



29 May 2015

Committee Secretary
Senate Standing Committees on Environment and Communications
PO Box 6100
Parliament House
Canberra ACT 2600

By email: ec.sen@aph.gov.au

Dear Committee Secretary,

RE: Landholders' Rights to Refuse (Gas and Coal) Bill 2015

The National Farmers' Federation (NFF) is pleased to provide a submission to the current inquiry into the *Landholders' Rights to Refuse (Gas and Coal) Bill 2015*.

It is the NFF's view that landholder rights impacted by mining and extraction licences should be protected by strong regulatory and scientific frameworks. The NFF does recognise that the mineral and gas industries have a right under State and Territory legislation to explore and mine across the landscape. However, the NFF notes that further work is required to ensure there are strong regulatory frameworks with clearly specified legal rights, protections and obligations consistent across all jurisdictions. As it currently stands, the NFF is of the view that this bill does not contain the correct mechanism to deliver these regulatory protections and as such the NFF does not support this bill.

It is an unreasonable use of the Parliament's powers to seek to override Section 51 of the Constitution that establishes state governments as the law makers in relation to land-use. In NFF's view it is a clumsy and simplistic application of the heads of power provided by the corporations provisions of the Constitution. Additionally, the NFF would seek further clarification as to whether the bill would changes the ownership/access abilities of the government to gas and mineral resources, by giving the right of access decision to the landholder.

The NFF is concerned about the long-term sustainability of not just the interests of today's farmers but also of tomorrow's farmers. Sustainability has many facets including the environmental, economic and social considerations of farmers and their communities. The primary focus for the NFF is protecting the agricultural capacity of our water sources and soils to meet increased food and fibre demand.



In NFF's view, when States, Territories or the Commonwealth regulate activities associated with mining and on-shore gas, the following principles should be adhered to:

- 1. Scientific information and monitoring should underpin exploration and development.** Investment in robust scientific information and pre and post impact monitoring are critical to the protection of the natural resources on which farmers' rely. Governments have a clear responsibility to invest in information, monitoring and transparent compliance to help inform the regulation of the mining and petroleum sector, including the issuing of development approval and the assessment of cumulative impacts. Ongoing monitoring should be the responsibility of the developer and should form part of the condition set of development approval.
- 2. The profitability and sustainability of food and fibre production must not be compromised.** Australia's mineral and petroleum industries must recognise and avoid any perverse and unintended impacts across the landscape. This includes direct and indirect as well as current and future impacts arising from exploration, mining and production activities, beyond the confines of the licence area and the life of the licence.
- 3. Australia's reputation for safe, clean quality food and fibre must not be compromised.** Australian agriculture plays a crucial role in supplying fresh quality food to Australia and the world and to global food security. The safety of Australia's food must not be jeopardised by the mineral and petroleum industries.
- 4. There should be no net decline in water quality or water quantity.** Many farmers are concerned about the potential for contamination of surface and groundwater as well as impacts on water volume of aquifers. NFF recommends that mineral and petroleum industries are required to show no net decline in water quality and no net loss in water quantity for third parties (stock & domestic, irrigation, town water supplies) against benchmark conditions.
- 5. Water management must be National Water Initiative consistent.** As the blueprint for Australia's water reform, all water use or interception by the mineral and petroleum industries must be consistent with the National Water Initiative provisions, including NWI consistent water planning and management.
- 6. Social, economic and environmental outcomes must not be compromised.** The nature of mineral and petroleum industries means that they may have both positive and negative economic, environment and social effects. The mineral and petroleum industries must take all reasonable steps to avoid or minimise the adverse effects on communities, landholders and the environment.



In NFF's view, the key to productive relationships between agriculture and mineral and petroleum industries is relationships built on science, genuine trust, goodwill and appropriate community engagement. Agriculture and the mineral and petroleum industries underpin the social, environmental and economic fabric of rural and regional communities. The social licence of mineral and petroleum industries is dependent on constructive, transparent and quality engagement and participatory decision-making processes over time. Moreover, best practice engagement should include essential elements such as:

- Transparency and full disclosure;
- Collaboration;
- Inclusiveness;
- Ethical and responsible business practice;
- Integrity and appropriate behaviour;
- Capacity building; and
- Listening and responding to community concerns.

7. Landholder rights impacted by mineral and petroleum licences must be protected by strong regulatory frameworks. NFF recognises that the mineral and petroleum industries have a right under State and Territory legislation to explore and mine across the landscape. However, NFF notes that further work is required to ensure there are strong regulatory frameworks with clearly specified legal rights, protections and obligations consistent across all jurisdictions. This legal framework should encompass responsibilities where mining or petroleum activities are abandoned or "orphaned".

8. Land access agreements should recognise landholder and occupier property rights, and the negotiations must be respectful of farmers. NFF recognises that land access agreements may be the only time where landholders can actually seek to positively influence the process, and receive some protections and assurances from the mineral and petroleum industries. However, it is worthwhile noting that farmers may be overwhelmed, confused and under stress and therefore should seek legal advice. Access agreements should be activities based, and subject to renegotiation should the schedule of activities change.

The companies must undertake best practice during and in finalising land access negotiations, and that such agreements must include among others:

- Appropriate recompense for the full range of costs including the use of assets and access;
- Clear agreements with landholders regarding the disposal and acquisition of any exploration/extraction licence;
- Mining practices including complying with drilling legislation, and the use of chemicals;
- Biosecurity arrangements;
- OH&S requirements;
- Rehabilitation of land;



- Appropriate insurance and bond arrangements;
- Clear specification of responsibility for, and insurance arrangements to cover, accidental damage to mining infrastructure as a result of farming operations;
- Arrangements for normal agricultural operations;
- Any and all conduct whilst operating within the landscape; and
- Protocols regarding notification prior to access.

The NFF encourages the development of a strong, transparent and scientifically based regulatory framework and a supported, informed and level playing field when it comes to negotiating access to farm land. The mechanisms contained in this bill are not the solution to achieving this level playing field. Rather it may place landholders in uninformed positions which will disadvantage both agriculture and mining industries.

Whilst a robust scientific information and monitoring framework should always act as the primary framework underpinning exploration and development, other options beyond the proposed legislative method contained within this bill could also be explored. In New South Wales, gas developers and agricultural industry bodies developed and signed onto a set of guiding principles to facilitate a more positive relationship between the two industries. The principles can be accessed [here](#).

With a focus of fostering trust and good will, the principles in effect offer a right of veto to landholders. This collaborative approach between farmers, gas companies and state government regulators offers a potential alternative solution that avoids heavy handed legislative regulation. Additionally, NFF members in other jurisdictions have expressed interest in exploring a similar approach to that of the NSW principles. There may be an opportunity for the government to support the sharing of the benefits of such an approach in these interested jurisdictions.

For the reasons discussed in this submission, NFF recommends that the Senate does not pass this bill. We urge government to continue to strengthen the scientific monitoring frameworks that should underpin all developments of rural land, and explore alternative means by which to strengthen the right of Australian landholders.

Yours sincerely,

SIMON TALBOT
CHIEF EXECUTIVE OFFICER