

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

30<sup>th</sup> October 2015

Dear Sir / Madam,

**Re: Landholder benchmark compensation rates – Draft report**

Cotton Australia (CA) welcomes the opportunity to comment on *Landholder benchmark compensation rates – gas exploration and production in NSW: Draft report*.

We appreciated the chance to ask questions directly of the IPART panel through the public hearings at both Narrabri and Gloucester, transcript transparency, and the ability to provide a formal response.

CA wishes to highlight that it does not oppose the CSG industry provided 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.

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 has expressed that CSG operations are unwelcome.

**Feedback on main themes**

We were encouraged to see IPART's recognition of the complexity of landholder operations, which clearly identified that a 'one size fits all' approach will not work, that a landholder will be likely required to seek professional advice when developing a land access arrangement and that conduct arrangements are as important as compensation.

CA is in strong agreement regarding the complexity of landholder businesses whereby issues for consideration around land access will be vastly different, for example, when comparing cropping versus livestock operations. In our original submission we put forward that an approach that assisted landholders in determining factors that could be considered for compensation would be far more beneficial for landholders rather than the allocation of quantitative figures. We were

encouraged to see IPART adopt a significantly different approach as it moved from the issues paper through to the draft report.

IPART has indicated within the draft report that landholders will 'likely' need professional advice. We would encourage IPART to word this main theme more strongly. Through our involvement on the Petroleum Access Group, we would suggest that all members recognise the importance of seeking (at a minimum) legal advice when drafting a land access agreement. We recognise that in some cases the professional advice sought will be minimal, in line with the 'one size fits all' not universally applying across the board. That being said, the position of the Walker Review and recent legislation passed in the NSW Parliament recognises the importance of seeking professional advice. Given the widespread support for these initiatives we would encourage IPART to take a clearer and stronger stance on the importance of landholders seeking professional advice.

We wish to highlight our support regarding the critical importance of ensuring that conduct arrangements are properly established. CA has some reservations about the use of the word 'conduct' to describe the development of land access agreements where landholders and petroleum companies develop a mutual understanding of each other's business requirements and establish conditions of access as a result of these discussions. Conduct may imply *behavioural* considerations as opposed to business restrictions and may lead to this recommendation being misconstrued. We suggest that referring to 'land access arrangements' would be more suitable as it provides consistency with resources currently available to landholders / petroleum companies.

A common understanding of landholder farm business operations and requirements of petroleum companies during exploration and production phases is key to fostering working relationships. In the event that exploration proceeds through to the production phase these relationships can operate for thirty years. As such the importance of these land access arrangements and effective lines of communication cannot be underestimated. Several guideline documents have been developed highlighting factors for consideration by landholders when constructing a land access agreement. We have provided some additional resources to IPART including the NSW Farmers CSG Mining and Communications Officer who is funded by the NSW Government to provide information and resources to landholders.

### **Feedback on model used to estimate benchmark compensation**

We were encouraged to see that IPART took on board the comments of various stakeholders and adopted an approach whereby landholders are able to determine what might form a reasonable level of compensation based on factors that should be considered as part of an access arrangement. Factors that were considered in developing a compensation payment included the value of land occupied, loss due to severance, loss due to injurious affection and loss due to disturbance. We are in agreement with the heads of compensation proposed by IPART. We believe that the inputs of the model proposed by IPART are easy to follow. However

we would make the following suggestions in order to further improve the example models put forward in the final report:

- Develop additional case study examples in fitting with the 'one size fits all' approach does not apply universally. This may include higher / lower land values or higher / lower fees for professional advice. We wish to make note that a comment was made at the public hearing indicating that \$40,000 in professional fees for development of a land access agreement was overly generous. We would like to publicly state that we believe that this represents a reasonable – lower end estimate of professional costs incurred. Valuation, legal and taxation advice is a significant cost and given the potential impacts on a landholders operation should be duly factored in to any compensation payment. For ease of generating an example Excel spreadsheet we recognise that only one worked example will be easiest for landholders to use. As such we would suggest that the additional case study examples could sit within the report alone rather than as additional worksheets within the Excel spreadsheet.
- References should be made from the spreadsheet to the report to allow landholders to make direct comparisons. For example footnoting the cost of landholders time and expert advice as loss due to disturbance.
- We suggest providing examples against injurious affection to provide clarity in the spreadsheet in the event that this is used in isolation. For example *injurious affection e.g. impacts on land value from noise, dust, CSG infrastructure*. A simple example could also be given in the spreadsheet for severance. While we recognise that these are clearly outlined in the 'User Guider' tab, we believe that a few key words within the 'Input' tab itself may be of significant assistance to landholders.
- We recommend footnoting the spreadsheet to highlight to landholders that expert advice can be sought to obtain the estimated reduction in the value of land
- We recommend splitting the estimated impacts on land in recognition of the significantly different impacts faced by landholders between the exploration and production phases. In many cases exploration may not necessarily proceed through to production. Exploration has greater impact with access required by a more individuals and larger well pads. While we recognise that IPART has tried to achieve this through the first and second year split within the spreadsheet we believe that an exploration / production split would provide greater clarity to landholders.
- Within the 'Results' tab the payment in year one should be footnoted to indicate that the higher payment within this year is a result of the professional costs incurred by landholders for the purpose of expert advice.

We also wish to highlight that CA is supportive of landholders being reimbursed for their time and providing an estimate of the value of their time. CA continues to be supportive of landholders receiving incentive payments from gas companies in recognition of the imposition on landholder time and operations resulting from gas production.

## **Other decisions and recommendations to support landholders**

### *Compensation for neighbours*

CA in reading through the transcript from the Narrabri public forum and participating in the Gloucester public forum understands that there are strong views regarding compensation of neighbours.

We recognise the challenges faced by IPART, particularly given the legal precedent this may establish for compensation payments. In recognition of this, CA is in broad agreement that compensation should be paid to neighbours where noise, light or other impacts exceed reasonable levels.

CA is highly supportive of localised distribution of benefits through the Community Benefits Fund and would recommend that DRE take on the feedback from communities regarding noted impacts from CSG and mining development.

While outside the terms of reference for IPART's review, we wish to note that this highlights the importance of establishing a rigorous monitoring framework. A well established and transparent monitoring network provides communities with information and certainty that their land and water rights are being protected.

### *Amendments to NSW legislation*

CA has reviewed the changes to legislation which have recently entered Parliament and are currently awaiting assent. We believe that the amendments to legislation (as relates to this study) do not address the current issues identified by IPART in relation to compensation payments.

CA supports the alignment of provisions for compensation in the *Petroleum (Onshore) Act 1991* (NSW) and the *Petroleum and Gas (Production and Safety) Act 2004* (Qld). As highlighted in our earlier submission the current legislative framework does not appropriately capture special value of land. That is, market value is not reflective of actual land value where parcels of land have good access to high quality land and water resources or where growers 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.

We additionally support the IPART recommendation that 'reasonable costs' should be covered rather than the establishment capped costs in recognition that a 'one size fits all' approach does not work in relation to landholder circumstances when developing a land access agreement.

We note that permanent impacts are accounted for in the valuation statements within the model.

*Land access and negotiation workshops*

CA is supportive of forums whereby landholders can access advice on issues such as CSG operations in NSW, groundwater impacts, agencies responsible for monitoring and compliance, and advice on developing land access arrangements. We recognise that there is currently little information on CSG operations and changes within NSW Government policies filtering through to communities where CSG companies are undertaking exploration activities. The NSW Government / Federal Government / Industry has funded the GISERA initiative which aims to deliver community driven research. However we recognise that GISERA cannot meet the needs of landholders alone. GISERA may address issues such as groundwater impacts however we see that a gap remains around access arrangements and compensation considerations.

We support NSW Farmers taking the lead on this initiative given their broad membership base of agricultural landholders. CA would happily engage with NSW Farmers to provide advice and support for these workshops where possible.

*Public register of compensation payments*

CA continue to support a voluntary, non-identifying, market based reporting mechanism for compensation payments.

CA believes that the reporting mechanism should remain with an independent government agency such as IPART rather a representative body or interest group, identified as NSW Farmers within the draft report. We would support a very brief annual factsheet should numbers permit this to occur.

Should you have any questions regarding our submission please do not hesitate to contact me on [REDACTED]

Kind regards,

Felicity Muller  
Policy Officer