



Landholder compensation review
Independent Pricing and Regulatory Tribunal
PO Box K35
Haymarket Post Shop
NSW 1240
Electronically: via online submission form

15th June 2015

Dear Sir / Madam,

Re: Landholder benchmark compensation rates for gas exploration and production in NSW

Cotton Australia (CA) welcomes the opportunity to comment on the issues paper addressing *Landholder benchmark compensation rates for gas exploration and production in NSW*.

Cotton Australia is the key representative body for Australia's cotton growing industry. The cotton industry is a small but integral part of the Australian economy, worth over \$2 billion in export earnings and employing 10,000 people. The industry's vision is: *Australian cotton, carefully grown, naturally world's best*.

Coal seam gas exploration is a difficult issue for our organisation as our growers have a range of views regarding the operation of the industry. Cotton Australia does not oppose the CSG industry provided that the land and water rights of our growers are fully protected and land access arrangements are fair, equitable and provide compensation for growers in recognition of the impact of CSG operations. The CSG policy developed by Cotton Australia in consultation with our growers reflects this position and highlights that all land access arrangements need to address the complexity of each farming scenario which cannot be accounted for under a one size fits all approach. Cotton Australia's current coal seam gas extraction policy is attached to this submission.

Cotton Australia has been highly engaged in public policy processes that uphold the land and water rights of our growers and provide them with choice. We are a current member of the Petroleum Land Access Group convened by the NSW Land and Water Commissioner – Jock Laurie, along with other major agricultural industry bodies including NSW Irrigators Council and NSW Farmers. Our public policy position was also integral to the development of an MOU with Santos and AGL. The MOU states that both companies will not enter a landholders property where a landholder expressed that CSG operations are unwelcome.

Cotton Australia is cognisant of the justification for the IPART review and is highly supportive of landholders being compensated for access to their land. We welcome the IPART discussion paper and have previously endorsed the findings of the NSW Chief Scientist and Engineer under the Independent Review of CSG Activities in NSW.

Page 1 of 7

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However CA has identified a number of overarching concerns through the issues paper including:

- The progress of the benchmarking compensation methodology
- The delay engaging in consultation that may more appropriately inform the benchmarking process
- The potential for issues to arise during the arbitration process as a result of an outlined compensation framework.

These issues are outlined and discussed in greater detail below.

Cotton Australia wishes to express its concern that the questions passed within the issues paper indicate that IPART is highly progressed in developing a 'formula based' approach to establishing compensation rates when this may not in fact be the most suitable approach. We note that IPART intends to hold some public hearings in September / October 2015, which will include consultation within regional areas. An improvement of this process may include targeted consultation in communities including Moree and Narrabri that are currently exposed to petroleum and mining industries and as such are best placed to comment on land access challenges. This engagement may highlight alternative avenues and approaches to how a compensation framework may operate. Such an alternative approach which may similarly aid growers in their compensation negotiations would be market reporting of compensation payments to be conducted by IPART. It is envisaged that this could be done in a manner that does not identify individual landholders but provides compensation payments on a regional basis.

Cotton Australia is concerned that developing a framework may establish a precedent for 'factors' to be considered when calculating suitable rates of compensation. We would see that this may become an issue during the arbitration process whereby there may be legal avenues that a proponent / exploration company could take to indicate that all relevant compensation requirements had been considered- a position that could be in direct conflict with the opinion of the landholder. Cotton Australia understands that the proposed principles which aim to guide the recommendations of the review – transparency, adaptability and practicability – intend to cater for this flexibility that can capture different landholder circumstances. However we would want clear reassurance that the guidelines developed as part of the review process clearly cater for individual landholder circumstances. We suggest that landholders might be more comfortable with a framework which outlines in general terms what is compensable or not, but does not seek to set a rate on compensation.

The IPART issues paper seeks comment on many aspects of CSG benchmark compensation rates. We have outlined our responses in line with the questions posed by the IPART review.

Once again we would like to highlight the importance of undertaking immediate consultation directly with landholders prior to the IPART compensation benchmarking process proceeding further. We are concerned that landholders may otherwise be left with a 'formula' based approach that they have little faith in and be left with uncertainty around the fairness of the compensation payments. We would suggest that an additional forum that could be used by IPART to discuss the progress of the compensation benchmarking process could involve the Petroleum Access Group. Through industry involvement there is greater potential to liaise directly with landholders through engagement with their representative groups.



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?

The issues paper focuses on compensation for four main impacts of CSG activities and infrastructure development:

- The value of the land occupied by CSG activities and infrastructure
- Loss due to severance (reduction in land value caused by division of land parcel caused by CSG activities)
- Loss due to injurious affection (noise and dust impacts); and
- Loss due to disturbance (landholder time taken to develop an access agreement).

Cotton Australia along with NSW Farmers, the NSW Irrigators Council and the Ricegrowers Association (landholder representatives) have been involved in the development of landholder guidelines which outline the factors that landholders may wish to take in to account when developing up a land access agreement with an exploration company. These documents capture issues including:

- Considerations for the location of exploration and production wells e.g. proximity of wells to landholder buildings and infrastructure
- Access to the property e.g. biosecurity issues, access routes, approved access time periods and OH&S considerations
- Methods of communication between the exploration company and landholder; and
- Environmental consideration e.g. minimising erosion, waste management and approved chemical use.

As part of this document, consideration was also taken as to what should be addressed in the development of compensation for landholders. The advisory list developed by the landholder representatives includes:

- Costs for landholders time taken to develop the access agreement
- Exploration company to pay for reasonable legal costs in forming the access agreement
- Exploration company to cover costs of any independent expert advice which the landholder requires e.g. for the development of baseline assessment data
- Require compensation for any loss suffered as a result of the title holder's activity
 - Damage to surface land, crops, trees, grasses, other vegetation
 - Loss of overland flow as a consequence of infrastructure development
 - Damage to buildings, structures, works
 - Deprivation of the possession or use of the surface of any part of the land including an inability to carry out irrigation of the land area



- Severance of land
- Surface rights-of-way and easements
- Destruction, loss of, injury to or disturbance of stock
- Any damage as a consequence of any of the above
- Compensation for any unexpected loss or damage; and
- Compensation may also be required for farm workers residing on the property, share farmers, other parties holding agistment rights over the land.

We would consider that the above must be taken in to account when determining what landholders should be compensated for. We are in agreement with the IPART review panel that current NSW legislation requires amendment in order to capture the broad range of impacts through CSG exploration and development.

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?

Cotton Australia believes that market value may not always be reflective of actual land value as such a scheme fails to recognise:

- Parcels of land that have good access to high quality land and water resources
- Where farmers have invested significantly in soil amelioration and made significant overall improvements to farm layout and operation i.e. the development of continuous paddock structure that allows for greater efficiency in operation of machinery.

We also believe that compensation should be made to account for future limitations on land value and use. Location of CSG infrastructure may restrict landholders ability to install new irrigation infrastructure such as centre pivots or lateral moves that place an upper limit future potential to improve irrigation efficiencies.

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

The review raised the results of the NSW Valuer General study which assessed whether the presence of the CSG industry has had a material impact on land values. While the study determined that there was no impact on land values it also identified the limitations of its work given the limited extent of CSG development within NSW. We would caution the use of the NSW Valuer General study as a means to draw any conclusions regarding the impact of CSG on land value over time. CA would advocate for the application of a precautionary principle which assumes that there are long term impacts on land values. This reasoning is based on the yet unknown implications on water resources and the potential for restrictions to ongoing productive capacity of land following the development of CSG infrastructure.

The lack of understanding of material impacts of the CSG industry within Australian geological systems on groundwater is illustrated through the current Government AI policy. CA supports the movement of the AI policy to legislation, however in its existing format the policy seeks to monitor draw down of groundwater, water quality and water pressure. Access to water, and more specifically good quality water sources is key to maintaining economically viable agricultural production. In fact access to good, secure water significantly increases the value of a parcel of land.



Within the existing legislation and compliance operations undertaken by Government departments it is unclear when issues of drawn down, changes to water quality and / or pressure occur, how quickly gas exploration activities will be stopped or placed on a temporary hold. Without reassurance, or based on the uncertainty around process to occur when a breach is identified, there is the potential for a material impact on water resources. In the event that this situation was to arise the changes to water security will significantly impact on land value.

As mentioned in CA's response to the proceeding question, the location of CSG infrastructure on a landholders parcel of land may also restrict the ability of a landholder to install new irrigation infrastructure such as centre pivots or lateral moves. It may also impact on activities such as laser levelling of cotton fields in the event that the CSG infrastructure is located within the paddock. These restrictions will place severe limitations on the ongoing water efficiency of a farming operation and as such have implications for the long term profitability of competitiveness of a farming operation.

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?

Yes – see response to question 3.

CA is involved in the Petroleum Access Group along which is chaired by Jock Laurie. Previous provisions to the Petroleum (Onshore) Bill 2013 have been attempted in relation to amendments to landholder compensation for reasonable legal costs during the initial phase developing a land access agreement. These failed to be passed through to legislation, meaning that landholders are only granted compensation for reasonable legal assistance at the request of the affected individual. CA is strongly supportive of legislative provisions that foster the development of land access arrangements that are fair, equitable and provide compensation for growers in recognition of the impact of CSG operations. However we would recommend that any such provisions would need to be well constructed and require the garnering of support from the Government in order to ensure that these pass through as legislative amendments.

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?

The issues paper raises that landholders affected by noise or other impacts from gas exploration and production should receive fair compensation for these impacts. Cotton Australia agrees that those individuals who are impacted by CSG operations should be compensated. This includes those individuals who may experience reduced yields as a consequence of dust deposition, or suffer the impacts of increased levels of noise through increased vehicle movement and loss in visual amenity.

Current provisions only allow for compensation to be paid to the landholder and do not account for impacts incurred by farm workers residing on the property, share farmers, other parties holding agistment rights over the land. Beyond this compensation payments do also not account for surrounding landholders and it is unclear as to how the impact radius of a petroleum development is determined. Additional questions remain regarding the timing of compensation payments, and whether impacts monitored by a petroleum exploration company may trigger a requirement for compensation over time.



While Cotton Australia is supportive of landholders and neighbours receiving compensation payments for impacts of petroleum exploration we would suggest clarity is require around:

- Determination of the impact radius
- Timing for compensation payments and transitional arrangements from compensation to liability based payments
- Impacts that would be considered in determination of compensation payments.

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?

Cotton Australia is unsupportive of the use of Department of Primary Industries Gross Margin (GM) numbers for the estimation of compensation payments. We believe that these figures are highly conservative and beyond this are concerned that if the GM figures are only applied to the land that is physically impacted by the CSG footprint then it will underestimate the impact of the development on the landholder.

CSG infrastructure and the associated personnel that are involved in the monitoring of this equipment will generate a 'nuisance' and biosecurity impact on farming operations. Services such as irrigation channels may have to be relocated, machinery efficiency may be impacted due to changes in paddock layout and spraying regimes may need to be adjusted to avoid safety concerns. Given the potential for variability it is suggested that estimation of compensation may not be appropriate. In fact many of our growers are highly unsupportive of development and allocation of 'compensation figures'. We believe that an alternative approach might be a comprehensive list of what is to be considered in the development of a compensation payment. To provide landholders with current rates of compensation payments, IPART could consider the use of non-identifying market based reporting mechanism.

Questions 9–11

Given the high degree of variability in compensation payments for severance and injurious affection we consider that professional advice would be required at a minimum to assign financial figures. We therefore suggest that development of benchmark payments may not be the most suitable approach.

Cotton Australia again would like to indicate its support for meetings to be held in regional areas including Moree and Narrabri who are dealing with gas companies to allow for further feedback on a suitable approach for determination of guidance on compensation for petroleum exploration and development.

We are highly supportive of passing through costs to the titleholder including:

- Legal costs incurred by the landholder in development of a land access agreement
- Costs associated with obtaining professional advice for the development of compensation payments for impacts such as severance and injurious affection
- Time costs incurred by the landholder both in development and the ongoing commitments arising as a result of the land access agreement.

We suggest that these passing through costs should be made as an upfront payment to prevent barriers to landholders obtaining this professional advice.

Page 6 of 7

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Questions 12–14

Cotton Australia is supportive of landholders and the wider community directly impacted through the development of the CSG industry sharing in the benefits of the industry. We suggest that individuals who are directly hosting a CSG development should receive benefits over and above any benefit payments made to the wider community. We would recommend that the benefit payment should occur separately to the compensation payment in recognition that it is not an 'impact' based financial benefit but rather sharing of resource royalties that will occur throughout the production life of the well.

We are aware that Division of Resources and Energy (DRE) currently have a discussion paper available regarding the establishment of a Community Benefits fund. We would suggest that the mechanisms around benefit sharing including how benefits are calculated and shared will require collaboration between these two concurrent processes.

While the review paper indicates that this payment should only occur in the production phase we would suggest that the benefit should commence when the CSG infrastructure is used to generate financial returns. Cotton Australia is aware of unique cases where wells currently in the pilot testing phase are producing gas that is used for commercial purposes and is generating a financial return. We understand that it is normal practice that wells can typically only generate revenue and financial return during the production phase. However given that instances and approvals occur where this may not necessarily be the case it is recommended that benefits payments are made whenever revenue and financial return from gas production occur.

Cotton Australia, as suggested in response to questions 9–11, would recommend that IPART undertake direct consultation as soon as possible with landholders to discuss potential models for benefit payments. The allocation of benefit payments through the use of a fair and equitable model is key to ensuring landholders receive remuneration in recognition of land access arrangements.

Cotton Australia recognises that the issues paper represents the first opportunity for industry to comment on the compensation benchmarking process. We look forward to future engagement as this process continues and would welcome any enquiries by the IPART landholder compensation review panel.

Should you have any questions regarding our submission please do not hesitate to contact me on me on 02 9669 5222 or felicitym@cotton.org.au.

Kind regards,

Felicity Muller
Policy Officer



Coal Seam Gas Extraction Policy

Endorsed November 2012



Cotton Australia

Cotton Australia is the key representative body for the Australian cotton growing industry. It helps the industry to work together to be world competitive and sustainable, and also tell the good news about the industry's achievements. Cotton Australia determines and drives the industry's strategic direction, retaining its strong focus on R&D, promoting the value of the industry, reporting on its environmental credibility, and implementing policy objectives in consultation with its stakeholders.

Cotton Australia works to ensure an environment conducive to efficient and sustainable cotton production. It has a key role in Best Management Practices (*MyBMP*), an environmental management program for growers. This work has seen a significant improvement in the environmental performance of the industry, with huge improvements in water use efficiency, significant reductions in pesticide use, and millions of dollars invested into R&D.

The Australian cotton industry directly employs thousands of Australians and this year will contribute over \$2 billion to the Australian economy.

For further information or to discuss the content of this policy please contact Cotton Australia on (02) 9669 5222 or www.cottonaustralia.com.au.



Coal Seam Gas (CSG) extraction is a rapidly expanding industry in Queensland (QLD) and New South Wales (NSW). Its activities overlap cotton production in many areas of Central and Southern Queensland and North-West NSW.

In developing its CSG policy Cotton Australia recognises that the CSG industry offers potential economic benefits to Australia. However, without proper regulation and enforcement the CSG industry also poses significant risks to the Australian Cotton Industry.

This policy is a broad statement of principles. Cotton Australia, its members and growers reserve the right to implement these principles in a variety of ways, which reflect the different physical, historical and regulatory frameworks which apply across the cotton growing regions.

As an overriding principle Cotton Australia will not accept any negative impact on the property rights of cotton growers, arising out of the activities of the CSG industry.

Any impact intended or unintended must be fully compensated by the CSG industry and guaranteed by government.

While Cotton Australia will work with both Government and the CSG industry to develop the appropriate industry and regulatory framework, the responsibility to protect growers from negative impacts rests with Government.

Cotton Australia's CSG Extraction Policy seeks to:

- ***Protect the sustainability of aquifers that underlie irrigated and dry land cotton production and their communities.***
 - There can be no negative impact on the water property right that is currently held by existing users.
 - All decisions related to water resource management and the CSG industry must be made with full access to, and consideration of, independent, high quality, peer reviewed science.
 - Independent and comprehensive water quality and quantity monitoring, evaluation and reporting networks must be funded by CSG companies. The outcome of these monitoring, evaluation and reporting networks must include independent, peer-reviewable reports characterized by the highest scientific standards. These would include the requirement for comprehensive baseline assessments.
 - The “water balance” and “water quality” must be maintained to ensure long term aquifer sustainability.



- Where there is no likely impact on aquifers that support the cotton industry or high value agricultural land that could be used for cotton production, any new coal seam gas development should ensure the long term viability of agricultural production.
 - The use of evaporation or release to streams methods for untreated CSG water, are unsatisfactory disposal strategies.
 - A robust water-licensing, measuring and monitoring scheme must be used to account for all CSG related water and form part of a broader state water licencing process, with similar requirements and guidelines as current alluvial water legislation.
 - Industry best practice for all construction, operation and rehabilitation of CSG infrastructure and is overseen by government regulation and ensuring compliance with appropriate infringement penalties and remediation requirements. .
 - Ban the use of hydraulic fracturing or “fracking, unless it can be demonstrated, on a case-by-case basis, by the highest quality science, that it poses no risk to productive aquifers.
- ***Protect high value agricultural land from CSG extraction activities.***
 - That CSG exploration and extraction activities should not occur on land capable of cotton production, unless it can be demonstrated by independent, high quality, peer reviewed science, that the activity does not pose a risk to the agricultural productive capacity of the land.
 - ***Enhance landholder rights, to ensure land access agreements are fair and equitable.***
 - Support the landholder’s right to say no to CSG development.
 - Allow for flexibility in negotiating Access Arrangements of Conduct and Compensation Agreements (herein referred to as “land access agreements”), so that the focus is on minimising the impact of CSG exploration and extraction on the land and landholder.
 - All access terms are not to be inconsistent with requirements stipulated under Cotton Australia’s myBMP program.¹
 - All land access agreements to recognize case-by-case complexities of each scenario and cannot be addressed using a “one-size-fits-all” approach.
 - Strengthen compensation arrangements in both States to ensure all real losses for landholders are compensated for.
 - Allow compensation arrangements to include an element of “return” on the resource.

End

¹ Please see <https://www.mybmp.com.au/home.aspx>