

COMMUNIQUE TO LANDOWNERS

COAL SEAM GAS OPERATIONS ON LIVESTOCK PROPERTY

Coal seam gas (CSG) is a non-renewable natural resource which is becoming increasingly attractive for exploration and exploitation beneath the surface of rural properties.

As livestock producers owning rural properties are approached by CSG operators for use of their land for these purposes, it is important that those landowners be made aware of the different rights and responsibilities associated with those activities. Having a basic understanding about the CSG industry and the legal framework surrounding it will position landowners to make the best decisions for themselves if approached by CSG operators.

This document aims to provide a very general form of guidance to landowners before entering into discussions or negotiations with CSG operators. This guidance is in the form of identification of some of the important issues that arise for consideration.

The guidance is very general in nature and not a substitute for legal advice. There will be a number of specific factual circumstances that will need to be considered where any CSG activity is proposed for a rural property and obtaining legal advice to suit those circumstances is strongly recommended.

What is CSG?

CSG is a form of natural gas located in coal seams below the earth's surface. Coal seams are found at depths ranging from 300 to 1000 metres below the surface. CSG is held in place within the coal seam by water pressure. To release the CSG, the water itself must be extracted by drilling a well. The release of the water then allows the CSG to flow to the surface.

'Fracking' is one method of improving the flow of CSG to the surface. It involves injecting chemicals into the coal seam to better promote the release of the CSG. It is not always necessary for efficient CSG production and some states have banned the method because of environmental uncertainties regarding the chemicals used.

What are the rights of CSG operators?

CSG is the property of the State. Each of the states and territories have legislation which allows rights to be granted by the state or territory to a CSG operator to explore for and extract CSG. The state or territory may be paid in royalties by the CSG operator in exchange for the exploration and production rights.

The rights are granted to the CSG operators in the form of conditioned approvals which specify the terms of how the CSG activities can be carried out. Importantly, agreement of the landowner is not always a pre-condition to a CSG approval. The state and territory legislation varies in what rights it grants landowners to refuse access. However in all cases there is a requirement for the landowner to be financially compensated for the use of the property.

The practice of CSG operators to date is to obtain landowner consent even if it is not required under the relevant legislation.

What are the rights of the landowner?

In certain circumstances, state and territory legislation may grant a right to the landowner to refuse to allow CSG operations to be carried out on their property. However whether the landowner agrees to the CG operations or not, state and territory legislation provides for compensation to be payable to the landowner by the CSG operator.

Some state and territory legislation also makes entering into a 'land access agreement' compulsory. In addition to providing for compensation, such agreements will create contractual rights between the landowner and the CSG operator. The agreements may cover matters like hours of access to the property, details on how the CSG operations are to be carried out and protections from liability associated with the activities.

Even if not required by the legislation, it is open to the landowner and the CSG operator to negotiate a contract to cover relevant matters. This contract will then define the rights of the parties in addition to any rights under the legislation. It is therefore important that a landowner press for a contract so that the respective rights are clear to each party. The CSG operator may have a standard form agreement but the landowner will still be able to negotiate the terms to suit the specific circumstances.

What are the advantages of CSG operations occurring on a landowner's property?

The main advantage of CSG operations for landowners is financial reward. Although the state and territory legislation only requires compensation for 'losses' to the landowner, 'loss' is defined broadly and it is common practice for the landowner to be further financially rewarded by the CSG operator.

What are the disadvantages of CSG operations occurring on a landowner's property?

When approached by a CSG operator, the process for negotiating compensation and entering into an agreement can be time-consuming and costly. Certain costs to the landowner's business may be incurred in having to adapt the use of the property to accommodate the CSG operations. Ideally however these costs will be provided for by way of compensation from the CSG operator. Similarly, future losses associated with accommodation of the CSG operations should also be the subject of compensation.

The main disadvantage to landowners is in the creation of new risks. CSG operations create a new risk of environmental harm. The major concern, which is still being researched, is the potential for groundwater pollution. However it is clear that apart from groundwater pollution, contamination of soil and pasture can occur as it can with any mining operations. For this reason, it is important that the landowner press for a contract which allocates responsibility for managing the risk and any adverse outcome onto the CSG operator.

Contamination of soil, pasture or groundwater could have also result in contamination of neighbouring properties as well as livestock which, if then processed and consumed, could cause illness. While a landowner may have some recourse against a CSG operator, the landowner may still have primary liability.

Environmental regulatory authorities may also exercise statutory powers to impose clean-up obligations on the landowner if contamination occurs. These costs may not always be recoverable from the CSG operator.

Entering into an agreement with a CSG operator

If you are approached by a CSG operator, there are some important steps that should be taken before any agreement is concluded and even before negotiations begin.

- Talk to your lawyer. Although you may wish to deal directly with a representative of the CSG operator, it is very important that you obtain advice from a lawyer including before entering into any agreement. A lawyer may also be able to assist in the negotiations concerning compensation.
- Talk to your bank. If a bank has a mortgage over your property or is otherwise involved in financing your business operations, you should discuss the potential for CSG operations on your property with them. They may have contractual rights in your contract with them that need to be considered or may also be able to provide some useful advice in dealing with the CSG operator.
- Talk to your insurer. Like the bank, the contract of insurance may require you to advise your insurer if you plan to allow CSG operations on your property. They may also be able to provide some useful advice.
- Find out about the CSG operator. It is important to be sure that you are dealing with a reputable company. A lawyer would be able to assist in these enquiries. Some of the questions you may want to ask are:
 - What CSG approvals are already in place in your area? Do they cover your property?
 - Is the CSG already operating in your area? If not, have they carried out activities in other parts of the state?
 - How is the company structured? Is it a subsidiary? Are there related companies? How long has it been operating? What are its resources? Are you able to speak with any other land owners who have dealt with the company to ascertain their experiences?
 - What is the company's insurance arrangements? Will they include you and your property as an interested party on any policy they hold and what are its terms?

The first step in obtaining answers to these questions is to obtain a copy of the company's annual report. It is also important to obtain a copy of any approvals given by the state or territory and copies of the relevant environmental assessments which have been carried out.

Disclaimer

This note contains general advice only. It has been prepared without taking into account your particular circumstances or needs. Before making any decisions concerning your interests, you should consider the appropriateness of the advice, having regard to your circumstances and needs and we strongly recommend that you seek the assistance of an appropriate professional adviser.