**The right to say no** – presentation by Property Rights Australia chairman, Dale Stiller

Meeting at Chinchilla 26th June 2016

**CSG Power – looking to Remedy Failure**

What is a very good indication that there is a major problem?

One indication is the diversity of the background of those individuals and organisations speaking out on the one issue.

Gas industry advocates try to pigeon hole those debating against CSG into an environmental category. Yet I am here as Chairman of Property Rights Australia (PRA), an organisation which has fought against many environmental inspired imposts on rural property owners, to address the issue about coal seam gas that is well and truly on the nose.

That is because fundamentals for the future of agriculture have been left unprotected such as both quantity & quality of water and the protection of high quality soils. There is a fight to bring justice for people, landowners being treated with little respect and common decency.

Wandoan grazier, Peter Webster, wrote earlier this year of what he called unconscionable conduct:

> *"I have been involved with QGC for nearly a decade and have seen firsthand the total lack of respect and integrity shown to primary producers, in general they treat them like third class citizens.*
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> *Q.G.C. is a Company that has used pressure, intimidation and threats to access primary producers land. Basically if you don't sign a contract, Q.G.C. threatens to take you to the land court. There is no goodwill from them at all and because governments who don't care and want the royalties are simply putting their head in the sand and are allowing Australian citizens to be bullied and threatened legally by them.*
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> *The government has allowed this through legislation that basically gives the resource industry the right to EXPLOIT people. If you are really strong you will get a better compensation deal but what about the people who aren't? They are simply steam rolled.*
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> *I myself was threatened with land court at my OWN kitchen table on my OWN property by two separate QGC land access representatives."*

Across all the CSG companies making the threat to take a landowner to the land Court was widely used and the provision to do so still exists under Section 500A of the Petroleum and Gas Act which provides that a Conduct & Compensation Agreement (CCA) is not required prior to entry to land once a Land Court application has been commenced.

Is this the much talked about "co-existence"? Co-existence implies a mutual agreement that has benefits to both parties. Instead coexistence has come to mean for landowners doing your best to work in your business around this new business that government has allowed to be overlayed across your land. It has no similarity to a true commercial business deal.

Last month Peter Shannon a lawyer who specialises in representing landowners on resource matters reflected on the standard of protections for landowners post the overhaul of land access in 2010 and

how gas companies are treating landowners in negotiation since the low oil prices has taken gas prices south:

> *"Such protection is not mirrored for landholders, notwithstanding that government forces the dealings and the "co-existence" upon them.*
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> *There are no industry-specific Codes of Conduct in place, no Ombudsman procedures and no bonds that landholders can access to ensure good behaviour, let alone address bad behaviour. Unreasonable and belligerent conduct on the part of companies is thereby indirectly rewarded. Misconduct leads to negotiation fatigue and capitulation."*[1]

Is government improving legislation to create better balance between the gas giants, very large multinational companies and individual landowners? The short answer is no. On September 9 2014, the Newman government passed the Mineral & Energy Resources (Common Provisions) Bill. PRA at the time made the call that it was the second greatest taking of Qld property rights surpassed only by Beattie's Vegetation Management Act.[2]

MERCP was passed but left unproclaimed, the incoming Palaszczuk government promised to reverse all the ills of the MERCP but in the amending MOLA Bill which while restoring objection rights did not restore all of landowner property rights. P & E Law in its May 2016 Newsletter wrote of their concern of remaining significantly disadvantage land owners which includes:

> *"The proposal to allow parties to "Opt-Out" of the statutory framework will lead to more misleading and deceptive conduct and unconscionable conduct by gas companies and takes away existing protections and safeguards such as access to the Land Court in the case of disputes;*
>
> *The 600m rule protecting landholders from exploration around their house is proposed to be abolished. This means mining company employees and contractors can approach within 200m of households without consent"*

Left unaddressed is a nasty little sleeper in the MERCP Regulations - Conduct of a Conference, section 89 where a landowner can't be represented by a lawyer at a conference unless the coal seam gas company agrees.

This clearly demonstrates that the individual landowner is left alone in a vulnerable state with few protections. The best protection currently available for landowners is the payment of professional costs when negotiating a CCA. Yet resource advocacy organisations are lobbying to cap these professional costs. But how the recovery of professional costs is framed is that it is focused on the landowner signature on a CCA and this provides further distortions to true protection.

The system to this day is woefully inadequate as far as landowners are concerned. Governments have avoided their responsibility to provide across the board legislative protections for landowners. Sure there have been improvements; but glacial slow incremental wins against the many, many impacts experienced by landowners from the CSG industry is no longer good enough. Landowners need that emergency button to be able to pull things into line.

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[1] https://www.shine.com.au/blog/coal-seam-gas-law/gas-companies-need-code-of-conduct/

[2] http://evacuationgrounds.blogspot.com.au/2014/09/pra-regional-queensland-deserves-better.html

The right to say no will not stop the CSG industry going ahead – but it can stop CSG companies from intimidating people.

Currently landowners are compelled to enter negotiations with very large companies which enjoy vastly superior powers of capital, in-house legal experts, information and legislative backing. Negotiations cannot be passed off as "just another commercial negotiation"; because in any standard commercial negotiation, both parties have the option to walk away. Under existing resources legislation, landowners have no such option. Some may be good negotiators and some not so good. But whatever their capability, they do not have the option if saying "this deal is not to my advantage and I do not wish to continue". Governments have tied them to the negotiation table against very large companies which do have the freedom to walk away if they so choose – at any time and perhaps after great inconvenience on the land owner.

Allowing such a disparity in power upon a section of the community is an insult to the tenets on which civil society is based.

'The right to say no' will ensure landowners have a least some control over a situation that currently creates enormous pressure and stress. It will:

- Ensure that true commercial negotiation can occur without fear or intimidation tactics able to be used by the resources sector.

- Allow all landowners – both those who want resource development on their land and those who do not - to proceed as they choose without any stigma

- Assist to uphold the principle that agricultural production should not be permanently impaired.

- Provide landowners greater ability to negotiate amenity of life protections for the family home on the farming or lifestyle property

- Along with good planning laws assist to protect Australia's valuable, good quality agricultural land and valuable, clean, reliable sources of water both sourced from overland flow and from underground aquifers

- Ensure that Landowners are not disadvantaged and actually share a small benefit from resource activities.

Surely it should not be too much to ask for the right to say no to be extended ASAP at the very least to those landowners with scientifically identified high quality agricultural soils. The biggest beneficiaries of this small action will society as a whole with protection of food security.

If in the future for there to be a fair and mature relationship between CSG companies and landowners, agreements should be on a commercial basis where there is a mutual profitable outcome, protects the landowners long term assets of soil & water and that the landowner should not have to agree with something that is detrimental to their business.

Thank you