



COAL SEAM GAS OPERATIONS ON LIVESTOCK PROPERTY

General information for livestock producers

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

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 are aware of the different rights and responsibilities associated with those activities. The aim of this guidance note is to provide a basic understanding about CSG operations and the legal framework surrounding them to assist landowners to make the best decisions for themselves if approached by CSG operators.

Disclaimer

This document provides only a very general form of guidance to landowners (you). This guidance is in the form of identification of some of important issues that you and your advisers may wish to consider. However, this guidance is very general in nature and not a substitute for legal advice concerning your circumstances and interests. There will be a number of specific factual circumstances that will need to be considered when any CSG activity is proposed for a rural property and obtaining legal and other specialist advice to suit those circumstances is strongly recommended. Before making any decisions concerning your interests, you should consider seeking advice from appropriate specialists, having regard to your circumstances and needs.



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 and Territory. Each of the States and Territories has 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 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 regarding the rights granted to 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 or Territory legislation may allow the landowner to refuse to allow CSG operations to be carried out on their property. However whether the landowner agrees to the CSG 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 and obligations between the landowner and the CSG operator. The agreements may cover matters such as hours of access to the property; seek to minimise the impact of resource activities on you, your activities and land; define the acceptable standards of conduct by CSG operators when on your land; detail how the CSG operations are to be carried out; and also define any 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 and obligations of the parties in addition to those under the relevant legislation. It is therefore important that a landowner press for a contract so that the respective rights and obligations 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** may be incurred in having to adapt the use of the property to accommodate CSG operations. Ideally these costs should be paid by the CSG operator. Similarly, future losses associated with accommodation of the CSG operations should also be the subject of compensation to the landowner.

The main disadvantage to landowners is in the creation of new **risks**. Property owners should investigate the full range of risks that may be introduced by a CSG or mining operator and seek to manage these risks through a land access agreement, using professional advice where required. The nature of these risks will be specific to your circumstance but may include:

- Risk to amenity and privacy through new infrastructure and increased traffic;
- Risk to biosecurity through vehicle movements and opportunities for mixing and escape of livestock if gates are left opened;
- Risk to your staff and family from a Workplace Health and Safety perspective;
- Risk that your ability to conduct standard management practices on your property and expand in the future will be impaired.

The major concern, which is still being researched, is the potential impact on groundwater quantity and quality. 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 outcomes, onto the CSG operator.

Contamination of soil, pasture or groundwater could also result in contamination of **neighbouring properties** as well as livestock which, if then processed and consumed, could breach Australian food standards or importing country requirements for meat. 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 under the relevant legislation.



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 negotiated.

1. **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. Your bank may have contractual rights in your contract that need to be considered. Your bank may also be able to provide some useful advice in dealing with the CSG operator.
2. **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.
3. **Find out about the CSG operator.** It is important to be sure that you are dealing with a reputable company and find out matters such as:
 - What CSG approvals are already in place in your area? Do they cover your property?
 - Is the CSG operator already operating in your area? If not, have they carried out activities in other parts of the state? Are you able to speak with any other land owners who have dealt with the company to ascertain their experiences?
 - How is the company structured? Is it a subsidiary? Are there related companies? How long has it been operating? What are its resources?
 - What is the CSG operator's insurance arrangements? Will they include you and your property as an interested party on any policy they hold and what are its terms?

4. **Get educated.** Knowledge is power. Learn about the CSG extraction process, the CSG approval process, Environmental Impact Statements, Environmental Management Plans, Environmental Authorities and legislative requirements. Talk to your state farming association, peak industry council 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 engaging professional advisors and/or negotiating agreements with CSG operators.

5. **Talk to your lawyer.** Although you may wish to deal directly the CSG operator, it is very important that you obtain advice from a lawyer before entering into any agreement. Your lawyer should also be able to assist in the negotiations concerning compensation and risk and liability allocation. Some of the matters you may want to raise with your lawyer are:

- What is the financial health of the CSG operator? What protection do you have if the CSG operator ceases operation or goes insolvent? For example, will you be covered by the CSG operator's insurance if an issue is discovered in years to come, even after the CSG operator ceases to exist?
- The CSG operator should be primarily responsible for identification, notification and remediation of any contaminants on the property and any neighbouring properties. However, does the agreement specify what this entails? Does the agreement provide sufficient protection (including indemnities) if contaminants are located on the property as a result of the CSG activity? As most States and Territories allow the regulatory authority to enforce responsibilities for dealing with contamination on landowners as well as the CSG operator, what guarantees and indemnities are provided by the CSG operator if that was to occur.
- Does the agreement include establishing baseline measurements of soil and water contaminants? It is a good idea to have soil and water tests completed before any mining operation commences so that there is some baseline data to refer to if a contamination incident occurs later on. Try to have this testing done by the CSG operator as part of the land access agreement.

- Does the agreement address the remediation of the property after any exploration or production? Some agreements, approvals and licences leave this at the CSG operator's discretion. Is provision made in the event there is unsatisfactory remediation? Does the agreement concerning remediation cover any adverse impacts caused to surrounding areas by the activities on the landowners site (such as the local road or neighbouring properties)?
- Any agreement should make provision for the allocation of responsibility and risk in the event something goes wrong as a result of the CSG operator's activities such as:
 - ▷ someone is injured on your property (such as a CSG operator worker or a visitor);
 - ▷ there is damage to your property;
 - ▷ there is damage to a neighbouring property (such as groundwater contamination or other nuisances caused by the activities such as dust);
 - ▷ livestock or produce is injured, damaged or contaminated.

The landowner can be liable for liabilities arising from these circumstances. Specific indemnities and guarantees can assist landowners against personal liabilities in the event something does go wrong, in particular involving third parties such as neighbours or consumers.

- Any agreement should take into account any impacts from CSG activity on your future expansion plans eg feedlot, cropping, house, dam and drainage sites or locations as well as the effect on your land eg 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 agreement should take into account 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 suitability of such supply in terms of water quality, volume and length of time of supply.
- Understanding what the CSG operator is doing is important. Does the agreement make provision for reporting on the status of exploration or production? Is there a testing regime for water and soil contamination and how and how often is that to be reported to the landowner?

- The CSG operator should acknowledge and understand any Property Management Plan. Making provision in any agreement for the agricultural calendar and landowner's operations to accommodate activities (such as lambing, sowing and harvesting) avoids confusion. Does the agreement make provision in the event the CSG operator's presence on the site (including staff) impacts these activities?
- Does the CSG operator's risk management and emergency action plans take into account the landowners? Is there provision in the agreement to share this with the landowner?
- Are there any current and future matters that are specific to your property and business that may need to be covered in the agreement with the CSG operator?

The proper management of the risks associated with CSG operations requires you to actively protect your interests. The more enquiries you make, the more assistance and specialist advice you seek, the better your position will be to understand and appropriately deal with the risks associated with CSG operations on your property.

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About MLA's Industry Issues Research program

This general information memorandum is an output of Meat and Livestock Australia's (MLA) Industry Issues Research program.

MLA commissions independent and apolitical research to inform industry on priority issues and support policy development - through the Peak Industry Council structure - for the betterment of the red meat and livestock industry.

This piece of research was commissioned at the request of Cattle Council of Australia (CCA), Australian Lot Feeders' Association (ALFA) and Sheepmeat Council of Australia (SCA).



Research framework

An industry issues research framework has been drafted to ensure research commissioned by MLA:

- is independent and credible
- aligns with industry policy priorities (as determined by the Peak Industry Councils)
- clearly outlines the roles of MLA and the PICs
- aligns with the Deed of Agreement between MLA and the Department of Agriculture

The Deed of Agreement between the Department of Agriculture and MLA prohibits MLA from undertaking lobbying activities but MLA can commission research and provide information to the industry. The charter of MLA industry issues research is to commission independent consultants. MLA engages key industry stakeholders throughout each consultancy and seeks their input on draft reports and key progress meetings with the consultant. The final research is then provided to Peak Industry Councils, other peak bodies and Government for their consideration and is also made publicly available.

The Australian Government and levy payers each contribute 50% towards the research commissioned by MLA.



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