

INDEPENDENT PRICING AND REGULATORY TRIBUNIAL

Landholder benchmark compensation rates: Gas exploration and production in NSW: Draft Report

Santos response | October 2015



Santos Response: Draft IPART Report: Landholder benchmark compensation rates:
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Santos Ltd provides this response in relation to the Independent Pricing and Regulatory Tribunal (IPART) Draft Report *Landholder benchmark compensation rates: Gas exploration and production in NSW* (Draft Report).

Santos is generally comfortable with the direction of the draft report and recognises that it successfully resolves a number of issues and questions raised by IPART in the issues paper that was released for consultation earlier in the year. With that in mind we wish to make the following observations.

Firstly, Santos believes it has in place highly attractive compensation arrangements for NSW landholders that are well known and understood. The arrangements are available from our web page online or from our shop front locations in Narrabri and Gunnedah.

In summary, during the exploration phase a private-landholder receives in excess of \$30,000 per annum upfront. During the production phase a landholder will share in the benefits of the project by way of a compensation pool based on the royalties paid. We estimate a farmer with 4 wells on his or her property would receive \$100,000 per annum (or over \$1 million over ten years).

Secondly, Santos' successful negotiation of land access arrangements in north west NSW demonstrates there has not been sufficient legislative or market failure to justify amending legislation or over-turning existing commercially negotiated arrangements between land holders and project proponents.

The draft report notes that a consistent theme from landholders interviewed is that conduct arrangements are as important as compensation. Santos vehemently agrees that successful land access arrangements are based on a 20-30 year positive partnership. While compensation should fully address the impacts of activities on the surface of the land, the way in which those activities are undertaken is the most important factor in maintaining amicable relationships with landholders.

Also important is the conduct of the negotiation of the agreement by both parties. As outlined in the Centre for Coal Seam Gas Research Paper: Stakeholder Trust in CSG Research and Operations:

- Landholders want to be paid equitably in comparison to their neighbours – no more, no less
- Landholders want gas companies to respect their business in the planning and operation of CSG
- Landholders do not want to see companies wasting money in their operations

Thirdly, as highlighted in our submission to the inquiry, natural resource development in Australia is already a highly regulated industry through State and Commonwealth laws. The underlying principle in Australia where coal, petroleum and mineral resources are [the property of the Crown](#)¹ (rather than the landholder) must not be legislatively compromised. We reiterate the following points highlighted in our initial submission:

- Land access and compensation arrangements should be a commercial arrangement negotiated between the project proponent and the landholder;
- The proposal to legislate the payment of benefits muddles this principle by confusing surface impacts with mineral rights;
- Payments to neighbours are already sufficiently covered by common law protections, and existing planning and environmental processes;
- The proposal for upfront payments misunderstands the length of time access is required for and the need for long term relationships, possibly with successive future owners of the property; and
- Should the Government wish to appropriate a greater share of the royalty take to landholders that is a matter for the State, but seeking to effectively increase the royalty take from proponents would have significant commercial consequences.

¹ Crommelin, M --- "Governance of Oil and Gas Resources in the Australian Federation" [2009] UMelbLRS 8

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Santos wishes to provide the following comments in regard to the key findings and recommendations of the draft report.

IPART Draft Report	Comment
<p>One-size-fits-all approach to compensation won't work</p> <p><i>Rec.1 When negotiating land access agreements with gas companies, landholders use IPART's spreadsheet model to estimate compensation benchmarks that take into account their individual circumstances.</i></p>	<p>Santos agrees that a one-size-fits-all approach won't work.</p> <p>The recommendation that landholders use IPART's spreadsheet model risks becoming a defacto one-size-fits all for negotiations that could lead to unrealistic landholder expectations.</p> <p>If IPART wishes to proceed with the model, Santos recommends a simpler spreadsheet confined solely to heads of compensation under s.109 of the Act with no presumptions on benefit payments, market values or timing of payments.</p> <p>It could also be argued that the voluntary public register is also seemingly in conflict with this key finding by IPART. It remains Santos' position that land value should be as set by the NSW Valuer General and stated on the property's rates notice. This value is both certain and not subject to the impact of weather or agricultural markets.</p> <p>The valuation method should also consider the financial benefit that the activity area accrues to the landholder in the value of their land over the term of the agreement, ie., there are limited agricultural or other land uses that have a financial return as high on a per hectare basis than that already paid by Santos to landholders for CSG activities.</p> <p>There are many utilities in the broader community that may have a similar land use impact on a landholder's property including road, rail, electrical and telecommunications infrastructure. Consultation with these industries may need to be undertaken prior to adopting the model as landholders are likely to use this spreadsheet as the model for all land disturbance compensation calculations associated with infrastructure on their land.</p>
<p>Benefit payments for Landholders</p> <p><i>Rec.2: That gas companies fund benefit or incentive payments to landholders as part of their compensation arrangements.</i></p>	<p>Santos does not support legislated or mandated benefit payments. Such payments must remain a commercial decision for individual projects, especially given the IPART recommendation is equivalent to a higher royalty payment.</p> <p>Santos reiterates that its land access compensation arrangements pay a benefits payment once production is underway. This is specific to the proposed Narrabri Gas Project.</p>

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<p>Impacts on neighbouring properties</p> <p>Rec.3: <i>That gas companies pay compensation to neighbours in the event that impacts on them (e.g., noise levels or hours of operation) exceed reasonable levels set out in licences or approvals. Written agreements should be in place in these instances, and minimum compensation should be paid equivalent to an allowance to relocate neighbours for the period that impacts exceed reasonable levels.</i></p>	<p>Santos supports the view highlighted in the Draft Report that impacts on neighbours are already managed to a reasonable level through existing planning and environmental processes. The proposed Gas Community Benefits Fund is a vital part of the overall compensation for communities who host the gas industry.</p> <p>As previously mentioned, there are many utilities and activities in the broader community that may have an impact on a neighbouring property including industrial facilities, road and rail infrastructure and the agricultural industry (crop spray drift, agricultural equipment such as pumps, generators and machinery operating 24 hours). Consultation with these industries may need to be undertaken prior to adopting final standard compensation as neighbouring landholder compensation may impact social licence for these industries..</p>
<p>Amendments to NSW Legislation</p> <p>Rec.4: <i>That the provisions for landholder compensation in the <u>Petroleum (Onshore) Act 1991</u> be amended prospectively to align with the <u>Queensland Petroleum and Gas (Production and Safety) Act 2004</u> and recognise special value of land.</i></p> <p>Rec.5: <i>That, in amending the <u>Petroleum (Onshore) Act 1991</u> to require gas explorers to pay for landholders' time spent negotiating and arbitrating an access agreement and for legal and other professional fees, the NSW Government provide for landholders' reasonable costs to be paid rather than set caps for these costs.</i></p>	<p>Santos' position is that there has been insufficient legislative or market failure to justify amending the <u>Petroleum (Onshore) Act 1991</u>. Further amendments to the legislative process will simply create further uncertainty.</p> <p>However, should the Government choose to harmonise the Act with Queensland legislation, that should be what is implemented rather than "sort of harmonising" by only changing some terms and adding grounds for compensation such as land holder's time, impacts on neighbours etc. The latter type of change would add uncertainty for companies and promote further development of case law rather than relying on existing precedents from Queensland.</p> <p>If the landholder's time is recognised and compensated in legislation it should be capped and only paid if the negotiation is successful and the time spent reasonable. At present Santos does not pay explicitly for the land holder time, but rather pays a lump sum Service Fee as set out in the Working with Landholder Fact Sheet (attached).</p>
<p>Compensation for professional and legal fees</p> <p>Rec.5: <i>That, in amending the <u>Petroleum (Onshore) Act 1991</u> to require gas explorers to pay for landholders' time spent negotiating and arbitrating an access agreement and for legal and other professional fees, the NSW Government provide for landholders' reasonable costs to be paid rather than set caps for these costs.</i></p>	<p>Santos supports payment of reasonable legal costs. The Santos '<i>Working with Landholder's</i>' factsheet states that the company pays reasonable legal costs.</p> <p>Should this recommendation be legislated, the payments should be capped and providers regulated, unless by mutual consent. There is experience in Queensland where legal fees exceeded payments to landholders and of non-qualified or unlicensed individuals or entities providing services such as valuations. This led to landholders being out of pocket due to being misled over the professional qualifications of their advisors.</p>

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<p>Workshops to provide information and negotiation skills</p> <p><i>Rec.6: That the NSW Farmers Association provide independent workshops funded by the NSW Government and the gas industry that assist landholders in understanding land access for coal seam gas and negotiating land access and compensation agreements.</i></p>	<p>Our experience is that negotiations progress more smoothly and relationships are more enduring if landholders are well informed. On that basis Santos supports the concept of ‘independent workshops’ but does not support the recommendation for NSW Farmers Association to provide the ‘independent workshops’.</p> <p>NSW Farmers’ is not perceived by the gas industry as an independent and disinterested party in the CSG debate. Additionally, the Association have only a minor representation of landholders in NSW. Whilst these workshops have been successfully delivered by Agforce in Queensland, their membership base originates from a broader amalgamation of beef, sheep and grain producers.</p> <p>The NSW Land and Water Commissioner is an established independent and impartial office that should be tasked to undertake this role. This would ensure that access to information and attendance at workshops would be accessible to all landholders, not just the minority that are members of NSW Farmers.</p>
<p>A public register of compensation payments</p> <p><i>Rec.7: That the NSW Farmers Association develop and maintain a voluntary and non-identifying public register of CSG compensation payments.</i></p>	<p>Santos is neutral on a public register of compensation as the company’s publicly stated position is that confidentiality is a matter for each landholder to decide. Santos has made its NSW land access agreement template publicly available.</p> <p>As previously mentioned, our view is that the NSW Farmers Association is not an independent and disinterested party in the CSG debate and have only a minor representation of landholders in NSW.</p> <p>The Division of Resources and Energy is an impartial office that would be better suited to facilitate this register. The Division already maintains databases established to provide access to information in relation to petroleum activities that have been promoted widely for example Common Ground and DIGS.</p> <p>Feedback from landholders and the broader community is that, where possible, information sources should be easily accessible and grouped for ease of access.</p>
<p>Option for upfront payments (included in Spreadsheet)</p>	<p>Santos remains opposed to upfront payments:</p> <ul style="list-style-type: none"> • Compensation must be linked to an impact in a timely manner • Upfront payments would penalise future landholders of the property • Creates perceived inequalities between neighbours due to the timing of payments even if the net present

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	<p>value is the same</p> <ul style="list-style-type: none">• Present value calculations are misunderstood and could create mistrust between the parties which is contrary to the key IPART finding about importance of conduct
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Attachment: Working with Landholders Fact Sheet

The Narrabri Gas Project

Working with landholders

Santos respects landholders and has a long history of working with landholders in regional areas.

The Narrabri Gas Project area includes both State owned land and private land mostly in and around the Pilliga. We have been very clear about our commitment to drill wells on private land only when the landholder agrees to work with us and a land access agreement is in place.

In our more advanced Queensland operations, we have voluntary land access agreements with over 300 landholders, demonstrating agriculture activities and natural gas development can exist side by side.

In New South Wales we have a compensation framework in place that provides an income stream for landholders who host our exploration and drilling activities. The framework features a land-value based payment to compensate for the amount of land utilised by Santos' surface facilities and a fee for service to the landholder. In exchange for the fee for service, the landholder signs a Services Agreement and agrees to assist with general monitoring and upkeep of the sites located on their land. A land access agreement is also negotiated.

We work with landholders involved in all stages of our activities to ensure they are comfortable with how we work on their land in consideration of their lifestyle and business interests.



When entering into a Land Access Agreement and Services Agreement with a landholder, Santos will:

- + Be honest and transparent
- + Pay reasonable legal costs incurred by the landholder to finalise an agreement
- + Conduct our operations to the highest health and safety standards
- + Carry out a plan to minimise noise, dust and light from our activities
- + Monitor the landholder's water bore by measuring water levels and quality
- + Rehabilitate the land progressively during our operations

Project overview

The Narrabri Gas Project could supply up to half of the natural gas used by NSW homes, small businesses, major industries and electricity generators every day

Operations will be focussed on land in and around the Pilliga, near Narrabri

The Project will create over 1,200 jobs during construction and bring substantial economic benefits to Narrabri and the region, while delivering a clean, reliable source of energy to NSW

Working with Santos

- + A member of our Land Access team will be in contact to ask if you are interested in working with us
- + If you would like to find out more, we'll arrange to meet with you and provide information and answer questions you may have
- + Following the initial meeting, if you would like to progress further, a scout of your property is arranged to determine if there are any ecological or cultural heritage impediments to the proposed site
- + We then work with you to prepare an agreed checklist containing details to be considered prior to undertaking proposed activities on your property. This may include infrastructure locations, agreed access routes, hours of operation and timing of agricultural activities like cropping which we consider when planning our activities
- + These details are documented in a Farm Management Plan
- + A Land Access Agreement and Services Agreement are prepared and compensation amounts finalised
- + We encourage landholders to have the documents reviewed and Santos will pay reasonable legal costs on the landholder's behalf to finalise an agreement
- + When the agreement is signed compensation for the first year is paid
- + Fourteen days before work is scheduled to commence we will contact you to advise details. At this time neighbours will also be notified of impending work
- + The infrastructure on your property will be regularly monitored and a member of our Land Access team will maintain regular contact with you

Compensation

Exploration and appraisal

Exploration and appraisal is carried out to gather additional information on geology and natural gas composition. It involves the drilling of core holes and pilot wells.

Exploration and appraisal compensation

In these examples, calculations are based on land valued at \$1,000 per hectare, with facilities over one hectare of land (an average well site).

Year One

- + Santos pays 120% of the land value of the area used for our facilities
- + The land value is based on the landholder's rates notice
- + \$30,000 fee for service per landholder per annum, paid in a lump sum

Compensation:

\$1,200 for land utilised + \$30,000 fee for service
Total: **\$31,200** for Year One

Year Two onwards

- + Santos pays 60% of the land value of the area used for our facilities
- + The land value is based on the landholder's rates notice
- + \$30,000 fee for service (paid at \$2,500 per month)

Compensation:

\$600 for land utilised + \$30,000 fee for service
Total: **\$30,600** for Year Two and each year following for as long as activities remain on the land

Production

The production stage follows exploration and appraisal. During this stage production and transmission of gas occurs. If production facilities are located on your land, a different form of agreement will be entered into, as a typical production well has a life span of 20–30 years.

Production compensation

Calculations are again based on land valued at \$1,000 per hectare, with facilities over one hectare of land (an average well site).

Year One

- + Santos pays 120% of the land value of the area used for our facilities
- + The land value is based on the landholder's rates notice
- + \$30,000 fee for service per landholder per annum, paid in a lump sum

Compensation:

\$1,200 for land utilised + \$30,000 fee for service
Total: **\$31,200** for Year One

Year Two onwards

Rather than receiving a land value based payment, landholders involved in the longer term production phase will share in a Landholders Incentive Fund.

- + The Fund will be equivalent to 5% of Santos' statutory annual royalty payment
- + Landholders will receive a share of the Fund proportionate to the amount of their land being utilised by Santos
- + A landholder with 2–3 production wells on their property would receive approximately \$50,000 per year (inclusive of the \$30,000 annual fee for service)

About Santos

An Australian energy pioneer since 1954, Santos is one of Australia's largest domestic gas producers with more than 3,000 employees and a long history of safe, responsible operations.

For more information

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