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Madeline Taylor

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Trends in current Australian agricultural policy and land resource management

Abstract

Food security and the human right to food, as recognised under Article 25 of the *Universal Declaration of Human Rights* and Article 11 of the *International Covenant of Economic, Social and Cultural Rights*, are intrinsically linked. Both Articles recognize that access to agricultural land and security of tenure is essential to achieving food security. The right to food requires that each individual, alone or in concert with others, has physical and economic access at all times to adequate food or means for its procurement. Primarily, however, the right to food requires that: States refrain from taking measures that may deprive individuals of access to productive resources on which they depend when they produce food for themselves (the obligation to respect); that they protect such access from encroachment by other private parties (the obligation to protect); and that they seek to strengthen people's access to and utilization of resources and means to ensure their livelihoods, including food security (the obligation to fulfil). This paper explores and assesses three contemporary policy instruments in the area of agricultural production and unconventional gas operations in Australia against the right to food and security of tenure. It examines the new natural resource governance proposals in *The Agricultural Competitiveness Green Paper*, *The Regional Planning Interests Act 2014* (Qld) protecting prime agricultural land and *The Multiple Land Use Framework* developed in recognition of the conflict arising over land access and land use.

Keywords

natural resource management, food law, agricultural land protection, coal seam gas, food security

Disciplines

Food and Drug Law

TRENDS IN CURRENT AUSTRALIAN AGRICULTURAL POLICY AND LAND RESOURCE MANAGEMENT

MADELINE ELIZABETH TAYLOR*

Food security and the human right to food, as recognised under Article 25 of the *Universal Declaration of Human Rights*¹ and Article 11 of the *International Covenant of Economic, Social and Cultural Rights*, are intrinsically linked. Both Articles recognize that access to agricultural land and security of tenure is essential to achieving food security. The right to food requires that each individual, alone or in concert with others, has physical and economic access at all times to adequate food or means for its procurement.² Primarily, however, the right to food requires that: States refrain from taking measures that may deprive individuals of access to productive resources on which they depend when they produce food for themselves (the obligation to respect); that they protect such access from encroachment by other private parties (the obligation to protect); and that they seek to strengthen people's access to and utilization of resources and means to ensure their livelihoods, including food security (the obligation to fulfil). This paper explores and assesses three contemporary policy instruments in the area of agricultural production and unconventional gas operations in Australia against the right to food and security of tenure. It examines the new natural resource governance proposals in *The Agricultural Competitiveness Green Paper*, *The Regional Planning Interests Act 2014* (Qld) protecting prime agricultural land and *The Multiple Land Use Framework* developed in recognition of the conflict arising over land access and land use.

INTRODUCTION

In November 2011, the Senate Rural Affairs and Transport References Committee released its *Interim Report: The Impact of Mining Coal Seam Gas on the Management of the Murray Darling Basin* ('the Report').³ The Report found that much of the land affected by coal seam gas is productive agricultural land that, if properly managed, will remain a valuable resource for many generations. The competition among various uses of farmland has recently been increased by policies favouring unconventional gas, which leads to competing resource claims on the part of local resource users, a lack of tenure security and consequently, food insecurity.

This paper explores and assesses three contemporary policy instruments in the area of agricultural production and unconventional gas operations in Australia: The new natural resource governance proposals in *The Agricultural Competitiveness Green Paper*, *The Regional Planning Interests Act 2014* (Qld) protecting prime agricultural land and *The Multiple Land Use Framework* developed in recognition of the conflict arising over land access and land use.

* Madeline Elizabeth Taylor holds a Bachelor of Laws (Hons.) from Bond University. She is a PhD and Candidate and Research Fellow for the Centre of Commercial law at Bond University.

¹ General Assembly resolution 217 A (III).

² E/C.12/1999/5, para. 6.

³ www.aph.gov.au/senate/committee/rat_ctte/mdb/interim_report/report.pdf.

AGRICULTURAL POLICY PRINCIPLES IN AUSTRALIA

Successive governments in Australia have played an active role in promoting 'intensive farming practices, farm consolidation, displacement of smaller, less 'efficient' farmers, and developing better business management capacities'.⁴ In addition, the regulatory path has been cleared for agricultural intensification through 'light touch' environmental policies, and encouraged market development by advocating and negotiating international free-trade agreements. Consequently, it creates a production environment that, while not exclusionary, is unfavourable to alternative models of agri-food networks.⁵

Australian agriculture is largely unsubsidised, and is export-oriented, with 60% of total production sold abroad, equating to some 76% of the total gross value of farming. Producing for export to the international market, but receiving very little government financial support and direction, Australian farmers have adopted the latest technologies and management systems to increase output and improve efficiency.⁶ Farmers have also embraced self-help strategies to improve their business operations either independently or in association with the peak organisation, the National Farmers' Federation ('NFF'). The NFF has supported federal government initiatives to pursue greater global competition, the reduction of tariffs and the elimination of other market 'distortions' such as import restrictions and farm subsidies.⁷

Australia does not hold a large amount of arable cropping land and many of the existing farmed areas are undergoing acidification and other forms of soil degradation as part of the intensive farming practices that have been in place since the 1960s. Water availability for agriculture in light of the competing demands of coal seam gas is also evident. Further, according to Lawrence et.al., 'agricultural productivity is not increasing at a level which will guarantee food production increases that have occurred in earlier decades'.⁸

THE CO-EXISTENCE OF COAL SEAM GAS AND CROPPING LAND

The removal of prime agricultural land through coal mining, and coal seam gas ('CSG'), is of particular concern for agricultural policy and natural resource management in Australia. In the Queensland Darling Downs region, one of the most fertile and productive in Australia, 18,000 CSG wells have been approved by , representing a substantial decline in arable farming lands.⁹ It has been estimated by 2020 mining activities (including CSG) could be worth AUD\$16 billion per annum to the State of Queensland, while agriculture could be worth some AUD\$2.2 billion per

⁴ (Dibden & Cocklin, 2005, p. 136)

⁵ (Andre'e, Dibden, Higgins & Cocklin, 2010)

⁶ Dibden J, Cocklin C, 2005. Sustainability and agri-environmental governance. In: Higgins ,V Lawrence G (Eds.), *Agricultural Governance: Globalisation and the New Politics of Regulation*. Routledge, London, pp. 135e152.

⁷ Gray I, Lawrence G, 2001. *A Future for Regional Australia: Escaping Global Misfortune*. Cambridge University Press, Cambridge.

⁸ Geoffrey Lawrence, Carol Richards and Kristen Lyons, 'Food security in Australia in an era of neoliberalism, productivism and climate change' *Journal of Rural Studies* 29 (2013) 38.

⁹ Business Day, 2011. Mining is a Mint for Some and Crumbs for Others Available at: <http://www.businessday.com.au/business/mining-is-a-mint-for-some-andcrumbs-for-others-20110525-1f4gi.html>.

annum.¹⁰ It is estimated that the mining industry will also contribute another AUD\$1 billion yearly in terms of royalties. CSG lies under some of the most productive farmland in Australia, and the wells needed to extract the gas will render this land unsuitable for farming, resulting in a decline in food production.

Chen and Randall examine the economic contest between coal seam gas and agriculture on prime agricultural lands in the Darling Downs region.¹¹ Their findings highlight that the economic royalties from CSG provide on average 10% of total mining rents to the government, and are insufficient to defeat economic revenues from agriculture. Further, Hogan and McCallum suggest that Australia is not gathering the total substantial minerals mining rents available compared to Norway which applies a 50% tax on mining activities.¹² However, employment generated from CSG for Australians and the company taxes collected by the Commonwealth government are not to be discounted. Chen and Randall argue:

Agriculture-only does not defeat coexistence if only 10 percent of the CSG rents are captured in Australia, while coexistence comes out ahead if 30 percent of rents are captured... Our results show that the economic contest between CSG and agriculture is closer than we may have thought: under some plausible scenarios, the long-term economic net benefits from agriculture-only exceed those from CSG-only and CSG-agriculture coexistence cases.¹³

Some would argue that there is a national interest in preserving the very best farmland for agriculture, even if the economic argument for CSG development is strong.¹⁴ However, the trade-off of CSG for the best prime agricultural land does not present a compelling argument according to Chen and Randall. CSG offers the prospect of several decades of lucrative extraction but it is reasonable to expect environmental costs, some of them potentially substantial in cumulative effect. While current projections for CSG are for high and stable commodities prices for the life of the planned projects, the extractive industries historically have experienced cycles of boom and bust.

THE AGRICULTURAL COMPETITIVENESS GREEN PAPER

Australian agriculture recorded productivity growth of some 1.8% per annum, but in the most recent decade productivity has dropped to 1.3% per annum.¹⁵ While this fall in productivity growth has been attributed to such events as drought and climate change, the main cause is

¹⁰ Fraser A, 2011. Battle between Mining and Agriculture Threatens \$22bn in Coalseam Gas Projects Available at: <http://www.theaustralian.com.au/business/battle-between-mining-and-agriculture-threatens-22bn-in-coal-seam-gasprojects/story-e6frg8zx-1226049435238>.

¹¹ Chen C and Randall A 2013, 'The economic contents between coal seam gas mining and agriculture on prime farmland: it may be closer than we thought' *Journal of Economic and Social Policy*: Vol. 15: Iss. 3, Article 5.

¹² Hogan L and McCallum R. (2010, October). *Non-renewable resource taxation in Australia*. Report prepared for the AFTS Review Panel, ABARE–BRS, Canberra.

¹³ Chen Cindy and Randall Alan, 'The Economic Contest Between Coal Seam Gas Mining and Agriculture on Prime Farmland: It May Be Closer than We Thought' (2013) *Journal of Economic and Social Policy*: Vol. 15: Iss. 3, Article 5, 16-17.

¹⁴ Dart P. (2011, May 26). Coal seam gas a risk to food security. *The Conversation*. Retrieved 10 September 2013 from <http://theconversation.com/coal-seam-gas-arisk-to-food-security-485>.

¹⁵ PMSEIC, 2010. Australia and Food Security in a Changing World. The Prime Minister's Science, Engineering and Innovation Council Canberra, 16.

purported to be the lack of investment by the state in agricultural R&D.¹⁶ As part of declining government support for agricultural policy, the Australian government removed much of the funding from agricultural R&D during the past three decades. The Australian government has relied on private enterprise and the corporate agribusiness sector, in particular, to make the necessary investments. There are now calls for the state to increase public investment to at least 5 % of the gross value of agricultural production, from the current 3%, so as to return to the investment levels of the 1970s.¹⁷

The most recent contribution of the Australian Government to the future direction of its agricultural policy is the *Agricultural Competitiveness Green Paper* (2014) ('The Green Paper'). The Green Paper's aim is driven by the Australian governments' objective 'to achieve a better return at the farm gate to ensure a sustainable and competitive Australian agriculture sector'.¹⁸ Its strategy is 'to improve the competitiveness and profitability of the agriculture sector, boosting its contribution to trade and economic growth, and building capacity to drive greater productivity through innovation'.¹⁹ The question of whether the current Green Paper can create the policy settings that will boost productivity increases and growth in food output in a sustainable manner is one of the most important issues facing Australia.

The Green Paper distils the policy ideas put forward by stakeholders during the consultation process into 11 main categories. These sections give insight into the Abbott Coalition Government's view on Australia's agricultural policy platform.

The Green Paper explores 25 policy suggestions within the following 11 policy areas as summarised by Lewis:

1. Infrastructure: the Green Paper identifies that agricultural transport, logistics and communications infrastructure must be efficient and cost-effective;
2. Working with the States and Territories: given that much agribusiness regulation occurs at State and Territory level, the Green Paper contemplates that competitiveness may be improved via deregulation, particularly removal of duplicated regulation;
3. Competition and regulation: efficient and effective regulation (including the removal of unnecessary so-called red and green tape) will promote lower costs and competitiveness in the sector, as would strengthening competition laws and increasing price transparency in the supply chain;
4. Finance, business structures and taxation: productivity and competitiveness will be increased by providing better access to finance and reliable business information and advice, and by ensuring that the relevant taxation system appropriately encourages agricultural investment;
5. Foreign investment: noting historical benefits to the sector, the Green Paper provides that the agricultural sector will benefit from the continued encouragement

¹⁶ Nossal K, Gooday P, 2009. Raising Productivity Growth in Australian Agriculture. ABARE, Canberra.

¹⁷ Nossal K, Gooday P, 2009. Raising Productivity Growth in Australian Agriculture. ABARE, Canberra, 65.

¹⁸ *Agricultural Competitiveness Green Paper* (2014) Pg vii.

¹⁹ *Agricultural Competitiveness Green Paper* (2014) Pg xv.

of responsible foreign investment, and by ensuring the associated regulatory framework is appropriate for the industry;

6. Education, skills and training, and labour: improving agricultural education systems will ensure that workers in the agricultural sector have the requisite experience and skill, and that enabling access to a flexible workforce will increase labour availability and thereby benefit the agricultural sector;
7. Drought: the Green Paper suggests policies relating to the promotion of drought resilience and risk management capabilities, and canvasses the benefits of providing support to drought-impacted farmers, families and businesses;
8. Water and natural resource management: the Green Paper notes that improved water infrastructure will be beneficial to meeting Australia's future water supply needs, and policies that ensure sustainable and productive use of natural resources will allow for economic growth and development in the sector;
9. Research, development and extension: the Green Paper suggests that productivity may increase as a result of policies aimed at increasing strategic and coordinated research and development;
10. Biosecurity: the Green Paper proposes potential legislative changes and improvements to biosecurity procedures to protect the industry from biological risks; and
11. Accessing international markets: the Green Paper recognises that policies aimed at improving Australia's export regulatory framework and reducing technical barriers to trade would give Australian exporters an improved opportunity to capture high-value foreign markets.

There is implicit recognition that the Green Paper represents somewhat of a 'kitchen sink approach', in expectation that many of the ideas will not be present in the final White Paper. The basis to remove some policy ideas may be attributed to a lack of consistency with existing government policy settings, are incapable of being funded, or are simply too bold to be considered.²⁰

Food security has been low on the policy agenda in Australia. Australia has a large food surplus, exporting around 60% of the food that it produces, and is commonly perceived as food secure. This statement evident in the Green paper, 'Australia has a high level of food security due to our income level and trade surplus in food'.²¹ The sole mention of food security within the current Green Paper, similar to the Gillard Government's *National Food Plan Green Paper* (2012), is focused on Australia's aid activities in developing countries and the Government's policy to 'provide \$5 billion per year in international aid in 2014–15 and 2015–16'.²²

The high level of comfort in Australia's national food security masks vulnerabilities in our food supply. Less than 10% of Australia's land is arable and therefore suitable for agriculture, and only

²⁰ Lewis H, 2014, The Commonwealth releases the Agricultural Competitiveness Green Paper Clayton Utz.

²¹ *Agricultural Competitiveness Green Paper* (2014), 105.

²² *Agricultural Competitiveness Green Paper* (2014), 144.

a small proportion of this arable land has the type of high quality soil and water availability that makes it suitable for intensive agricultural uses.²³

The Green Paper has a strong emphasis on the government embarking on a range of 'red/green tape reduction' initiatives in agriculture, including a 'one stop shop' proposal, which could result in a substantial reduction in Commonwealth involvement of environmental matters. The 'one-stop shop' proposal relates to the Commonwealth environmental impact assessment (EIA) process that operates under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) ('EPBC Act'). The end result of this particular initiative, will be to effectively withdraw the Commonwealth from active engagement in the assessment and approval of proposals that might have a significant impact on 'matters of national environmental significance' ('MNES'). For example, State government deregulation is quoted as of high priority to maintain agricultural competitiveness with government already looking at ways to reduce red tape and duplication and improve the performance of regulators.

For the first time since the 1970's agricultural policies, a strong emphasis on family farms as the 'cornerstone of farming'²⁴ in The Green Paper is also notable in numerous chapters. The Green Paper has provided one of the only contemporary proposed policies to improve and secure family farms, for example in the reform of the *Australian Small Business Commissioner* into the *Small Business and Family Enterprise Ombudsman*. The federal government is also investigating the possibility of reforming the *Competition and Consumer Act 2010* (Qld) to provide for farming cooperatives, improve the uptake of collective bargaining and to attract institutional funding while retaining family ownership. The avenues to achieve these aims are either through channelling funds from institutional investors via leasing arrangements or through cooperative capital units.²⁵ Over 95% of Australian farms are family owned and operated with family farms expected to remain the dominant business structure over the next few decades.²⁶ However, changes in ownership and management are occurring with more leasing and share farming arrangements under way.²⁷ Property turnover is predicted to increase by 50% in the next 10 years in some areas, resulting in further fragmentation into lifestyle properties or amalgamation into larger properties. In summary, Australia has lost almost 50% of its farmers in the last 30 years although surprisingly according to the Green Paper 'this has not reduced overall agricultural production'.²⁸ Uncertainties around changing ownership of farms, available labour and investment in research and development are also creating concerns regarding future food production and tenure security.

According to Millar and Roots, 'the major concerns for Australia emerging from loss of agricultural land are:

1. A reduction in food production from productive areas close to coastal cities and regional towns owing to a lack of control over urban growth;

²³ Lewis H 2014, The Commonwealth releases the Agricultural Competitiveness Green Paper Clayton Utz.

²⁴ Australian Government, *Ministry of Agriculture, Agricultural Competitiveness Green Paper* (2014), Vii.

²⁵ Australian Government, *Ministry of Agriculture, Agricultural Competitiveness Green Paper* (2014), 37.

²⁶ Agriculture and Food Policy Reference Group 2006 <<http://www.acera.unimelb.edu.au/materials/reports/Agri-FoodPolicyNextGen.pdf>>.

²⁷ Mendham E and Curtis A. (2010) Taking over the reins: trends and impacts of changes in rural property ownership. *Society and Natural Resources* 23(7): 653-668

²⁸ Ibid.

2. Slowing of agricultural production from amenity areas due to an ageing population and further subdivision into hobby farms;
3. Land-use conflicts in peri-urban areas and adjacent to mines; and
4. Loss of productivity in areas with reduced water availability'.²⁹

Others argue that such faith in global competition, economic forces and government capacity to intervene is risky and that food systems need to be more robust, energy and resource efficient, affordable and community driven.³⁰

Within the Green Papers' water and natural resource management chapter, Stakeholders responding to the Green Paper argue to restrict certain land to agricultural use in order to reduce pressure from mining and help maintain agricultural production. The Green Paper responds in stating, 'The Australian Government is committed to protecting the rights of farmers and the integrity of prime agricultural land and water resources'.³¹ Three principles are highlighted by Miller and Roots explaining that to maintain coexistence of coal seam gas development and food production as follows:

1. Access to prime agricultural land should only be allowed with the farmer's agreement and farmers must be entitled to financial compensation for access to any of their land;
2. There must be no long-term damage significant enough to impact surface or subsurface water resources which are utilised for agriculture or local communities; and
3. Prime agricultural land and quality water resources must not be compromised for future generations.³²

No policy ideas are put forward from the Green Paper to more adequately regulate the protection of prime agricultural land and coexistence of unconventional gas operations. The solitary mention of coal seam gas research is the work of the *Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development* ('IESC'),³³ funding bioregional assessments. The IESC committee has produced the *National Partnership Agreement on Coal Seam Gas and large Coal Mining Development*, a framework without any 'regulatory teeth' due to its voluntary nature and its lack of implementation and endorsement from the states and territories. Although there have been attempts to try and regulate CSG with a more balance approach to agriculture, it has been from the government's perspective, without clear third party scrutiny, creating a one sided debate.

The Green Paper posits that for agriculture to be successful, reducing regulations and restrictions on farming will allow greater growth and efficiency. Working with States and Territories to reduce regulation and amendments to Australian competition law to introduce a more flexible test of misuse of market power have been identified as crucial to this objective. Changes to tax and

²⁹ Millar Joanne & Roots Jane, 'Changes in Australian agriculture and land use: implications for future food security' *International Journal of Agricultural Sustainability* 10.1 (2012): 25-39, 35.

³⁰ Australian Government, *Ministry of Agriculture, Agricultural Competitiveness Green Paper* (2014), 76.

³¹ Australian Government, *Ministry of Agriculture, Agricultural Competitiveness Green Paper* (2014), 78.

³² Australian Government, *Ministry of Agriculture, Agricultural Competitiveness Green Paper* (2014), 78.

³³ *National Partnership Agreement on Coal Seam Gas and large Coal Mining Development* (2012).

finance regulations were also proposed as a means of strengthening the industry and attracting new entrants.

THE MULTIPLE LAND USE FRAMEWORK

The Multiple Land Use Framework ("MLUF") was endorsed by the Standing Council on Energy and Resources in December 2013. The broadly worded aim of The Framework 'is to effectively and efficiently meet the land access and land use challenges, expectations and opportunities'. The framework recognises that development of many Australian industry sectors is reliant on access to land, inclusive of multiple stakeholder needs covering economic, environmental, heritage, societal and cultural values. The need for appropriate management of land is evident in a context where climate change and volatile food prices are likely to result in increased competition for fertile land in rural and peri-urban areas and in intensified internal migration to cities and their peripheries.

The MLUF defines areas of activity, supported by the overarching principles (outlined above), that must be part of successful multiple and sequential land use:

- Leadership, Facilitation and Coordination - Strong leadership from government, industry and the community is central to successful multiple/sequential land use outcomes. Articulate the broad areas of responsibilities of government, industry and the community in terms of facilitating and leading the required changes to optimise multiple and sequential land use;
- Planning - Seek clarity regarding governments' objectives and intentions. Describe the optimal approach to enable regions to benefit from land use change;
- Partnerships - Partnerships between industry and affected stakeholders play an important role in achieving mutually beneficial multiple and sequential land use outcomes. Identify what needs to be done in order for regional communities to be prepared for land use changes. Extensive stakeholder consultation assists decision making and avoids inappropriate development and/or exclusion of land from other potential uses;
- Engagement - Early engagement to enable stakeholders to clearly understand any proposed land use activity. Progress a tripartite approach, with government, industry and community working, to resolving policy, planning and investment conflict. Guidance as to how to engage with key stakeholders with an interest or involvement in land access and usage issues;
- Information - Education and adoption of evidence-based approaches is an important feature of successful multiple land use planning approaches. Inform the broader community, industry and media about the importance of land access and land use to the future viability of all industries and the ongoing sustainability of regions. Inform media and industry about what governments are doing to protect the public interest with respect to regulating industry and protecting social and environmental values;
- Assessments and Approvals - Project approvals are streamlined through applying risk-based approaches that are based on best available science, evidence and sustainable development principles. Transparent and consistent approvals processes

which account for multiple and sequential land use, and identify related issues such as water, heritage and cultural values;

- Monitoring and Compliance - Improvement in the transparency and understanding of how Government/s ensure industry complies with conditions/regulations set to protect the public interest. Increased confidence in the regulator through efficiency in enforcement;
- Continuous Improvement - Drawing on past experiences in decision making will improve multiple and sequential land use outcomes. Outline the necessary coordination of investment and the resulting outputs of the investment in the areas of activity, to better understand the cumulative effects of land use change and development across economic environmental and social dimensions; and
- Sharing and Collaboration - Collaboration between organisations such as government and industry bodies can support sharing of data and information, and quality assurance, accuracy and correct application. Provide mechanisms and opportunities for government, industry and community to share land related information to identify potential issues and opportunities for multiple and sequential land use outcomes.³⁴

The Framework proposes an adaptive management, rather than a technical, approach to regulation is needed:

The analysis also supported that a blend of adaptive and technical responses is needed to achieve multiple and sequential land use outcomes.³⁵

However in the same breath, the Framework solely relies upon existing regulations and case studies as adequate and in satisfaction of its guiding principles as:

The MLUF does not propose any significant change in existing accountabilities, roles and responsibilities of the different State and Territory government agencies. It does not seek to impose any significant additional responsibilities onto resource companies.³⁶

The Framework restates and relies upon many of the provisions already in place in the regulatory environment as the success of protecting and balancing land uses in Australia. It reiterates it is the responsibility of the States and Territories to envisage practical solution to translate the aspirational ideas of the Framework into regulation as ‘The State and Territories resource agencies will be the driver for designing the implementation model’.³⁷ This policy position adheres to the doctrine of government agendas with the implicit principle of self-determination for regions to implement and create regulations from aspirational policy ideas. For example, it is stated the Framework aims ‘to enable the minerals and petroleum sector to effectively and efficiently meet the land access and use challenges, expectations and opportunities confronting

³⁴ COAG Energy Council, *Multiple Land Use Framework* (2012) < <http://www.scer.gov.au/workstreams/land-access/mluf/>>.

³⁵ COAG Energy Council, *Multiple Land Use Framework* (2012) < <http://www.scer.gov.au/workstreams/land-access/mluf/>>, 18.

³⁶ COAG Energy Council, *Multiple Land Use Framework* (2012) < <http://www.scer.gov.au/workstreams/land-access/mluf/>>, 29.

³⁷ COAG Energy Council, *Multiple Land Use Framework* (2012) < <http://www.scer.gov.au/workstreams/land-access/mluf/>>, 5.

the sector?³⁸ Use of such language does not engender wider support, particularly when one of the major challenges is access to private land. The NFF points out a lack of detailed information of resource development:

NFF seeks that Governments take this responsibility more seriously, such as the establishment of sites similar to the USA FracFocus. At this stage, the NFF are not in a position to endorse the principles and issue a joint communiqué... Such a proposal would require the endorsement of the Mining and CSG Taskforce, Members' Council and ultimately the NFF Board.³⁹

Land-use planning in Australia is the responsibility of state, territory and local governments. Some states have attempted to protect peri-urban areas from residential development using green belts and farming zones. The suggestion of developing a National Land Use Planning Framework to secure future food production, reduce 'food miles' and transport costs and engage communities could be a step to achieving genuine protection.⁴⁰ However, such a framework would have to guide and influence national and state legislation to moderate urban sprawl, foreign ownership, mining interests, water use and other land-use threats to food security. At the same time, incentives are required to facilitate capacity building of a future agricultural workforce and generate environmentally sound technologies for future food production.

THE REGIONAL PLANNING INTERESTS ACT 2014 (QLD)

The threatened loss of agricultural land to future domestic and export food production has only recently emerged as an issue for debate in Australia.⁴¹ Concerns of farmland loss have previously focused on associated environmental and social impacts such as loss of open space and biodiversity, decline in rural communities and small towns and shortage of agricultural labour, not agricultural production *per se*.⁴² In Australia, the debate between agricultural landholders and unconventional gas present a provocative issue in relation to access to land and the right to food, where prime farming land exists alongside unconventional gas resource development, and where contamination of underground water supplies continues to be of concern to rural communities.

The Queensland government introduced the *Strategic Cropping Land Act 2011* (Qld) ('SCL Act'), which came into force on 30 January 2012, in order to address the competing interests of unconventional gas extraction and agricultural activities. The SCL Act attempted to strike a balance between mining, agriculture and urban development, with the objective that the state's

³⁸ Framework, 10.

³⁹ National Farmers Federation, *The Multiple Land Use Framework Research Study – Final Briefing Paper* (14 March 2013).

⁴⁰ Chief Scientist, *Food Security* (2010) http://www.chiefscientist.gov.au/wp-content/uploads/FoodSecurity_web.pdf.

⁴¹ Budge T, Slade C, 2009. Integrating land use planning and community food security. Melbourne, Australia: Report to the Victorian Local Government Association; Campbell A, 2009. Paddock to plate: policy propositions for sustaining food and farming systems. The future food and farm project propositions paper. Melbourne, Australia: Australian Conservation Foundation; Commonwealth of Australia, 2009. Food production in Australia, Final Report. Canberra, August 2010: Select Committee on Agricultural and Related Industries.

⁴² Cocklin C and Alston M, 2003. Community sustainability in rural Australia: a question of capital? Wagga Wagga, Australia: Academy of Social Sciences Australia and Charles Sturt University; Argent, N, 2008. Perceived density, social interaction and morale in New South Wales rural communities. *Journal of rural studies*, 24, 245-261.

best cropping land should be protected from development that would result in diminished productivity. Where the proposed resource activities were within a Protected Area, then the project would not be authorised if it will result in any ‘permanent impact’ defined by s 14 of the SCL Act, as impeding the land from being cropped for at least 50 years, the land could not be restored to its pre-development condition or the activity involves or is open-cut mining or strong hazardous mine wastes. However, resource development will be permitted on protected areas with permanent impacts in exceptional circumstances prescribed pursuant to s 120 of the SCL Act. To be considered an exceptional circumstance, the developer must demonstrate that, the resource cannot be found at an alternative site within the state that is not on SCL, and for development assessed under the *Sustainable Planning Act 2009* (Qld) (‘SPA Act’), the development is unable to occur other than on SCL, and the development provides a significant community benefit to the state. The SCL also provided the opportunity to developers to and as non-SCL based on a cropping history assessment.⁴³ Assessments undertaken using the cropping history test could allow significant savings in field surveys costs and mitigation costs for mining and gas companies up to amounts of \$20 000 per hectare.⁴⁴

In 2014, the Queensland government passed the *Regional Planning Interests Act 2014* (Qld) (‘RPI Act’) to repeal the SCL Act and put in place a more stringent agricultural protection regime. The purpose of the RPI Act is described as:

To protect strategic areas of the most regionally significant agricultural production and provide certainty for the future of towns while also establishing a framework for successful co-existence between the different sectors.⁴⁵

It is important to note unlike the SCL Act, there is mention of the locations of towns having a value in decisions permitting resource activities within the aim of the RPI Act. The RPI Act has brought about a significant overhaul of the previous SCL Act provisions and defines areas, previously regulated by the SPA Act. The RPI Act prescribes a new approvals process for ‘resource activities’ and other ‘regulated activities’ that are carried out in ‘areas of regional interest’, unless the person holds, or is acting under, ‘a regional interests development approval’. There are four types of areas of regional interest: a priority agricultural area; a priority living area; the strategic cropping area; and a strategic environmental area.⁴⁶

A resource activity includes and regulated activity encompasses ‘an activity likely to have a widespread and irreversible impact on the area of regional interest’.⁴⁷ However, the definition of an ‘irreversible impact’ is missing in either the RPI Act or the RPI Regulation. For the time being, the only regulated activity prescribed by the RPI Regulation is broadacre cropping and water storage (dams) in respect of a strategic environmental area. However, it is likely the rollout of further new-generation regional plans, such as the *South East Queensland Regional Plan*, will determine additional regulated activities. The RPI Act has significant implications, in particular for resource activities which have, until now, been largely exempt from planning regulation. In addition to the statutory processes for obtaining a resource authority and environmental authority, resource projects that are unable to rely on one of the exemption provisions will be

⁴³ *Strategic Cropping Land Act 2011* (Qld) s 49, 50.

⁴⁴ Cropping history tests have now been repealed by the RPI Act.

⁴⁵ State Development, Infrastructure and Industry Committee *Regional Planning Interests Bill 2013* Report No 35, March 2014, available at www.parliament.qld.gov.au, 5.

⁴⁶ *Regional Planning Interests Act 2014* (Qld), Subdivision 2.

⁴⁷ *Regional Planning Interests Act 2014* (Qld), s 17.

subject to a further regional interests' development approval requirement, involving yet another approval process with its own unique features.

The following persons may apply for a regional interest development approval:

- An “eligible person”, which means a person who holds, or has applied for, an environmental authority or resource authority for the resource activity; and
- A person who intends to carry out a regulated activity in an area of regional interest.⁴⁸

Proponents must make an assessment application of the resource activity or regulated activity's impact on the area of regional interest and identify constraints on the configuration or operation of the activity⁴⁹ to the chief executive⁵⁰ and a copy to the land owner must be provided.⁵¹ Once the proponent is granted a regional interests development approval, they may lawfully carry out the activity in an area of regional interest. However, a variety of exemptions prescribed by s 22 of the RPI Act exist, namely:

- (a) The agreement of the land owner, via conduct and compensation agreement has been complied with or the land owner has voluntarily entered into a written agreement with the authority holder which has been consistent with the agreement; and
- (b) The activity is not likely to have a significant impact on the priority agricultural or strategic cropping area; and
- (c) The activity is not likely to have an impact on land owned by a person other than the land owner.⁵²

It is notable the SCL Act has reiterated the interests of the town at large and neighbouring properties hold significant value, as the activity must not have an impact on the land owned by a person 'other than the land owner' to be exempt.

An 'impact' on the land by a resource activity for a priority agricultural area that does not affect 'the suitability of the land to be used for a priority agricultural land use for the area' or for land within the strategic cropping area: 'the land's soil, climate and landscape features that make that area highly suitable, or likely to be highly suitable, for cropping' is also exempt.⁵³

Further, activities carried out for less than 1 year are exempt and pre-existing resource activities which have been approved:

- (i) Under a resource authority or an environmental authority; and
- (ii) Without the need for any further authority or approval relating to the location, nature or extent of the expected surface impacts of the activity to be obtained under an Act or a condition of either authority; and

⁴⁸ *Regional Planning Interests Act 2014* (Qld), s 28.

⁴⁹ *Regional Planning Interests Act 2014* (Qld), s 29.

⁵⁰ The chief executive of the Department of State Development, Infrastructure and Planning.

⁵¹ *Regional Planning Interests Act 2014* (Qld), s 130.

⁵² *Regional Planning Interests Act 2014* (Qld), s 22(2) (a)-(c).

⁵³ *Regional Planning Interests Act 2014* (Qld), s 22(3).

- (ii) Information provided in, with or in support of the application for the resource or environmental authority (or an amendment of the application) identified the location, nature and extent of the expected surface impacts of the activity.⁵⁴

These exemptions are particularly important as s 91 of the Act provides that no compensation is payable because of activities being prohibited or restricted under the Act. Concerns were raised during the submission process of the RPI bill of the scope and clarity of exemption provisions for pre-existing activities; apprehensions about the methodology for identifying areas of regional interest and the accuracy of mapping; the lack of assessment and decision timeframes and difficulties associated with establishing standing for appeals. Almost without exception, submitters maintained that they were unable to properly critique the proposed assessment framework because of the ‘considerable uncertainty about how it would work in practice due to lack of detail in the Bill’.⁵⁵

Unlike the SPA Act, where a properly made submission with respect to an impact assessable development application secures appeal rights,⁵⁶ the right to appeal pursuant to the RPI Act is only vested in the applicant, owner of the land or an ‘affected land owner’.⁵⁷ Pursuant to s 71 of the RPI Act, ‘an affected land owner’ means:

An owner of land (*affected land*) that may be adversely affected by the resource activity or regulated activity because of—

- (a) The proximity of the affected land to the land the subject of the decision; and
- (b) The impact the activity may have on an area of regional interest.

While the impact of an activity must affect land in the area of regional interest and also relate to one of the specified matters of interest for the purposes of assessing impact under s 8, 9, 10 and 11 of the RPI Act, ‘affected land’ need not be located within an area of regional interest.

The RPI Act separates appeal rights from the making of submissions. This will result in some uncertainty about standing to commence appeals and could result in decisions being made that the appellants lacked standing to appeal in the first place after a full hearing on the merits. The RPI Act could have adopted a similar approach as the SPA Act: by giving the appeal right to an owner of land, situated wholly or partly in an area of regional interest, who makes a submission about an application for a regional interest’s development approval. However, there is no specification in the RPI Act as to the time limit an appeal may be lodged against a regional interest’s development approval. The RPI Act has strengthened the previous SCL Act aim of protecting prime agricultural land by creating new procedures to obtain regional interests development approval. However, in the same breadth, The RPI Act has taken some action away from the SPA Act, in appeal recourse mechanisms by also making it more difficult for affected parties to appeal resource or regulated activities on prime agricultural land.

⁵⁴ *Regional Planning Interests Act 2014* (Qld), s 24 (3). Exemptions are also applicable to wild river areas under the repealed *Wild Rivers Act 2005* and pre-existing regulated activities.

⁵⁵ State Development, Infrastructure and Industry Committee *Regional Planning Interests Bill 2013* Report No 35, March 2014, available at www.parliament.qld.gov.au, p 23.

⁵⁶ Under the SPA, development applications that require impact assessment are subject to public notification requirements.

⁵⁷ Section 72 of the Act.

The SCL Act and RPI Act can be classified as reactive attempts to slow the ‘bolting horse’ of resource development in agricultural land, instead of taking proactive strategic action to plan for future food production. Increased overall emphasis on accountability and measureable outputs in a framework for land governance that can be used as a diagnostic tool and as a means to monitor change over time, could create a possible solution to equitable management of the co-existence of resource and agricultural activities rather than a retrospective ‘learning by doing’ approach.

CONCLUSION

The current Australian agricultural policy approach has limitations to correct the market failures, including potential land degradation, lack of tenure security and the right to food by unconventional gas activities. The argument of this paper is that current agricultural and unconventional gas policies foster ‘productivism’ which is likely to exacerbate prime farming land degradation and heighten food security. Consequently, Australia’s attempts to provide greater volumes of food to growing domestic and international populations will be minimalised.

According to the United Nations, ‘Good governance promotes equity, participation, pluralism, transparency, accountability and the rule of law, in a manner that is effective, efficient and enduring’.⁵⁸ ‘Smart regulation’ is defined as an ‘emerging form of regulatory pluralism that embraces flexible, imaginative and innovative forms of social control which seek to harness not just governments but also business and third parties’.⁵⁹ The concept speaks of the value of combining a variety of instrumental and institutional arrangements in a creative and coordinated manner.

The pattern of changes to state based regulation, aimed at stimulating free trade in the agricultural sector and extended capital revenue growth for private firms absent of the emphasis to protect prime agricultural land, represents the classic neoliberal doctrine to eliminate smaller farm competitors and increase opportunity for larger farming firms. However, the possible introduction of policies to help and support family farms could possibly break the chains of farm consolidation. Further, the combination of smart regulation and natural resource governance principles, if adopted in Australian agricultural and unconventional gas policy, could create a new regulatory landscape founded on equity, integration and conservation to ensure future tenure and food security.

⁵⁸ United Nations, *Governance* (2014) < <http://www.un.org/en/globalissues/governance/>>.

⁵⁹ Neil Gunningham and Darren Sinclair, ‘Designing Smart Regulation’ OECD (2005) < <http://www.oecd.org/env/outreach/33947759.pdf>>.