

15 June 2015

Dr Peter Boxall AO  
Chairman  
Independent Pricing and Regulatory Tribunal  
PO Box K35  
HAYMARKET POST SHOP NSW 1240

Dear Dr Boxall,

***IPART Landholder Compensation Review***

The Australian Petroleum Production & Exploration Association (APPEA) is the national peak body representing the oil and gas exploration and production industry. APPEA's members account for around 98 per cent of Australia's oil and gas production. In NSW, APPEA is active in supporting our members in their pursuit of onshore exploration and natural gas production.

APPEA welcomes IPART's review of landholder compensation arrangements as part of the NSW Government's Gas Plan. The Plan provides a framework and strategy to develop the state's natural gas industry, whilst balancing the interests of gas companies and the wider community.

IPART's proposed principals of transparency, adaptability and practicability are welcomed by industry, as these core principals are adopted by gas companies when approaching landholder negotiations.

The Review provides a vehicle to develop a framework to guide industry and landholders through the land access negotiation process. In our experience, landholders and gas companies can benefit from a framework under which independent and factual information is provided to all parties involved in negotiations. A landholder equipped with the information necessary to understand the processes associated with natural gas exploration and development, areas of gas activity where compensation may be appropriate and the methods to calculate compensation, is well-positioned to negotiate with gas companies.

In our submission we assert that the calculation of a generic benchmark value is unlikely to reflect the true value of the landholder's circumstance. As such, we believe an education program, similar to that offered in Queensland, would add significant value to both landholders and gas companies.

Additionally, APPEA proposes that an expanded 'Office of the NSW Land and Water Commissioner' be considered by IPART as an independent body which could potentially provide an advisory service to landholders seeking confirmation that the compensation arrangement proposed by a gas company is reasonable. The Commissioner's existing relationships with



industry and landholders would provide a strong foundation upon which to broaden the role of the Commission.

APPEA appreciates IPART's commitment to consult with our industry and we look forward to future engagement throughout the review process.

Yours sincerely

Paul Fennelly  
Acting Chief Executive Officer

# **INDEPENDENT PRICING AND REGULATORY TRIBUNAL**

## **Landholder Benchmark Compensation Rates: Gas exploration and production in NSW**

### **Issues Paper**



## COMPENSATION ARRANGEMENTS

- 1. Do you agree with our proposed principles of transparency, adaptability and practicability to guide our recommendations for this review? Are there other principles that we should apply in making our recommendations?**
  - APPEA agrees with IPART's principles of transparency, adaptability and practicability as an approach to this review. These are also core principals used by gas companies when approaching landholder negotiations.
  
- 2. Do you agree with the four key steps in our proposed approach for this review (identify impacts, estimate compensation for these impacts, estimate benefit payments and make recommendations)? If not, what are your concerns?**
  - The first two steps (identify impacts and estimating compensation for these impacts) offer a high level description of an appropriate process for a landholder and gas company to follow.
  - While it is possible for IPART to develop a broad framework around these two steps, the extent and nature of activities by both landholders and gas companies are highly variable and site-specific. Therefore seeking to provide ex ante quantitative advice or to specify a formulaic approach in these areas is unlikely to provide useful guidance to landholders.
  - The industry's experience, and of landholders and other groups that have been involved in developing land access regimes in Australia, is that an understanding of conduct arrangements (i.e. what the landholder is doing on their land and what the landholder's future plans are, what the gas proponent is proposing to do on the land, and how these two things can successfully coexist), are critical factors in identifying impacts on the landholder and the subsequent calculation of compensation. Given that these factors are highly variable and site-specific, it is difficult and/or potentially misleading to estimate appropriate payments for any given landholder in the absence of any site-specific understanding.
  - We have addressed step 3 (benefits) below in a separate section.
  
- 3. Do you agree with our preliminary view on the relevant heads of compensation for hosting CSG exploration and production (value of land occupied and loss due to severance, injurious affection and disturbance)? Are there other temporary impacts of CSG exploration and production on landholders that we should consider?**
  - In broad terms, the heads of compensation should be sufficient to ensure landholders are compensated for the impacts of gas activity.
  - However not every impact/head of compensation is easily quantifiable and it would be highly problematic to require that a specific value be assigned to every head.
  - Industry compensation models are typically yield-based, individually negotiated, and are based on a comprehensive assessment of compensable impacts. It is therefore difficult to produce representative benchmark figures for compensation given the vast differences in the activities of landholders and the intensity of gas operations.
  - It is possible however, to provide advice to landholders that are currently, or expect to be, engaged in land access negotiations so they are better equipped to negotiate and able to gain assurance that they are being compensated appropriately.
  - Additionally, we note that some of the impacts referred to in the issues paper (e.g. noise) are subject to additional and separate regulation (such as exploration licence title conditions), that requires companies to mitigate impacts to a "satisfactory" level. Mitigating steps in this regard can include providing financial or in-kind compensation to an affected landholder. As



such, requiring additional compensation under the land access regime for these impacts would potentially amount to double counting.

**4. Should we consider any 'special value' of land and 'loss of opportunity to make planned improvements on the land' in recommending compensation for CSG exploration and production?**

- Consideration of special value of land and loss of opportunity to make planned improvements should be considered, however the extent to which there is any 'special value' of land or 'loss of opportunity to make planned improvements on the land', is dependent on the particular circumstances of the landholder and the proposed gas activities, and cannot therefore be predetermined.
- Normally, negotiations between companies and landholders on conduct arrangements will cover any special value of land and loss of opportunity to make planned improvements. These discussions take place prior to the commencement of activity and companies provide mitigation strategies to counter impacts.

**5. Are there any permanent impacts on the market value of land arising from hosting gas exploration and production that we should consider?**

- Evidence suggests that there are no permanent impacts on the market value of land arising from hosting gas exploration and production.
- For example, the NSW Valuer-General's report *Study on the impact of the Coal Seam Gas industry on land values in NSW* released in February 2014, determined there was "no observable difference in the values of the comparable sales based on their distance from the CSG activity"<sup>1</sup>.
- The Productivity Commission reiterates these findings in their April 2015 report *Examining Barriers to More Efficient Gas Markets* by saying "The Commission does not find onshore gas developments cause a decline in land prices"<sup>2</sup>.
- The Queensland GasFields Commission has established a dialogue with the Queensland rural valuation industry to share information and discuss the impact of the gas industry on rural property values. The Commission believes there is insufficient evidence of a trend in rural property values as a result of the onshore gas industry<sup>3</sup>.
- The Queensland State Valuation Office developed a Land Valuation Globe, an online tool providing annual statutory land valuation data for all Queensland properties. This tool provides independent land value transparency information for landholders. The development of a NSW equivalent to house exploration and production activity data may benefit both landholders and industry.

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<sup>1</sup> Report can be found at:

[http://www.valuergeneral.nsw.gov.au/about\\_us/announcements/2014/valuer\\_general\\_releases\\_coal\\_sea\\_m\\_gas\\_industry\\_report](http://www.valuergeneral.nsw.gov.au/about_us/announcements/2014/valuer_general_releases_coal_sea_m_gas_industry_report)

<sup>2</sup> <http://www.pc.gov.au/research/completed/gas-markets>

<sup>3</sup> <http://www.gasfieldscommissionqld.org.au/whats-happening/rural-valuers-share-insights-on-gas-impacts.html>



**6. Do you agree with our preliminary view that NSW legislative provisions for landholder compensation for gas exploration and production should be broadened? If so, how? If not, why?**

- We note that the Queensland Government commissioned an independent review of their land access framework under which gas companies and landholders operate. Following the review, the Government convened an implementation committee to oversee the policy development to implement the review's findings. As part of this process, Sinclair Knight Merz (SKM) provided a report *Review of Heads of Compensation for Land Access in Queensland*<sup>4</sup>.
- SKM undertook a comparative assessment of other jurisdictions including NSW, Western Australia, South Australia and Alberta (Canada) and found that Queensland has the most comprehensive heads of compensation for land access in Australia. APPEA supports alignment between NSW and Queensland on the heads of compensation.
- SKM made the following observations regarding the heads of compensation:

“Nearly all stakeholders viewed the issue of lifestyle impacts (outside of visual amenity, noise, dust which are considered in compensation negotiations) being a result of the conduct of resource firm and the willingness/capacity of a landholder to articulate important lifestyle features. The majority of stakeholders agreed on several lifestyle impact points:

1. Some (not all) landholders have to date and can be expected in future, to incur genuine disruption to their lifestyle as a result of advanced activities.

2. Inclusion as a separate compensable effect without very clear definitions of what constitutes a lifestyle impact and without verifiable/robust property sales data will continue to create uncertainty. While it may provide the legislative certainty that lifestyle be considered in the determination of compensation, impacts may be difficult to quantify and audit, potentially increasing scope for gaming, disputes and delays – leaving all parties dissatisfied with the outcome.

3. Improving the transparency and understanding of how gas firms and independent valuers presently take into account impact on property value should be a key priority. The uncertainty as what constitutes/is dealt with under head of compensation “diminution of value” is clouding the lifestyle impacts issue.

4. Careful planning and design consideration so as to initially mitigate lifestyle impacts and secondly facilitate the return of the landholder's personal enjoyment of their property (as quickly as possible) to a standard acceptable to the landholder.

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<sup>4</sup> Report can be found at: <http://mines.industry.qld.gov.au/assets/native-title-pdf/appendix-2-skm-report.pdf>



5. No jurisdiction or other infrastructure/land use sector assessed has a separate compensable effect for lifestyle impacts where landholder's access to land is temporarily limited/prevented (although this may be the case for many years)."

- The Queensland review process acknowledged the considerable progress made since the framework's introduction. When introduced in 2010-11, about 1,800 land access agreements had been negotiated. In 2015 there are now close to 5,000 successful agreements in place.
- SKM found that the landholder/company negotiating practice is evolving naturally as parties become more educated and experienced.
- If heads of compensation are expanded, careful consideration should be given to how changes would be given effect. Any changes made to heads of compensation should be prospective only.

**7. Do you agree with our preliminary view that our recommendations on compensation should be limited to landholders who host CSG activities and their neighbours who are directly affected? If not, why?**

- APPEA believes that secondary impacts on neighbours (such as noise and dust) should not be compensated under the land access compensation regime given that, as noted above, these are already regulated by government.
- Further, as a point of first principles, the land access compensation regime should relate only to land that is being accessed and not neighbouring properties (which by definition are not accessed).

**8. Are gross margin and market rental approaches appropriate for estimating compensation for the value of land occupied? Are there other approaches that we should consider?**

- Given the case by case nature of land access negotiations, a one size fits all approach for estimating the value of land occupied should not be adopted as it would lead to inappropriate outcomes for the majority of landholders. The gross margin and market rental approaches may be appropriate in some cases, but should not be relied on across the board.
- Furthermore, the industry's experience is that compensation based on a strict application of the loss in value of land occupied in general produces compensation amounts that are below the expectations of landholders. This is due to intangible factors landholders consider relevant in determining the value of impacts on their land.
- The Productivity Commission's review found "While legislation specifies the types of costs that a landholder can be compensated for, these are typically no more than a guide, as in most cases the terms of access are determined through negotiation between the gas company and the landholder. In some cases, especially recently, gas companies are offering better terms than required under the legislation"<sup>5</sup>. This finding highlights the evolving nature of land access negotiations in Australia which is resulting in positive outcomes for landholders in the absence of direct government intervention.

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<sup>5</sup> <http://www.pc.gov.au/research/completed/gas-markets>



**9. Do you agree with our preliminary view that because severance is site-specific and highly variable, providing benchmark compensation would be of limited use to landholders? If not, how should we estimate and structure compensation for severance?**

- APPEA agrees with this preliminary view and submits that a similar conclusion should be drawn to compensable impacts more broadly as all impacts are highly variable and site-specific.
- As such, while it is beneficial for landholders to be informed on how to approach negotiations and options for arriving at values for compensation, we consider that specifying or quantifying general benchmarks for any particular compensable effect for all of NSW would misrepresent what any individual landholder could expect.

**10. Do you agree with non-market valuation and relocation cost approaches for estimating compensation for injurious affection? Are there other approaches that we should consider?**

- Non-market valuation and relocation costs may be appropriate in some cases as may injurious affection, but the extent to which these are useful will be highly variable and site-specific.
- Every landholder is different as is the intensity of gas operations on a given property. It is therefore difficult to provide general quantitative benchmarks.

**11. Do you agree with our proposed approaches for estimating compensation, or passing through costs, for disturbance? Are there other approaches that we should consider?**

- The proposed approach is supported by APPEA and we note that companies are already required to remediate damage to land or property to a standard at least as good as its original condition as part of the title conditions.

## BENEFITS QUESTIONS

**12. Do you agree with our preliminary view that benefit payments should apply during the production phase for those landholders hosting gas development on their land? If not, why?**

**13. Do you agree that the costs of benefit payments should be shared between the gas company and the NSW Government? If so, how? If not, why?**

**14. Should funds for benefit payments be pooled and divided among a group of landholders that have signed access agreements? If so, how?**

**Response to questions 12, 13, 14:**

- Payments from industry for the right to access the resource have historically been made in the form of royalty payments to the Government, as owner of the resource, on behalf of the community.
- The approach proposed in the preliminary view would see the Government relinquishing one per cent of the wellhead value in favour of the landowner, with a matching amount to be paid by the gas company. This would see the effective royalty rate rise from 10 to 11 per cent of the wellhead value for the gas company.
- APPEA opposes this approach. Compensation payments to landholders and royalty payments should be treated as separate issues. The royalty system is designed to ensure payments are made to the resource owner (the community) for the recovery of the resource based on the wellhead value, as a reflection of the resource's ownership prior to its recovery. It is not





appropriate (either directly or indirectly) to connect this payment methodology to compensation payments that may be made by a company to a landowner.

- The proposal is impractical as royalties are not calculated on the basis of individual wells. Royalty liabilities are usually assessed on a licence area basis, which by its very nature will often involve a wide geographic area, with the potential for a large number of wells across numerous properties.
- Due to variations in the productive capacity of wells, an inequality will always exist in regard to the value of those wells and hence the royalty earned. Irrespective of the proposed division of the royalty, a boundary of any sort will always deliver inequality, either between landholders, groups of landholders, or the wider community.
- APPEA recommends that if the Government wishes to directly compensate landowners through royalties, it should be sourced from its 10 per cent share of the wellhead value paid by the gas company. The Government would then assume responsibility for undertaking the process of apportioning the quantum of payments to individual landowners.
- In this respect, NSW competes with other jurisdictions to attract investment and currently has in place a royalty regime that is comparable to other mainland jurisdictions. Requiring industry to pay a “benefit” to the community over and above the royalty payment will negatively impact the competitive ranking of NSW as an investment destination.
- Industry already voluntarily contributes to communities and in Queensland contributions totalled \$166m in the period from January 2011 to March 2015.
- Further, as noted in the issues paper, landholders may receive benefits from gas exploration and production in the absence of an entitlement to a direct royalty stream. For example roads, fences, and gates may be upgraded and landholders may receive a production bonus which is unrelated to any compensable effect. As we have noted above, in most cases a strict calculation of compensable effects does not produce a compensation amount that reflects community expectations and this fact is reflected in the compensation packages negotiated by the industry.
- The benefits of activity reach beyond the individual landholder with entire towns and regional communities enjoying increased economic activity and employment opportunities.
- We submit that a decision to divert royalty revenue from government to individual landholders would represent a diversion of the benefit from a resource owned by all, to particular individuals. Such an approach has not been seen in other Australian jurisdictions and is likely to have broader implications with respect to the royalty income received from other resources.
- For example, what would be the rationale for not also diverting a share of coal and mineral royalties to individual landholders if that was the practice for gas royalties?

## RECOMMENDATIONS

### Landholders receiving independent expert advice on benchmark compensation rates for gas exploration and production from IPART.

- It could be potentially misleading for IPART to provide advice to landholders on compensation rates without fully understanding a given landholder’s activities and the proposed gas activities on their property. IPART can nevertheless play a role in ensuring landholders have the ability to determine whether the methodology and approach used for their compensation offer by a gas company is reasonable.
- To achieve this effectively we recommend that IPART consider delegating the performance of this responsibility to an independent body such as the NSW Land and Water Commissioner.



The Commissioner, appointed by the NSW Government, has developed strong working relationships with landholders, landholder groups and gas companies.

- We submit an expanded 'Office of the Land and Water Commissioner' could notionally provide advice to landholders who are in the process of negotiating compensation, independent advice on what constitutes reasonable compensation, and specifically whether their proposed agreement is generally fair relative to other agreements of a similar nature. The potential demand on this service would require consideration, given that the Commissioner operates within a relatively small budget allocation. Accordingly, to support an expanded role, the Commission should receive additional resourcing to manage the broader responsibility.

#### **IPART is to recommend appropriate compensation benchmarks for landholders.**

- As discussed above, we strongly recommend that any quantitative advice from the NSW Land and Water Commissioner be provided on a case-by-case basis when requested by landholders.
- Given the vast difference in the value of land and the activities undertaken by landholders, and also the intensity of gas operations that may or may not be considered on a given parcel of land, it would be difficult and likely misleading for IPART to issue generic benchmark amounts of compensation.

#### **IPART is requested to develop an analytical framework for setting compensation benchmarks that can be updated annually.**

- To achieve this objective we strongly recommend that IPART should focus on establishing a framework for use by landholders in their own land access negotiations. Such a move would empower individual landholders and enable them to negotiate an appropriate compensation amount that reflects impacts on their land, which as noted above, are highly variable.
- Landholders should be provided with the tools necessary to identify appropriate benchmarks and methods by which they could calculate associated compensation, rather than being issued with a generic amount reflective of a high-level assessment, that is unlikely to reflect their particular circumstance.
- There is currently a lack of detailed, apolitical or objective information available to landholders on what they need to know in order to undertake a successful land access negotiation in NSW. While various organisations and government agencies offer fact sheets, these provide only basic information to landholders.
- To assist landholders in a meaningful way, detailed and impartial information should be offered to guide them through the negotiation process. This information should principally focus on conduct arrangements, as once these arrangements are understood by both parties, calculating compensation amounts becomes a relatively simple task. Conduct arrangements include identifying the impact of gas activities on a landholder's business or land and mitigation strategies aimed at minimising any disruption to the landholder. The rights and responsibilities of both parties both during the negotiations and beyond, and guidance on the negotiation process should also be covered by the IPART framework.
- By empowering landholders with knowledge and advice, including legal and technical, and advice on comparable compensation amounts agreed to by others, landholders undertaking negotiations will be able to secure a fair deal with the gas company.
- Queensland provides a mature model of a land access negotiation framework that features this approach.
- Close to 5,000 agreements have been reached between landholders and gas companies and the gas industry is a major and successful industry in that state.



- A key element to this success has been the development of a framework developed by AgForce and provided via the Landholder Education Program. To deliver this program AgForce established an apolitical advocacy service which is funded by the Queensland Government, the Queensland GasFields Commission, APPEA and the Queensland Resources Council.
- The Program is free for landholders and provides a wealth of impartial and practical information to guide them through the negotiation process. For landholders that seek it, this resource provides the tools to confidently negotiate with gas companies in order to secure beneficial compensation agreements.
- A similar framework should be developed and delivered to landholders in New South Wales.