

# What you need to know regarding CSG

Given the predicted exponential growth in the Coal Seam Gas (CSG) industry in coming decades, land owners in a number of states will come under increasing pressure by CSG companies wishing to access their land.

CSG companies are at a distinct advantage over land owners in relation to CSG negotiations. They are fully abreast of their legal rights and obligations, they have access to more financial resources/ expertise; and have the benefit of experience and information from prior negotiations with other land owners. In contrast individual land owners are disadvantaged from the outset with less resources, knowledge, experience and expertise in such negotiations in trying to protect their business and lifestyle interests.

Therefore, what do potentially affected land owners need to be aware of, what actions should they undertake and who should they liaise with to ensure that not only they are fairly compensated but that the impacts of the CSG industry on their land and operations are minimized? This briefing note attempts to provide some information to assist landowners in this regard.

## Understand the process

### Queensland

The Qld Government identifies land that potentially holds energy reserves then calls for tenders to apply for an authority to prospect (ATP) at the relevant sites. A tender can cover up to 100 blocks, or approximately 7,500 square kilometres. CSG companies are granted authority or tenure by the Minister for Natural Resources, Mines and Energy, which authorises them to explore, produce, process or transport coal seam gas. A landholder may search the [Interactive Resource and Tenure Maps \(IRTM\) system](#) at the Department of Mines and Energy website to find information on any authorities, tenures or grants over their land. If an ATP has been granted over the land, it is the responsibility of the CSG company to give the owner or occupier of the land an 'entry notice' and an 'information statement' at least 10 days prior to the ATP holder or representative enters the land.

### NSW

In NSW before undertaking any activities, CSG companies or individuals wishing to explore in NSW must first apply to the Minister for Mineral Resources for a licence issued under the Petroleum Act 1991. A Petroleum Exploration Licence gives the titleholder the exclusive right to explore for 6 years in an area covering between 1 and 140 adjoining five-minute graticular<sup>1</sup> blocks (ie approx 1500 ha) for a period of six years. If exploration reveals significant resources, the titleholder may make a separate application and go through an assessment process before CSG extraction is allowed. A license is initially granted for up to 21 years. The holder of an exploration licence, or an assessment lease, cannot carry out prospecting operations on any land without an access arrangement agreed between the CSG company and the landholder.

## Get independent legal advice

The State Government laws applying to CSG development are complex and ad hoc. Queensland legislation is more advanced than other states. In Qld the principle legislation in which CSG is regulated is the *Petroleum and Gas (Production and Safety) Act 2004*, *Petroleum Act 1923*, *Water Act 2000* and *Environmental Protection Act 1994* whilst in NSW it is the *Petroleum (Onshore) Act 1991* and the *Environmental Planning and Assessment Act (NSW) 1979*. There is in addition other state legislation that also needs to be taken into consideration. In general, land owners will be requested by CSG companies to sign access and compensation agreements which are tied to the land (hence will impact future generations and land owners to come). Obtaining legal advice regarding these agreements and understanding your rights and obligations under legislation is essential.

At a basic level, the tenure of ownership for all Australian land owners gives you rights to the surface of your land. State governments give CSG companies the right to extract resources under your land (which belong to the Crown/Government). Therefore, legally you cannot object to entry once a company has met its legal requirements to undertake CSG extraction. However, the CSG company must notify you prior to entering your premises, must consult with you regarding what/ where and when activities are to be undertaken, must minimise its impact on your land and business; and must compensate you for those activities. They cannot obstruct or unreasonably interfere with your business and equally you also have an obligation to avoid obstructing their activities.

It is also wise to understand the legal rights and obligations of CSG companies in relation to water impacts. For instance, in Qld, if a water bore on your property is likely to have an 'impaired capacity' because of CSG activities, the tenure holder must negotiate a make good agreement with the bore owner. The agreement could, for example, involve deepening the bore, constructing a new bore or establishing an alternative supply. **Importantly ALFA strongly recommends that you begin measuring water quality and standing water levels in your bores so that you can objectively benchmark any changes prior to and post CSG activity.** The Qld Department of Environment and Resource Management has also developed a [CSG Groundwater Portal](#) which provides historical water level and salinity records (measured as conductivity) from the four major CSG explorers and producers in the Surat and Bowen basins. These are Santos, Origin Energy, Queensland Gas Company (QGC) and Arrow Energy.

The portal also provides information about the location of existing water bores and their purpose, gas production and exploration wells; and springs and baseflow fed watercourses. More detail regarding Qld regulatory requirements in relation to water is outlined in the attached brief <http://www.derm.qld.gov.au/factsheets/pdf/environment/en1.pdf>.

The Queensland Government offers landholders a Legal Aid service that provides free, non-means tested legal advice in relation to interactions with CSG companies (ph 1300 65 1188). Under Qld legislation CSG companies are also required by law to compensate you for your reasonable and necessary legal costs incurred in the negotiating and preparation of a conduct and compensation agreement. This also extends to costs associated with accountancy and valuation services.

### **Get educated**

Knowledge is power. Read about the CSG extraction process, CSG companies, Environmental Impact Statements, Environmental Management Plans, Environmental Authorities and legislative requirements. Speak to your neighbor, other landowners, your farming association and with the Government departments who administer the conditions under which CSG companies must operate. The more you read, the more you will learn about the positives/ negatives, potential risks, your options along with how CSG extraction may affect you. Importantly, this knowledge will also help you make informed decisions and place you in a more favorable position when negotiating access and compensation agreements. Some sources of information include the following;

[http://www.dme.qld.gov.au/zone\\_files/legislation\\_pdf/p&q\\_exploration\\_guide\\_for\\_landowners.pdf](http://www.dme.qld.gov.au/zone_files/legislation_pdf/p&q_exploration_guide_for_landowners.pdf)

[http://dme.digdnn.com/zone\\_files/land\\_tenure\\_pdf/tips\\_landholders\\_negotiations.pdf](http://dme.digdnn.com/zone_files/land_tenure_pdf/tips_landholders_negotiations.pdf)

<http://www.basinsustainabilityalliance.org/>

[http://www.dme.qld.gov.au/mines/coal\\_seam\\_gas.cfm](http://www.dme.qld.gov.au/mines/coal_seam_gas.cfm)

<http://www.derm.qld.gov.au/factsheets/pdf/environment/en1.pdf>

[http://www.parliament.nsw.gov.au/prod/parlament/publications.nsf/key/RegulationofthecoalseamgasindustryinNSW/\\$File/e-brief.coal+seam+gas.pdf](http://www.parliament.nsw.gov.au/prod/parlament/publications.nsf/key/RegulationofthecoalseamgasindustryinNSW/$File/e-brief.coal+seam+gas.pdf)

[http://www.agforceqld.org.au/index.php?tgtPage=&page\\_id=260](http://www.agforceqld.org.au/index.php?tgtPage=&page_id=260)

[http://www.nswfarmers.org.au/policy\\_committees/crm/priority\\_issue\\_9](http://www.nswfarmers.org.au/policy_committees/crm/priority_issue_9)

### **Get prepared**

Regardless of state, if a CSG company wishes to extract gas from your land, it is vital that you get prepared so that you know what to include in an agreement as this is important to any successful negotiation. Consider preparing a map of your land before starting negotiations, marking the location of:

- access points, formed roads and tracks
- gates and fences
- the feedlot and cattle yards
- your house and other buildings
- areas or structures of sentimental value (e.g. unused remains of historic homesteads)
- key agricultural areas and infrastructure (e.g. crops, dams, levees, irrigation channels, shade clumps)
- water bores and key watering points or other important infrastructure
- sensitive areas such as calving paddocks, vegetation, waterways, erosion prone areas and overland groundwater flow areas
- any plans for expansion or improvement you may have underway

In Queensland, the 'Land Access Code' has mandatory provisions that require CSG companies to include induction training; access points; roads and tracks; livestock and property; obligation to prevent spread of declared pests; camps; items brought on to land; and gates, grids and fences. It is critical that the Land Access Code mandatory conditions are used as a starting point for any agreement, with specific conditions around conduct, as agreement conditions must not be inconsistent with this Code.

Identify any goals or issues you want included in your agreement. These may include setting fair, reasonable and workable solutions to:

- ensure your safety and the safety of your family, employees and animals
- preserve the amenity of your home
- minimise or avoid the impact of resource activities on you, your activities and land
- set out acceptable standards of conduct for anyone coming onto your land
- identify anything the company may be able to do to assist or benefit you
- ensure you don't incur unreasonable out-of-pocket expenses from negotiating agreements
- ensure you receive adequate compensation for impacts to you and your family, animals, crops, business and land
- ensure your rights and those of your family are respected
- reach an agreement that you and the company can live with and will abide by.

You may also wish to ask the CSG company to provide additional information such as:

- who will carry out the activities, including the numbers of workers likely to be involved
- detailed work programs for each activity and any potential impacts including noise, dust, lights, vibration, impact on water supply, or any other impacts

- any future interest they anticipate having in your property based on all current information and what might influence future plans
- any work place safety considerations, proposed emergency plans and important contacts.

Ask for any maps the company may have of the areas they want to work in so you can compare their information with your own map, and identify potential issues. Make sure the company provides you with this information BEFORE commencing formal negotiations so you have enough time for thorough review and to identify potential problems or matters that may need clarifying. **Keep diary notes and correspondence to/ from CSG companies.**

Before beginning formal negotiations, you should consider:

- how you might negotiate over the location and timing of any activities to get a 'win – win' outcome
- any safety and biosecurity issues that could impact on you, your family, friends, workers and animals
- any impacts on future expansion plans eg feedlot, cropping, house, dam and drainage sites or locations
- the effect of activities on your land including deep tillage, wet weather access over pipelines, use of fire as a management tool, interference with activities such as aerial spraying, cropping and lot feeding.
- any activities that may affect the amenity (visual, noise, light, dust, vibration, water) of your property and home, and what could be done to minimise those impacts (eg buffer distances)
- any impacts (visual, drill holes, noise, light, dust, vibration, water, subsidence, damage to roads and tracks) from the activities on your livestock, crops, business and measures that could be taken to minimise those impacts(eg buffer distances).
- Any extended consequential impacts of such CSG activity eg potential residue related trade impacts from livestock consuming CSG contaminated bore water, inability to expand due to CSG activity reducing ground water quality/ quantity or biosecurity risks.
- establishing rules for anyone coming on to your land (e.g. related to biosecurity, traffic, use of gates, behaviour around animals)
- any activities you might be able to benefit from (e.g. the grading of a road or track, utilization of gas or CSG water for your business) Note if CSG water use is a possibility be mindful to assess the certainty of such supply in terms of water quality, volume and length of time of supply
- the cost of any legal, accounting or valuation advice you may incur related to the negotiation of a conduct and compensation agreement
- your business plans for managing your property now and into the future and any precautions that could be taken by the company to reduce interference with those plans.
- excluding authorised activities within a certain distance of your home and feedlot eg 100m
- imposing a vehicle speed limit on access tracks or formed roads close to your home/ feedlot (e.g. if you have children or because dust may be exacerbated by vehicles travelling at unreasonable speeds). A maximum speed of 20 km/hr hour within 100 metres of your home could be considered reasonable
- including a set contractual review period or the ability to review the contract as the situation changes (i.e. impact greater than initially expected etc)

*Organise negotiations to be held in a location that you are comfortable with eg home or solicitors office.*

### **Get fair and equitable compensation**

Under Qld law, CSG companies are required to compensate a landholder when resource activities carried out on private land have an impact on the landholder's business or land use. These compensation arrangements are in place to ensure that landholders are not financially disadvantaged by activities carried out on the property. If an agreement on compensation cannot be reached, it can be referred to the Land Court. If 'make good' agreements in relation CSG impacts on ground water cannot be reached then alternative dispute resolution can be undertaken. If this is unsuccessful the matter can also be referred to the Land court.

In general, you should determine any issues and requests you want to raise or put to the CSG company. Be fair and realistic as negotiations require give and take from both sides. Being rigid and inflexible is unlikely to lead to a successful resolution. Ending up in court could be costly, stressful and time-consuming. Working co-operatively to find solutions will be less stressful and more likely to result in positive or reasonable outcomes that are acceptable to you and the company. Consider providing the company with details about how you manage your business and land before starting formal negotiations. This will help the company understand your point of view and identify how it can work with you to minimise any impacts from its activities on your business and your land.

The Queensland Government has developed a standard 'conduct and compensation' agreement and a standard 'deferral' agreement to assist the development of legal contracts and negotiations with a resource company. These can be both found on the Department of Mining and Energy website; [http://www.dme.qld.gov.au/mines/land\\_owner\\_occupier\\_information.cfm](http://www.dme.qld.gov.au/mines/land_owner_occupier_information.cfm)

Consider any costs, losses or consequential damages you may incur from the company's activities being carried out on your property. These costs may include impacts on property land values, the capacity to generate income from your land, your ability to adopt new technologies/ management practices into the future; and the long-term environmental impact on your land and water resources and their implications for you and your family/staff/ community's health, stock health and food safety. You may also need to obtain specific advice from your solicitor or accountant regarding tax and other business implications.