation between resource companies and landholders. As resource companies must provide it to landholders when providing mandatory notifications, the inclusion of the principles in the Land Access Code will ensure both parties are aware of the government's expectations.



These principles establish government's minimum expectations for the behaviours between resource companies and landholders and will complement the four foundations of coexistence. The government encourages parties to go above and beyond these minimum standards to ensure they form and nurture good working relationships that deliver mutually beneficial outcomes over the long-term. Parties should have honest conversations about their expectations and feel empowered to address relevant issues, rights and obligations of the parties involved.

Further, while the principles are to set an expected standard of behaviour between resource companies and landholders, the government also expects resource companies will engage with relevant parts of the community including local First Nations peoples and local governments. By engaging more broadly with communities, resource companies can find opportunities to go beyond compliance with the Land Access Code to meet community expectations and leave a positive and enduring community legacy.

## Summary of QRIDP feedback received

15 submissions on the draft QRIDP specifically addressed the draft coexistence principles. Most of these submissions were conditionally supportive of the principles. The key issues addressed included:

- The principles should be more balanced in applying to both resource companies and landholders, as parties to the negotiation process.
- The principles should use language that is positive and collaborative.
- The principles should be clear, objective, measurable and enforceable. This could be achieved by including principles in a standard or third-party certification process.
- The principles should remain subjective and aspirational rather than become enforceable.
- Some submitters thought a working group should be established to further develop the principles.

## Revised principles

In the draft QRIDP we proposed a draft set of principles to set out a standard of behaviour to support strong coexistence. These have now been revised, based on feedback received on the draft QRIDP, and we are seeking final feedback before these principles are added to the Land Access Code.

| Principles                              |   |   |
|---|---|---|
| Values                                  | Resource authority holder   | Landholder  |
| Be proactive and engage early           | <ul style="list-style-type: none"> <li>• Engage early with landholders about potential activities, potential impacts on their land and business activities, land access arrangements and other relevant considerations</li> <li>• Provide landholders with the information necessary to inform negotiations and decision-making</li> <li>• Provide regular progress updates to landholders and advise of any significant changes to operations or timing, and be forthcoming when issues arise</li> </ul> | <ul style="list-style-type: none"> <li>• Be open to meeting with resource authority holders and discuss proposed activities</li> <li>• Ask any questions and raise any potential concerns, or requests for additional information from resource companies</li> </ul>  |
| Interact respectfully and transparently | <ul style="list-style-type: none"> <li>• Communicate openly, honestly and with empathy</li> <li>• Be respectful in all dealings with landholders - respect the rights, privacy, property and business activities of the landholder</li> <li>• Outline expectations for conduct and compensation arrangements to landholders</li> <li>• Negotiate in good faith and ensure timely decision-making</li> </ul>   | <ul style="list-style-type: none"> <li>• Communicate openly and honestly</li> <li>• Respect the rights of the resource company to carry out their activities</li> <li>• Outline expectations for conduct and compensation arrangements to resource authority holder</li> <li>• Negotiate in good faith and provide timely responses to requests or notices</li> </ul> |

| Principles            |   |   |
|-----------------------|---|---|
| Values                | Resource authority holder   | Landholder  |
| Promote understanding | <ul style="list-style-type: none"> <li>• Listen to landholders' questions and concerns and seek to resolve issues in a timely manner</li> <li>• Learn about the landholder's current business activities, succession dynamics and future aspirations and consider them in planning activities</li> <li>• Appreciate the impact of proposed activities on the landholder's property and business and seek to minimise impacts</li> <li>• Seek mutually beneficial arrangements and be open to alternatives that may be suggested</li> </ul>  | <ul style="list-style-type: none"> <li>• Communicate your current and future business and land use activities with the holder and discuss how the impact of the resource authority holder's activities can be mitigated or addressed</li> <li>• Seek information from the resource authority holder about proposed activities, including when and where they are going to occur and the likely impact on your property or business activities</li> <li>• Seek mutually beneficial arrangements and be open to alternatives that may be suggested</li> </ul>   |
| Act with integrity    | <ul style="list-style-type: none"> <li>• Build reliability and trust by consistently acting and undertaking activities as agreed with landholders</li> <li>• Comply with relevant legislated frameworks</li> <li>• Promptly pay compensation agreed with the landholder once milestones are reached</li> <li>• Promptly notify the holder of any damage caused and rectify it without any undue delay</li> <li>• Be responsible for all authorised activities and actions undertaken by employees and contractors of the holder</li> <li>• Regard information obtained about the landholder's operations as confidential</li> </ul> | <ul style="list-style-type: none"> <li>• Be open with resource authority holders about when significant changes to operations or management programs are likely to occur, so that they can plan to carry out activities in a way that will minimise impacts</li> <li>• Comply with relevant legislated frameworks</li> <li>• Promptly notify the resource authority holder of any damage to property caused by authorised activities</li> <li>• Be responsible for all landholder activities, requests and actions undertaken on the property by landholder's employees and contractors</li> <li>• Treat information obtained about the resource authority holder's operations as confidential</li> </ul> |

### Have your say

2. In what ways could the principles be improved to deliver better coexistence outcomes?
3. Are there other ways in which the government could make its expectations about conduct of resource companies and landholders clear?

## Part B: Coexistence institutional review

There are several institutions that are currently acting within the coexistence realm. These institutions are intended to complement and support the regulatory and policy frameworks in place to help deliver successful and sustainable coexistence.

Since the establishment of the land access framework in 2010, independent institutions such as the GasFields Commission Queensland (GFCQ) and the Land Access Ombudsman (LAO) have been established in response to coexistence issues.

The GFCQ was established in early 2012 in direct response to the booming coal seam gas (CSG) and liquified natural gas industries. Its primary role is to manage and improve the sustainable coexistence of landholders, regional communities, and the onshore gas industry in Queensland. The GFCQ does this by:

- facilitating relationships, collaborations and partnerships to support information sharing;
- reviewing the effectiveness of implementation of regulatory frameworks associated with the onshore gas sector; and
- advising key stakeholders on matters related to coexistence and leading practice and management.

The role of the GFCQ has continued to evolve in response to multiple reviews, the evolution of the onshore gas sector and community sentiment.

The LAO was established in 2018 after an independent review of the GFCQ. This review, led by Professor Robert Scott, recommended that an independent dispute resolution body be established to assist with disputes between landholders and CSG companies in relation to existing conduct and compensation agreements (CCAs) and make good agreements (MGAs).

The *GasFields Commission Act 2013* and the *Land Access Ombudsman Act 2017* set out the specific roles and functions of the GFCQ and LAO respectively. The roles and functions of these institutions can be found in Appendix B and C respectively.

The independent Office of Groundwater Impact Assessment (OGIA)<sup>3</sup> was established in 2010 in response to concerns of widespread groundwater impacts from CSG development, particularly in the Surat Basin. OGIA is highly respected in its role of periodically, assessing and managing the impacts of cumulative groundwater impacts including modelling, monitoring and assigning specific management responsibilities to tenure holders. OGIA's primary function as an independent scientific entity is to support water and environmental management, and it is also active in engaging and educating the community on these issues to promote coexistence.

Additionally, within government, various agencies with different administrative and regulatory responsibilities are involved in matters relating to land access and coexistence. For example, the Engagement and Compliance Unit (ECU) within the Department of Resources provides some dispute

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<sup>3</sup> Initially a unit of the Queensland Water Commission, which was dissolved in response to changing water policy and industry needs in 2013.

resolution and engagement functions and is empowered to administer compliance responses to breaches of legislative requirements. Other government departments including DSDILGP and DES (under Chapter 3 of the Water Act), also play a role in facilitating coexistence by assessing and approving resource projects and carrying out compliance on those same activities.

Finally, the Land Court of Queensland plays an important role in facilitating coexistence more broadly by providing a point of final determination for disputes relating to land access agreements. It also facilitates non-binding dispute resolution services for landholders and resource companies in negotiating instruments like CCAs and MGAs.

While many of these entities perform a broader range of functions outside of land access and coexistence, Figure 5 illustrates the role of these entities within the coexistence framework.

Figure 5 – Current roles of entities within the coexistence framework

|   | ASSESSING & MANAGING GROUNDWATER IMPACTS | NEGOTIATING & DEVELOPING CCAs & MGAs | CCA DISPUTES | MGA DISPUTES | INFORMATION, EDUCATION & OVERSIGHT | REGULATION & COMPLIANCE |
|---|--|--------------------------------------|--------------|--------------|------------------------------------|-------------------------|
| Department of Resources                 |  | ✓                                    |              |              | ✓                                  | ✓                       |
| Office of Groundwater Impact Assessment | ✓  |                                      |              |              |                                    |                         |
| Department of Environment and Science   | ✓ *                                      |                                      |              |              |                                    | ✓                       |
| Land Court                              |  | ✓                                    | ✓            | ✓            |                                    |                         |
| Land Access Ombudsman                   |  |                                      | ✓            | ✓            |                                    |                         |
| GasFields Commission                    |  |                                      |              |              | ✓                                  |                         |

\*The role of DES is in management and regulation, not in assessment of impacts

While each of these institutions and agencies have an objective of improving coexistence outcomes between the agricultural and resource sectors, stakeholders have advised that there is considerable confusion around their various roles and responsibilities. It is timely to review these arrangements, in line with the proposed foundations of coexistence, to ensure that they are delivering successful coexistence outcomes and offering coexistence-related services for existing and emerging industries.

### Have your say

4. What is working well with the current institutional arrangements and should be retained?

The scope of this review is limited to institutional arrangements only and does not include a broader review of the land access framework. Additionally, government’s regulatory and compliance roles, and the role of the Land Court as the final arbiter of disputes, are not in scope for the review.

The Department of Resources is seeking to identify and develop solutions to resolve issues with the current institutional arrangements. It will also review whether the jurisdiction of the coexistence institutions can be expanded to assist with emerging industries such as the growth of a critical minerals sector, renewable energy projects, and carbon capture, use and storage projects.

## Summary of feedback received

21 submissions on the draft QRIDP included responses relevant to the coexistence institutional review, as did one of the survey responses. Of these submissions, all supported, or supported with conditions, the proposed review.

Following the closure of submissions, the Department of Resources undertook targeted engagement with internal and external stakeholders to better understand the key issues and regulatory gaps within the institutional arrangements. The consultation process was highly interactive, well-engaged and has revealed strong support for a review of the land access and coexistence institutions.

## Issues

Five key issues emerged from the consultation process.

### **1. The institutional arrangements need to provide support across all land access negotiations**

Feedback identified a gap in the support available to landholders and resource companies to resolve disputes when negotiating land access agreements, particularly CCAs and MGAs. This was primarily raised by peak bodies and landholder advocacy groups.

These agreements form a critical part of Queensland's land access regime, and disputes that arise during the negotiation process can be costly. Currently, an escalating dispute resolution pathway is provided under the land access framework for issues that arise during the negotiation of a CCA. This pathway provides for initial negotiation between the parties, before private non-binding alternative dispute resolution (ADR) (including mediation, arbitration, and case appraisal) can be utilised. Finally, if no agreement has been reached, the Land Court (or alternatively private arbitration where both parties agree) can be utilised to get an independent and binding determination.

During this process, there is no defined role for the land access institutions to assist stakeholders in relation to ADR:

- ECU can conduct informal dispute resolution between parties negotiating CCAs and MGAs prior to the formal negotiation process being commenced under the relevant legislation. However, this role must cease when a negation notice is provided to start the statutory negotiation process.
- The LAO's current jurisdiction is limited to land access disputes between parties to existing CCAs and MGAs and it cannot be engaged for dispute resolution services during the negotiation process.

Outside of the CCA and MGA processes, historical feedback has highlighted a range of other agreements and negotiation processes where dispute resolution services could assist in achieving improved coexistence outcomes. These include disputes about: whether a proposed resource activity is a preliminary activity or an advanced activity to determine whether a CCA is required;



compensation agreements for mining leases and mining claims; and alternative arrangements under an environmental authority.

Stakeholders suggested that there may be value in having a clear and accessible dispute resolution function that could be used for coexistence-related disputes across the lifecycle of resource projects – from exploration through to the surrender of the tenure.

### Have your say

5. Would it improve coexistence outcomes if the jurisdiction of the LAO was expanded to include other dispute resolution functions relating to resource company and landholder interactions, for example, when negotiating CCAs and MGAs?
6. If expanding the jurisdiction of the LAO were to improve coexistence outcomes, which interactions between resource companies and landholders should be included?

## **2. Landholders do not feel empowered to engage in negotiations on land access, including CCAs and MGAs with resources companies**

There was strong feedback from landholders that the current institutional arrangements do not empower landholders in their interactions with the resource industry. This issue highlights the potential information asymmetry that exists between parties.

Landholders have raised concerns about an inability to access the necessary information about processes and negotiation practices to support them in their dealings with resources companies. This relates to knowing where to find available information and whether that information meets the needs of landholders. There were also concerns raised in relation to the lack of outreach or educational forums which landholders can attend to learn about these matters. This imbalance also applies to knowledge and understanding about the regulatory framework that is in place to foster and manage coexistence in Queensland.

Concerns were raised about access to project and property specific information relating to impacts of the proposed development on water resources and land use. While independent groundwater modelling, information and data can be accessed from OGIA, similar assessment on other related matters is not available. Also, there are multiple sources of data and information, and stakeholder feedback reported that it is often unclear to landholders where to get all the necessary information and what information and data is relevant to inform their negotiations with industry. For example, pre-development property conditions may be useful to a landholder in negotiating a CCA.

As a result, landholders who are unfamiliar with the nature of resource projects occurring on their land feel disadvantaged when negotiating CCAs and MGAs. Examples include the issues being raised around subsidence from CSG activities in the Surat Basin, and concerns regarding clarity around where the responsibility for the issue rests within government and the coexistence institutions.

The provision of accessible information and educational services will also be essential for landholders hosting emerging industries such as carbon capture and storage on their land. Understanding the nature of impacts from these activities will ensure landholders can make informed decisions in their dealings with industry.

## Have your say

7. Are there other ways the coexistence institutions could help to empower landholders in their dealings with resource companies?
8. Would a coexistence institution focussed on providing information and educational support to key stakeholders help to empower landholders in negotiating CCAs and MGAs?
9. What information and independent assessments are required to empower landholders in negotiations with resource companies?

### 3. The institutional arrangements need to capture the entire resource sector and could be expanded to include renewable energy projects and other emerging industries

Resource industry stakeholders highlighted that some land access institutions, such as the GFCQ, are currently designed on a singular commodity basis. As such, there are limited support services or functions available for other established commodity types and emerging industries, such as renewable energy projects. For example, the GFCQ currently offers a range of engagement services but only for matters pertaining to onshore gas activities. Similarly, the LAO does not offer dispute resolution for prospecting permits, mining claims or mining leases under the *Mineral Resources Act 1989*.



Effective information provision, education and dispute resolution services are essential to allow stakeholders to make informed decisions regarding the relevant land access process and resource activities more generally. Such services are critical to support stakeholders as industries develop and mature, and the context of issues change over time.

A gap has been identified in the current institutional arrangements for minerals, coal, renewable energy projects and emerging industries such as cobalt or carbon capture and storage. Stakeholders

suggest the institutional arrangements need to be future proofed to offer services for coexistence issues as they relate to existing and emerging industries that may have similar coexistence opportunities and challenges.

## Emerging issues – critical minerals and renewables

While coexistence issues continue to persist with traditional commodity types such as onshore gas, these industries have evolved dramatically in the past decade and are now considered mature markets. As the Queensland economy shifts in response to global trends such as decarbonisation, so too will the composition of industries in regional Queensland such as the critical minerals and renewable energy sectors. The emergence and expansion of these industries will also bring a range of coexistence issues.

### Critical minerals

There is significant economic development potential in untapped mineral reserves across a range of commodities such as lithium, graphite, cobalt, titanium and rare earth elements within Queensland. In the opportunity to identify and establish underground mine and resource development capacity to extract ore, there is ambiguity around the current institutional arrangements for land access and coexistence between industry and landholders.

As part of the consultation and feedback on the draft QRIDP relating to the land access institutions, resource industry stakeholders highlighted that the current institutional arrangement does not capture minerals, coal, renewable energy projects or critical minerals, with most of the current land access bodies only focusing on petroleum activities.

### Renewable energy projects

There is an emerging concern that the issues that relate broadly to coexistence may also present for the co-location of renewable energy projects with regional mining operations including critical minerals and agricultural activities, and how all activity can progress safely, economically, and sustainably, with as little waste and environmental impact as possible. For example, the current institutional arrangements do not cover a scenario where a resources company seeks to extract viable minerals on land where a renewable energy project has been developed. Coexistence issues will differ depending on the type of renewable energy project and consideration will need to be given to the difference in the assessment and approval processes for renewable projects compared to resources projects.

The existing land access and coexistence institutional arrangements can provide learnings to inform an institutional arrangement for the mining of critical minerals, the production of renewable energy. This could help cultivate simplicity and clarity in institutional arrangements moving forward, allowing emerging industries to grow effectively.

## Have your say

10. How could the design of the institutional arrangements be future-proofed to accommodate emerging coexistence issues and new industries?

#### **4. Independence and branding are particularly important and there is a risk of perceived bias if dispute resolution services and broader industry engagement or advocacy roles are combined**

There was very strong support for the clear division of roles and functions between institutions and agencies to ensure the integrity of decision making and avoid perceived conflicts when interacting with clients.

Additionally, concerns were raised about ensuring the independence of key institutions such as the LAO and OGIA. This independence is seen as vital to ensuring their effectiveness in supporting coexistence outcomes by landholders. Concerns were raised about the perceived independence of the GFCQ and government.

Additionally, in relation to the LAO, the branding that comes with the “ombudsman” title was also seen as important by stakeholders. The impartial nature of the ombudsman brand and its role in resolving disputes promote landholder confidence in approaching the service. Stakeholders suggested that government agencies should focus on the core business of policy, regulation and compliance and reduce involvement in other functions such as information provision and dispute resolution.

#### **Have your say**

11. Why is it important to have an independent ombudsman to assist in resolving disputes on coexistence matters?
12. Could the current functions of the LAO be delivered by a different dispute resolution entity?

#### **5. The land access space is crowded, with each entity performing slightly different (yet sometimes overlapping) roles and functions**

Stakeholder feedback identified that there are too many coexistence institutions and there is confusion about their respective roles and functions. This means that landholders do not know which institution to approach when they require information or assistance with an issue.

*“Stakeholders are confused by the number of entities (including regulators, the commission, and the Land Access Ombudsman) that perform roles and provide information within the land access and coexistence space. Specifically, landholders are often unaware of who to ask for, and how to access information relevant to land access queries and disputes” (Queensland Audit Office, Managing coal seam gas activities, Report 12: 2019-20).*

The institutional arrangements for land access and coexistence have evolved and the functions of the GFCQ and the LAO are reflective of issues that were identified at the time they were established. There has been no holistic review of these functions to ensure they are still relevant and necessary.

The number of entities and the roles and functions that they each perform in the land access and coexistence domain make it difficult for landholders to know the correct entity to contact, and how to access information. Examples were provided of stakeholders seeking advice from multiple coexistence institutions, reflecting the lack of clarity around the differences between the roles, responsibilities, and functions of the different institutions. On the other hand, ‘advice shopping’ by

stakeholders is occurring and is undesirable because it occupies internal resources and inflates the cost-of-service delivery, while also increasing the risk of conflicting information being provided.

The GFCQ currently has 14 legislative functions under the *GasFields Commission Act 2013* (see Appendix B). Stakeholders suggested that amending and/or consolidating these functions would assist in clarifying the role of the GFCQ. These functions are difficult for GFCQ to fulfill and could be viewed as potentially making it difficult to focus on fulfilling its key role of promoting coexistence. It could also be argued that there is some duplication with other functions across government, including some of the engagement functions currently provided by ECU. In terms of a proposed role for the GFCQ, stakeholders expressed a view that it was best placed to undertake education and information sharing functions, which would go towards mitigating the information asymmetry that currently exists.

By contrast, the LAO has a narrow jurisdiction that limits its functions to resolving disputes that arise in relation to existing CCAs and MGAs (see Appendix C for the LAO's functions). The majority of enquires made to the LAO since its inception relate to matters that fall outside of its jurisdiction. Between September 2018 and June 2021, the LAO received 81 enquires, of which only 14 were in, or potentially in, jurisdiction. In the 2021-22 financial year, the LAO received 50 dispute enquires, of which 49 were out of jurisdiction, with one case not proceeding to investigation after assessment.

Stakeholders have expressed a view that the LAO's functions should be expanded to provide dispute resolution services in relation to disputes arising from other coexistence negotiations. This would provide greater clarity for landholders about where to go when a dispute in a coexistence process arises and potentially enhance coexistence outcomes.

Due to the concerns about the lack of clarity and potential duplication of roles, government is interested in exploring ways in which the current institutional arrangements could be better structured. This could include whether greater clarity could be reached if the number of actors in the institutional arrangements were reduced, or roles and responsibilities better clarified, and unnecessary and duplicative functions removed.

### Have your say

13. Are there too many institutions operating in the coexistence space or would clarifying the roles and functions of the current institutions assist stakeholders in understanding where to go for relevant information and services?
14. Would a single land access entity that included dispute resolution, information and education services and impact assessment and management functions be an effective and efficient arrangement to promote coexistence?
15. What would be the barriers to such an arrangement, if any?

## Funding of the institutional arrangements

There are a range of funding models for the current coexistence institutions. The GFCQ and LAO are both currently funded from consolidated revenue, meaning taxpayers ultimately are paying for the services provided. OGIA is funded through an industry levy.

Any changes to functions or structure will need to be considered in terms of the resource requirements and funding arrangements that will be needed to support coexistence arrangements going forward.

An industry levy may be one such option, noting that OGIA is already funded through such a mechanism. It is also noted that other industry Ombudsman schemes are generally funded through industry membership levies and user charges. More detailed work will be undertaken to understand the appropriateness and efficacy of funding arrangement options moving forward, should any changes to functions or structure be made.

### Have your say

16. Would you be supportive of a revised institutional arrangement that required greater levels of funding but provided better coexistence outcomes?

## Appendix A – Draft QRIDP consultation overview

The Department of Resources conducted public consultation on the draft QRIDP with submissions invited between 28 November 2021 and 11 February 2022. The three-month consultation period included an online survey and written submissions. A roadshow was also undertaken to present the draft QRIDP to various regions across Queensland. This occurred in person and online for some locations due to COVID-19 impacts. A total of 84 written submissions and 75 survey responses were received on the draft QRIDP. These were received from a range of stakeholders including:

- Resource companies
- Research institutes
- Statutory bodies
- Conservation groups
- Legal centres
- Individuals
- Industry peaks
- Local governments
- Landholder advocacy groups
- Think tanks
- Farmers

## Appendix B – GasFields Commission functions

- (1) The commission has the following functions under the *GasFields Commission Act 2013* —
  - (a) facilitating better relationships between landholders, regional communities and the onshore gas industry;
  - (b) reviewing the effectiveness of government entities in implementing regulatory frameworks that relate to the onshore gas industry;
  - (c) advising Ministers and government entities about the ability of landholders, regional communities and the onshore gas industry to coexist within an identified area;
  - (d) in response to requests for advice from the chief executive under the Regional Planning Interests Act 2014 about assessment applications under that Act, advising that chief executive about the ability of landholders, regional communities and the resources industry to coexist within the area the subject of the application;
  - (e) making recommendations to the relevant Minister that regulatory frameworks and legislation relating to the onshore gas industry be reviewed or amended;
  - (f) making recommendations to the relevant Minister and onshore gas industry about leading practice or management relating to the onshore gas industry;
  - (g) advising the Minister and government entities about matters relating to the onshore gas industry;
  - (h) obtaining particular information from government entities and prescribed entities;
  - (i) obtaining advice about the onshore gas industry or functions of the commission from government entities;
  - (j) supporting the provision, to the community and stakeholders, of information prepared by appropriate entities on health and wellbeing matters relating to the onshore gas industry or geographical areas in which the onshore gas industry operates;
  - (k) facilitating appropriate entities to undertake community engagement and participation in initiatives about assessing health and wellbeing concerns relating to onshore gas activities;
  - (l) publishing educational materials and other information about the onshore gas industry;
  - (m) partnering with other entities for the purpose of conducting research related to the onshore gas industry;
  - (n) convening advisory bodies to assist the commission to perform a function mentioned in paragraphs (a) to (m).



## Appendix C – Land Access Ombudsman functions

The Land Access Ombudsman has the following functions under the *Land Access Ombudsman Act 2017*—

- (a) to investigate, and facilitate the timely resolution of, land access disputes;
- (b) to refer or recommend to departments the investigation of—
  - (i) possible offences under section 53, 54 or 55; or
  - (ii) possible breaches, relating to access to land, of resource authorities;
- (c) to identify, and advise government entities about, systemic issues arising from land access disputes;
- (d) to promote public awareness of the ombudsman’s functions under paragraphs (a) to (c);
- (e) other functions conferred on the ombudsman under this Act or another Act.

## **Appendix D – Related coexistence work and initiatives**

The Queensland Government is progressing related initiatives that together, with the review of the principles for coexistence and the coexistence institutions, seek to improve coexistence outcomes:

### **CSG-induced subsidence**

The GFCQ, in partnership with OGIA, are leading a research project into CSG-induced subsidence impacts and risks to farming operations. The research project builds on the work of OGIA in relation to monitoring ground movement and interpreting subsidence impacts from CSG activities in its Underground Water Impact Report (UWIR). The UWIR includes a comprehensive assessment of subsidence in cultivated areas. The research project is expected to be delivered in early 2023.

The GFCQ has also commenced a review of the adequacy of the current regulatory framework with a view to identifying potential regulatory or other enhancements relating to CSG-induced subsidence. A draft 'Regulatory review of coal seam gas-induced subsidence' discussion paper was released in late October 2022 and includes eight recommendations to enhance the regulatory framework and one recommendation for the adoption of principles to support implementation of the other recommendations. The research outcomes and the regulatory review will help to inform government's response to CSG-induced subsidence.

### **Review of the *Regional Planning Interests Act 2014* (RPI Act)**

The GFCQ commenced a review of the RPI Act assessment process in February 2021 and made seven recommendations to government. Four of these recommendations were supported by government and the remaining three recommendations were supported in principle. Government is working to implement the recommendations of the GFCQ Review.

### **Queensland Energy and Jobs Plan (the Plan)**

As part of the Plan and the associated Queensland Renewable Energy Zone (QREZ) development, the Queensland Government is committed to improving land use mapping to help inform decision making. The key desired outcome is coexistence, not conflict, where Queensland's critical industries are all supported to grow and do not impede on environmental priorities. Land use mapping informs QREZ development planning, with QREZ planning to inform and complement Infrastructure Plans and Regional Plans (Action 1.4 in the Plan).

### **Regional Plans and Improved Mapping**

Some regional plans—set under the *Planning Act 2016*—pre-date emerging industry activities like the renewable energy industry. The Queensland Government will ensure that, when updated, the regional plans capture the changing and competing demands for land use.

Additionally, as the Queensland Government works towards achieving its emissions and clean energy targets, more renewable energy projects will be developed. This presents an emerging need to manage coexistence between the location of new renewable energy projects in relation to existing resources projects, agricultural activities and amenity.

The Queensland Government will develop and maintain mapping layers on the GeoResGlobe and Queensland Globe to understand the location of projects in relation to each other, identify appropriate sites for proposed renewable energy projects, and to see where coexistence may be required.