Chapter 4

LAND ACCESS & LAND USE

Land Access

4.1 The questions of land access and land use have generated much of the controversy surrounding the coal seam gas industry. For many landholders, despite understanding that they do not own the mineral resources under their land, the realisation that they are legally required to give access to their land to gas exploration companies and that those companies could, for example, construct roads, clear drilling sites, build work camps and, ultimately, construct gas production facilities, came as a profound shock. This represents a huge imposition on the landholder who may have believed that freehold title meant what it said.

4.2 The legal position in both NSW and Queensland has no process for dealing with a situation in which a landholder simply does not wish to have CSG activity on their land under any circumstances. In such a situation, should the company choose, it can require the landholder to enter into arbitration and comply with the result of that arbitration, which will include access to the land.

4.3 It is important to note that, whenever it was put to a gas company by the committee whether they intended to use these powers the answer was that they had not and would prefer not to use them in the future. For example, in evidence to the committee, a senior company executive summed up Santos's position:

> As you saw when you came out and visited our area, we have to have respectful relations with our community. We employ locals because we want to understand the area; we want to understand particular farmers' issues. If a farmer does not want us on his property, we will not be going through that gate.[1]

4.4 The campaigns against giving land access to coal seam gas exploration and production companies, particularly those such as Lock the Gate seeking to deny access altogether, have contributed to a public perception that landholders have few legal rights when dealing with these companies and that the only alternative is 'civil disobedience'. At the other extreme, some landholders, perhaps lacking the resources, knowledge, or the confidence to 'take on' a major corporation, simply accepted what was offered by way of an access agreement and compensation and permitted access to their land.

4.5 In fact the law in this area has been evolving quite rapidly to respond to public concern and, while it is correct to say that a landholder cannot absolutely deny access

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1 Mr J Baulderstone, Vice President Eastern Australia, Santos, *Committee Hansard*, 9 August 2011, p. 15.

to the land, equally it is wrong to imply that a gas (or other resources) company has an unfettered right of access to conduct whatever activities they see fit on any land.

The Legal Position in Queensland & New South Wales

4.6 Under Australian law minerals under the earth's surface belong to the Crown, represented by the States.[2] The right to explore for, and produce, minerals, oil and gas, is generally granted by the State to private exploration and production companies. There are differences in the legal regimes governing exploration and production between the two States but, with regard to the rights of a permit holder to access land to exercise his rights under an exploration or production permit, the situation in the two States is broadly similar.

4.7 The holder of an exploration permit in Queensland – an authority to prospect – has the right to carry out "...authorised activities ... despite the rights of an owner or occupier of land on which they are exercised". These activities are:

- exploring for petroleum;
- testing for petroleum production;
- evaluating the feasibility of petroleum production; and
- evaluating or testing natural underground reservoirs for petroleum storage.[3]

4.8 The Queensland Act goes on to list activities that are "... reasonably necessary for, or incidental to, an authorised activity" and these include:

> 1. constructing or operating plant or works, including, for example, communication systems, pipelines associated with petroleum testing, powerlines, roads, separation plants, evaporation or storage ponds, tanks and water pipelines
>
> 2. constructing or using temporary structures or structures of an industrial or technical nature, including, for example, mobile and temporary camps
>
> 3. removing vegetation for, or for the safety of, exploration or testing under section 32(1)[4]

4.9 Obviously not all of these activities would be carried on at every site, and many of the larger works are located on land owned by the companies. However this list makes it clear how intrusive and disruptive CSG exploration might be.

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2 There are some minor exception to this in relation to long-standing rights, for example to coal, and the situation with regard to off-shore minerals, oil and gas and in the Territories is different but this report is concerned only with onshore CSG exploration and production in the Murray-Darling Basin.

3 *Petroleum and Gas (Production & Safety) Act 2004(Qld),* s.31(2) & s.32(1).

4 *Petroleum and Gas (Production & Safety) Act 2004(Qld),*, s.33(1).

4.10 The right to access land to carry out these activities is not uncontrolled. In Queensland, it is governed by the land access laws and the *Land Access Code,* introduced into Queensland law in October 2010. The purpose of the laws is to ensure that all holders of an authority to explore for, or produce, resources comply with a single set of rules.

4.11 The law's key features are:

- an entry notice requirement for 'preliminary activities'[5] i.e. those that will have no or only a minor impact on landholders
- a requirement that a Conduct and Compensation Agreement be negotiated before a resource authority holder comes onto a landholder's property to undertake 'advanced activities' i.e. those likely to have a significant impact on a landholder's business or land use
- a graduated process for negotiation and resolving disputes about agreements which ensures matters are only referred to the Land Court as a last resort
- stronger compliance and enforcement powers for government agencies where breaches of the Land Access Code occur.[6]

4.12 The *Land Access Code*[7] sets out the requirements that govern the relationship between an exploration or production company and the landholder. The general principles embodied in the Queensland Code encourage both parties to negotiate in good faith, to respect the rights of the other party, to act responsibly and to provide all relevant information necessary to the creation of a satisfactory working relationship. These are perfectly sound and, if followed in spirit as well as to the letter, would minimise the friction between landholders and the gas companies.

4.13 The Code also includes mandatory conditions in relation to:

- the training of personnel operating on a landholder's property;
- the selection, construction and use of access points, roads and tracks;
- livestock and property;
- the spread of declared pests;
- the siting and management of camps;
- bringing items on to the land – firearms, domestic animals and alcohol are banned (without the owner's consent); and

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5 Examples of preliminary activities are walking the area, taking soil samples or survey pegging.

6 Department of Employment, Economic Development & Innovation (Qld), *Guide to Queensland's new land access laws*, November 2010, p. 1. http://mines.industry.qld.gov.au/assets/land-tenure-pdf/6184_landaccesslaws_guide_print.pdf

See also: http://mines.industry.qld.gov.au/mining/land-access-policy-framework.htm.

7 Department of Employment, economic Development & Innovation (Qld) Land Access Code, November 2010, http://www.agforceqld.org.au/file.php?id=685&open=yes.

- gates, grids and fences.

4.14 These mandatory conditions generally place an obligation on the company to minimise its impact on the land, its occupants and their farming and other activities. Where a problem arises relating to any of these headings, the company is required to advise the landholder and, if relevant, make good the damage.

4.15 In addition to the Code, the *Guide to Queensland's New Land Access Laws* sets out conditions relating to land access and provides definitions of commonly used terms. One of those is a requirement that a copy of the *Land Access Code* be provided to landholders with the first entry notice, prior to a company gaining access to land.

4.16 Queensland has also moved to protect its agricultural resources by introducing a Strategic Cropping Land policy:

> The Queensland Government's policy position is that strategic cropping land is a finite resource that must be conserved and managed for the long-term. Such land should be protected from those developments that would result in its permanent alienation (that is, when a use on or near strategic cropping land will endure for 50 years or more and prevents cropping during that time or in the future) or diminished productivity.[8]

4.17 The criteria which define what constitutes strategic cropping land go to slope, soil depth and quality and soil water storage capacity.[9] The areas which the policy will apply have been defined. The criteria will be applied to individual properties to determine whether they, in fact, fall under the definition of strategic cropping land. The legislation to give effect to the policy was to be introduced into the Queensland Parliament on 25 October 2011.

4.18 The Queensland Government has identified CSG activities such as large water storage ponds and compressor stations as falling under the heading of activities likely to alienate strategic cropping land and thus unlikely to be given approval. Thus it can be assumed that some of the areas of greatest concern, black soil country along the Condamine River for example, will be protected from intensive development.

4.19 In addition, other lower impact actions may come under the policy's ambit:

> The policy will also apply to activities that have a temporary affect on strategic cropping land. These are activities where the land is able to be restored to its previous strategic cropping land condition at a later date. For example, activities such as pipelines or wells associated with petroleum and gas production and geothermal developments generally have a smaller footprint and may have a temporary impact. These activities will still be

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8 Queensland Government, *Submission 358*, p. 23.

9 The criteria can be found at http://www.derm.qld.gov.au/land/planning/pdf/strategic-cropping/proposed-criteria.pdf

assessed under the strategic cropping land policy to ensure appropriate conditions requiring full restoration are applied.[10]

4.20 Much of the area affected by CSG mining falls outside the areas of designated strategic cropping land.

4.21 New South Wales access and compensation arrangements are governed by the *Petroleum (Onshore) Act 1991*[11]. This Act sets out both the matters that may be covered by an access agreement and the restrictions which apply to the holder of a petroleum title.

> 69D Matters for which access arrangement to provide
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> (1) An access arrangement may make provision for or with respect to the following matters:
>
> (a) the periods during which the holder of the prospecting title is to be permitted access to the land,
>
> (b) the parts of the land in or on which the holder of the prospecting title may prospect and the means by which the holder may gain access to those parts of the land,
>
> (c) the kinds of prospecting operations that may be carried out in or on the land,
>
> (d) the conditions to be observed by the holder of the prospecting title when prospecting in or on the land,
>
> (e) the things which the holder of the prospecting title needs to do in order to protect the environment while having access to the land and carrying out prospecting operations in or on the land,
>
> (f) the compensation to be paid to any landholder as a consequence of the holder of the prospecting title carrying out prospecting operations in or on the land,
>
> (g) the manner of resolving any dispute arising in connection with the arrangement,
>
> (h) the manner of varying the arrangement, ...[12]

4.22 This section of the Act further provides that "...If the holder of a prospecting title contravenes an access arrangement, a landholder of the land concerned may deny the holder access to the land until:

> (a) the holder ceases the contravention, or
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> (b) the contravention is remedied to the reasonable satisfaction of, or in the manner directed by, an arbitrator appointed by the Director-General."[13]

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10 Queensland Government, *Submission 358*, p. 25.

11 http://www.dpi.nsw.gov.au/minerals/titles/landholders-rights/petroleum_onshore_act_1991

12 Petroleum (Onshore) Act 1991(NSW) s.69D

13 *Petroleum (Onshore) Act 1991(NSW)*, s.69D (4)

4.23 Sections 71 and 72 of the Act further limit the rights of a permit holder.

> (1) The holder of a production lease must not carry out any mining operations or erect any works on the surface of any land which is under cultivation except with the consent of the landholder.[14]

4.24 This limitation is subject to Ministerial discretion,

> (2) The Minister may, however, if the Minister considers that the circumstances warrant it, define an area of the surface of any parcel of cultivated land on which mining operations may be carried out or works may be erected, and may specify the nature of the operations to be carried out or the works to be erected.

4.25 Section 71 does not, except in exceptional circumstances, apply to cultivation of pasture.[15]

4.26 Exploration and production are subject to the following restrictions:

> (1) The holder of a petroleum title must not carry on any prospecting or mining operations or erect any works on the surface of any land:
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> > (a) on which, or within 200 metres of which, is situated a dwelling-house that is a principal place of residence of the person occupying it, or
> >
> > (b) on which, or within 50 metres of which, is situated any garden, vineyard or orchard, or
> >
> > (c) on which is situated any improvement (being a substantial building, dam, reservoir, contour bank, graded bank, levee, water disposal area, soil conservation work, or other valuable work or structure) other than an improvement constructed or used for mining or prospecting operations,
>
> except with the written consent of the owner of the dwelling-house, garden, vineyard, orchard or improvement (and, in the case of the dwelling-house, the written consent of its occupant).

Disputes arising over these limitations are determined in the Land and Environment Court.[16]

4.27 The right of access to land to explore for CSG must be balanced by the right of the landholder, whether on free or leasehold, to exercise some control on who comes on to their property and what activities are undertaken on that property. Given the array of legal protections available to the landholder, short of an absolute right of refusal of access, why has the issue generated so much hostility?

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14 Petroleum (Onshore) Act 1991(NSW), s.71

15 Petroleum (Onshore) Act 1991(NSW), s.71

16 Petroleum (Onshore) Act 1991(NSW), s.72

4.28 There are two aspects to the problem. Firstly, the issue of access has, in many instances, been mishandled by some gas companies and the resulting community hostility has been combined with anxiety among those subject to exploration permits who were 'waiting for the axe to fall'. Secondly, there is a very real impact on the lives and businesses of landholders if CSG exploration and production takes place on their land. This is considered later in this chapter.

4.29 Extensive evidence of offhand, patronising and simply insulting behaviour by companies – unannounced arrivals, phone calls at wholly inappropriate times and gratuitous, not to say stupid, advice on how to manage the land in conjunction with gas exploration was given to the committee. For example, a landholder near Narrabri explained that:

> ...when they come to us for meetings, they have made no effort to actually do any research into how we conduct our businesses. They had the audacity to ask us if we had heard of sorghum when they were telling us what we could do with the water. They said: 'We irrigate a crop; I think it's called sorghum. Have you heard of that?' Then they want us to trust them that they are going to do the right thing by us.[17]

4.30 The same witness also gave example of the casual approach of a company to a number of other landholders:

> I know firsthand that my sister was contacted at 20 past eight on a Sunday morning asking for access to her property. That was her first contact. That was before the mail out. ... I know that he rang other landholders in our PEL on a Saturday afternoon as well. Apparently the reasoning for that is, 'Because that is the only time we can get hold of you lot.'[18]

4.31 Another landholder described her experience of dealing with a gas company holding an exploration permit over her land:

> It was immediately evident to my husband and me that they were completely ignorant of the type of farming that we do. They had no idea that we are on a flood plain and that the area where they wanted to put the pilot was right in a major floodway. They did not understand our land values, our irrigation practices or the level of intrusion that their activities would cause to our property.[19]

4.32 As an example of the type of approach that angers landholders and undermines belief that some companies are acting in good faith, the committee received a copy of a letter sent to landholders by Leichhardt Resources, the holder of a Petroleum Exploration Licence (PEL) in the Moree Region of New South Wales.[20] The letter,

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17 Ms Natalie Tydd, *Committee Hansard*, 9 August 2011, p. 32.

18 Ms Natalie Tydd, *Committee Hansard*, 9 August 2011, p. 35.

19 Mrs R Armstrong, *Committee Hansard*, 19 July 2011, p. 15.

20 Letter tabled at the committee's hearing in Narrabri, 2 August 2011.

posted in Brisbane, is dated 30 June 2011 (a Thursday). It is fair to assume that it would not have been delivered to rural property owners near Moree until the following Monday at the earliest, that is 4 July 2011.

4.33 The letter announced that the drilling contractor "... proposes to drill an exploration core hole on your property" and that "... the well program is scheduled to commence in July." It then quite properly advises the property owner of the legal requirements relating to access and compensation including that the landholder has 28 days to reach an agreement after which the matter would go to arbitration; i.e. the landholder is entitled to take until at least 1 August to reach an agreement.

4.34 Thus by the company's own calculation it could not meet its own target for the commencement of operations if the landholder chose to exercise his or her full legal entitlement of 28 days to reach an access and compensation agreement. It is also unacceptable that the first direct contact with a landholder should also be the request for an access agreement and the trigger for the 28 day period in which the landholder is required to negotiate the agreement.

4.35 In too many cases it appears that the gas companies adopted a 'take it or leave it attitude' to negotiations with farmers, shifting the onus to the farmer to seek to negotiate reasonable conditions of entry and appropriate compensation for CSG activity on their land.

4.36 One witness at a hearing, who stressed that her family had a good relationship with the company seeking access to their land, nevertheless commented that landholders had to demand that access and compensation agreements covered issues of concern to them:

> **Senator STERLE: ...** Have you directly asked questions like who is going to fix your bores, what happens to the flaring in the dry, who is on the property and what chemicals are being used?
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> **Mrs Scott:** Yes we have but we want it in writing. We want it to be written in the conduct and compensation agreement. At the moment, the current conduct and compensation agreement that was put before us does not mention any of those things. So it is up to us to highlight them and to make sure that they are in writing to try to protect ourselves.[21]

4.37 As outlined above, both Queensland and NSW have detailed guidelines that should govern the interaction between landholders and gas companies and include requirements that the parties act in good faith. The behaviour described in preceding paragraphs is clearly unacceptable and in breach of the guidelines.

4.38 The Queensland Government has, in the last year, introduced a number of measures to support landholders in their negotiations with the gas industry:

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21 Mrs Kate Scott, *Committee Hansard*, 18 July 2011, p. 12.

- a training program, to assist landholders negotiate a successful Conduct and Compensation Agreement;
- A program of landholder and resource industry information sessions on the new laws in late 2010; and
- Opening a new Mines office in Dalby in January 2011 with officers trained in mediation conferencing.[22]

4.39 These initiatives are to be welcomed and should be extended to areas subject to future expansion by the industry in advance of that expansion. It is regrettable that landholders involved in the first wave of the industry did not have that level of support.

Land use

4.40 The impact of gas exploration and extraction varies, having regard to the type of farm it is on – grazing or intensive cropping, the soil type, rainfall patterns, the dependence on groundwater, whether it is an irrigated property etc. In addition which of the range of mining related activities is to be carried out on a particular property will have a major impact on the extent of disruption.

4.41 Disruption to agricultural production can be such that the viability of a property is threatened. This is not restricted to the prime cropping lands such as the Liverpool Plains in New South Wales or the land east of the Condamine River in Queensland.

4.42 The operators of a major grazing property near Roma in Queensland identified continued, reliable access to water as their major concern. The property, part of a major integrated beef producer including grazing and feedlotting, gets 50 per cent of its water from overland flow and the remainder from groundwater entitlements.

4.43 The operators were deeply concerned that loss of a groundwater source could not readily be replaced or compensated for:

> [The gas company will] guarantee that if we ruin or destroy your water or water-taking ability, we will give you an alternative.' Generally, the alternative is to sink another bore. So will we just sink another bore in an already depleted and/or contaminated water-bearing seam? I am a little bit confused as to how it has easily passed that that is the solution for the future ...[23]

4.44 In addition to anxieties about reliability of water supply and the capacity to make good damage to it, day-to-day grazing operations could also be adversely affected:

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22 Queensland Government, *Submission 358*, p. 21.

23 Mr D Foote, Australian Country Choice, *Committee Hansard*, 18 July 2011, p. 3.

> The animals are not allowed to settle because there is a flared well every 405 metres across your land. But, all importantly, our cattle eat grass. Because of dust and disturbance to the grass the cattle cannot eat.[24]

4.45 Mr Foote also highlighted the problem of compensation:

> In our situation, through the integrated operation we run, we will never be able to be fully compensated, because how can you get compensation for tenderness, which is a measure of the beef that we provide and put into those supermarkets across the eastern states? How do you get compensation for that?
>
> At the moment, compensation is focused on the immediate impact of that well or that well head.[25]

4.46 The impact goes far beyond the well-head. Exploration for, or production of, gas has the potential to severely disrupt virtually every aspect of agricultural production on cropping lands and, in extreme circumstances, remove the land from production.

> They compensate us for impact and they think the square footprint of that well is an impact, but it is not. Our labour bill has gone up 20 or 30 per cent in the last 12 months to keep staff on. Our access to transport and roads is all getting more expensive. There are so many things that are impacting our business. As far as the impacts on the management of the farm, it is the fact your runs are not as long as they used to be so you are turning around. It is just all these inefficiencies. It is very hard to say exactly what it is worth until you have worked through it ...[26]

4.47 In a submission to the committee a producer of high quality wheat identified the likely impact of coal seam gas wells on his property. The gas company with a permit over this property estimated it would require only one acre in 250 for its wells. The landholder, having regard to the topography, drainage patterns, risk of erosion, plus the need for safety zones along pipelines and around wells, arrived at a figure of some 38 acres in 250. This calculation assumed that only wells and associated access roads and pipelines would be put on his land.[27]

4.48 A partner in the same group described the importance of careful land management to retain soil quality and prevent erosion:

> Summer rain is intense and water erosion is a major issue on our black, self-mulching clay soils. We manage this by reducing tillage, retaining stubble or planting cover crops in addition to the installation of contour

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24 Mr D Foote, Australian Country Choice, *Committee Hansard*, 18 July 2011, p.4

25 Mr D Foote, Australian Country Choice, *Committee Hansard*, 18 July 2011, p.4

26 Mr I Hayllor, *Committee Hansard*, 19 July 2011, p. 8.

27 Mr D Cush, Bellata Gold, *Submission 347*

> banks and waterways to convey stormwater from the upper slopes to the natural watercourses at the base of the slopes.
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> Any development on these productive but fragile black soils can result in serious erosion if inappropriately designed and constructed. We also actively manage salinity on our soils and any development that impacts on the groundwater flow system may contribute to soil scalding. [28]

4.49 A second impact is that the presence of the wells would require changes to farming practices:

> ... there is the inconvenience factor and loss of production efficiencies because our machinery is in multiples of 40ft, 60 ft or 120 ft and fixed overheads are spread over a lower number of production acres.[29]

Mr Cush estimated that the loss of production on his property would be in excess of 25 per cent.

4.50 Ms Tydd described these problems in detail:

> At an operational level, we carry out controlled traffic farming, confining compaction to permanent traffic lanes, optimising soil conditions and reducing overlap. The machinery we use is up to 36 metres wide, set up on three-metre wheel spacing and equipped with the latest GPS navigation systems. Machinery of this scale requires plenty of room to move and turn around. Fields need to be free of any fencing, ponds, dams and roads. A one-quarter-acre well site every 250 acres with interconnecting gravel roads and pipelines would severely hinder our use of this machinery. Investment in the latest equipment delivers both environmental and economic benefits. For example, the use of GPS navigation delivers immediate production savings of 10 to 12 per cent. That means less diesel, less chemicals and less water.[30]

4.51 A paper prepared for the Queensland Government some years ago made a similar point:

> Laser levelling for cropping operations now means that long runs are required by grain and cotton farmers to operate machinery; and controlled traffic techniques require runs to be on established configurations. A network of even small obstacles in a paddock may make cultivation impracticable ...[31]

4.52 Gas company representatives indicated that they "were sensitive" to these issues and were willing to modify their practices accordingly:

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28 Ms N Tydd, *Committee Hansard*, 2 August 2011, p. 23.

29 Mr D Cush, Bellata Gold, *Submission 347*

30 Ms Tydd, *Committee Hansard*, 2 August 2011, p. 23

31 G Edwards, *An Issues Paper on the Management of Water Co-produced with Coal Seam Gas,*(December 2006)

> ... we do have some existing production in the Denison Trough, which is north of Rolleston. That is in black soil country and in that country ... the arrangements we have with the farmers is that we will walk into the wells.[32]

4.53 The committee has been told of cooperative processes where companies have agreed to site their facilities in such a way as to have the minimum negative impact on the landholder's own business; for example a gas company had worked with the landholder to agree the positioning and upgrading of roads within a property, thus providing some long term benefit to the landholder beyond the life of the gas field. In another example a company was open to negotiate the placement of wells when the landholder pointed out that the company's original proposal would intrude both on the operation of his business and the amenity of his family.[33]

4.54 The gas companies have stressed in evidence to this committee that they wish to have good relations with landholders and rural communities, that they prefer to avoid being required to go to arbitration and that they wish to have regulatory certainty. Santos and Dart Energy have also indicated in evidence to the committee that they would not enter land without the owner's consent.

Other land users

4.55 The Queensland Government has moved to restrict future minerals exploration near populous areas.[34] However this may be of little benefit to one group of landholders.

4.56 While the focus of much of the comment received by the committee was on landholders with significant holdings, the impact of the CSG industry extends beyond that group. The committee has received a number of submissions from people living on smaller blocks; people who have made a 'lifestyle' choice to move to a rural area or have been compelled by rising costs in urban areas to move to the country.

4.57 This group may not be faced with the direct intrusion of a gas company on to their property but they are nonetheless adversely affected by production facilities on adjacent land, increased traffic and industrial noise and related dust, and rising costs. These changes represent a real loss of the ambience and sense of community that may have drawn them to the land.

4.58 In addition to these impacts, there are claims of adverse health impacts from chemicals used by the industry:

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32 Mr K Horton, Group Manager, Upstream Queensland, AP LNG, *Committee Hansard*, 9 September 2011, p. 3.

33 Ian Hayllor,e-mail.

34 See, for example *Australian*, 16 August 2011 http://www.theaustralian.com.au/national-affairs/mining-free-zones-for-queensland-towns/story-fn59niix-1226115571800

> The small size of rural residential allotments (many are 12 hectares in area) and higher population density, particularly in the Tara-Chinchilla locality, increases the risk for gas field activities to cause environmental harm and nuisance when compared to other parts of the gas field. In particular, noise and vibration, dust and light could affect more residents and these effects could have more severe impacts on residents who through physical and financial circumstances are more sedentary.[35]

4.59 The special position of this group was recognised in the Queensland Co-ordinator General who commented that,

> This suggests strongly that the special circumstances of rural residents in this locality should be effectively addressed by quality liaison and social impact management.[36]

4.60 The author of this submission has argued that the responses of the gas company, QGC, and the Queensland Department of Environment and Resource Management (DERM) to specific complaints has been derisory. Dust suppression was carried out with water that produced a toxic run-off; claims of leaking gas wells were dismissed by DERM; complaints about excessive noise took months to be addressed.

4.61 Consultation with locals was also inadequate:

> Recently QGC brought on line 5 wells near my home.
>
> Not once was I consulted about their activities all I got was a letter telling us work would commence - as far as I am concerned that is not consulting I was merely told what was going to happen. The work lasted over 100 days and was clearly audible inside my house. Security guards would patrol the area 24hrs a day. I experience reverse beepers going off at 1 am in the morning ... trucks and vehicles run up and down the road causing dust and damage to the road. The road was repaired only after the work had been finished. The road was only usable for 4wd vehicles.[37]

4.62 A number of submissions to this committee have expressed similar frustrations and a sense that the agencies responsible for regulating the gas industry are not prepared to stand up to that industry. Whether all the claims of inaction are justified or not, there is clearly a very strong perception emerging in regional communities that the needs of the gas industry are being given priority over those of the local community.

4.63 While it may be of little consolation to affected individuals, the committee notes that the responsibilities of both the Queensland and New South Wales

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35 Mr D Pratzky, *Submission 360*, p. 2–3, quoting a report from the Queensland Coordinator General

36 Mr D Pratzky, *Submission 360*, p 2–3, quoting a report from the Queensland Coordinator General

37 Mr D Pratzky, *Submission 360,* pp 8–9. (Minor corrections have been made to this quotation)

Ombudsman extend to the failure of public officials to investigate complaints about breaches of government regulations.

Restoration

4.64 The obligations comprising the requirement to restore well sites, pipelines, dam sites (and other land used by the companies) need to be clearly identified in individual agreements and in the general conditions governing exploration and production licenses.

4.65 Much of the infrastructure associated with the industry will be removed but sealed wells and in-ground pipelines will remain. Wells will be sealed with cement and cut off some metres below the surface. Old pipelines are considered to be stable for the very long term.

4.66 The committee is particularly concerned with the rehabilitation of storage pond sites. It has been put to the committee that small ponds associated with exploration wells were not being adequately restored but merely bulldozed, burying saline residues. If the land is to be restored to a productive condition all residues must be removed and lining material whether impermeable or clay-based must also be removed.

4.67 Pipelines have also been raised as a cause for concern. Once production ceases, over the long term old metal pipelines will corrode and create areas of subsidence which will erode. The National Farmers Federation expressed concern that:

> Leaving the poly pipes in the ground may resolve the short-term impact but these will collapse in the longer term resulting in subsidence issues. Some examples show that crops cannot be grown on pipes installed 50 years ago so there may also be very long-term production impacts.[38]

4.68 The committee has heard no suggestion that old pipelines would be removed as part of site restoration works.

4.69 In evidence to the committee the gas companies accepted full responsibility for the clean-up and restoration of all their wells and sites and also for monitoring the stability of sealed wells in the future. However there must be some question about how long that responsibility will be retained by the companies, given that corporate structures and ownership change. This responsibility should not simply devolve on the public over time.

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38 Mr D Fraser, Chair, Mining & Coal Seam Gas Taskforce, National Farmers Federation *Committee Hansard*, 9 August 2011, p. 6.

Recommendation 16

4.70 The committee recommends that the Commonwealth, in cooperation with the states, establish an independently managed trust funded by the gas companies to make financial provision for long-term rectification of problems such as leaks in sealed wells or subsidence and erosion caused by collapsing pipelines.

Access and Compensation agreements

4.71 The issue of access and compensation agreements for the intrusion of a gas company onto a landholder's property is at the core of much of the hostility to the industry. It is important to bear in mind that in dealing with a gas company a landholder is being compelled to enter into an arrangement not of their choosing. Thus a satisfactory access and compensation agreement is essential to creating an amicable working relationship.

4.72 The significance of compensation agreements was emphasised in evidence to the committee:

> Conduct and compensation agreements are of extreme importance. Notwithstanding that they are not able to be registered on the title, they forever run with the land and bind future landowners. They contain extremely important rights and obligations and constitute equitable easements over land even though no plan need be registered. The make-good obligation also involves negotiation of a no less important document. The importance of securing water supply to maximise the productivity of land cannot be understated.[39]

4.73 Many witnesses were concerned at the imbalance of power between the two parties to the negotiations on conduct and compensation – the individual landholder and the multi-national gas company. This has been addressed to some extent by the requirement to complete a Conduct and Compensation Agreement before undertaking 'advanced activities' on the land. (See paragraph 4.11 above)

4.74 It is clear that there is wide variation in agreements even having regard to differences in land use, etc, and that the capacity of individual landholders to negotiate, seek legal advice, act cooperatively with neighbours, etc. has a significant impact on outcomes. A witness emphasised the need for a consistent approach to agreements:

> We do not want legislation that is actually going to prescribe what must be done but some legislation that will actually underpin something as simple as consistent codes of conduct, consistent agreements, and consistent heads of compensation positions. ... we have tried very hard to work with the

39 Mr P Shannon, *Committee Hansard*, 19 July 2011, p. 3.

> companies but we are relying on personal goodwill with individuals within the companies.[40]

4.75 The Queensland *Guide* is particularly relevant to the question of compensation. It lists "compensatable effects" (which can also be found in the *Petroleum and Gas (Production and Safety) Act 2004*). These are:

- Deprivation of possession of land surface;
- Reduction in land value;
- Reduction in land use including reduced use including reduced use that could be made through any improvements to it;
- Severance of any land from other parts of the land owned by the landowner;
- Any costs, damage or loss arising from activities carried out under the land surface;
- Accounting, legal or valuation costs reasonably incurred by the landholder to negotiate or prepare a Conduct and Compensation Agreement, other than costs involved to resolve disputes via independent alternative dispute resolution (ADR) [when parties have failed to reach an agreement]; and
- Damages incurred by the landholder as a consequence of matters mentioned above.[41]

4.76 It should be noted that reduction in land value and reduction in the opportunity to improve the land are both included in the list of compensatable effects. This subject has been the subject of much comment.

4.77 Anecdotal evidence suggests that the gas industry is having a negative effect on land values, though in the view of the Queensland Government:

> Due to the infancy of the industry and the subdued state of the rural property market, at this point in time, there is insufficient market sales data to provide definitive evidence about the impact of CSG operations on land values.[42]

Confidentiality clauses

4.78 Access and compensation agreements have generally included a confidentiality clause. Such a clause is included in the Queensland Standard Conduct and Compensation Agreement. However it comes with the following qualification:

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40 Mr P Shannon, *Committee Hansard*, 19 July 2011, p. 12.

41 *Guide to Queensland's new land access law*, pp 3–4; *Petroleum and Gas (Production & Safety) Act* (2004) (Qld), s.532 (4)(a)(b)(c).

42 Queensland Government, *Submission 358*, p. 22.

> ... the clause is optional and if the parties agree it may be deleted by crossing through the clause and initialling the deletion.[43]

4.79 Most of the landholders that the committee spoke to had negotiated agreements with a gas company which included such clauses. However, generally there did not seem to be much support for them. In fact confidentiality agreements were perceived as offering an advantage to the gas companies in that they prevented unified action by landholders to ensure that all agreements were in similar form and that compensation payments were soundly based and included similar levels of compensation for similar types of landholding.

4.80 The major gas companies did not view confidentiality clauses as particularly important; indeed it seemed to be recognised that such clauses merely heightened community suspicion of the industry. When asked by the committee if the companies were quite happy to waive existing clauses and forego their use in the future if that was the landholder's wish:

> The current landholder agreement used by Santos includes a standard confidentiality clause. ... Santos is aware that there is a public concern about potential for the clause to limit a landholder's ability to discuss their compensation arrangement. In response to this concern, whilst the confidentiality clause will remain standard practice, if, at any time a landholder wishes to waive the confidentiality clause, Santos will be willing do so.[44]

Committee view

Land Access

4.81 It needs to be recognised that land access is a business arrangement between two entities, both of whom have legal rights and reasonable expectations. All too often it appears that gas company representatives, or their sub-contractors, have not behaved in a responsible and business-like manner. Farms are businesses and their owners and managers deserve to be treated as responsible business people. At the same time, many farms are the private homes of families who should be treated with ordinary politeness and respect.

4.82 The request for land access involves major commercial and personal decisions for landholders which will have significant long-term impacts both on their business and their private lives and that of their families. Thus they should be given ample time to consider all of these issues, seek advice, consult neighbours, etc. without the threat of compulsory arbitration hanging over them.

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43 Standard Conduct & Compensation Agreement, clause 20, drafting note. This document may be accessed at http://mines.industry.qld.gov.au/mining/landholder-information.htm.

44 Santos, *Submission 353*, p. 23.

4.83 The coal seam gas industry is a relatively short lived industry. It may have a life of only 25 to 30 years in most regions. However, if it is not properly regulated, that period of time is sufficient to do serious damage to agricultural productivity on some of the best farmland in Australia. Landholders are legitimately concerned about water supply, disturbance to livestock, erosion caused by access roads and pipelines, interruption to natural drainage flows, damage to soil, particularly from salt, and the spread of noxious weeds.

4.84 The committee recognises that the holders of exploration or production permits for underground minerals must have access to the land surface to exercise their rights. However, in the context of the increasingly demanding food task that Australia and the world face it would be irresponsible to put at risk highly productive agricultural areas in exercising those rights.

4.85 In the committee's view it is both unreasonable and unwise to expose agricultural properties to the risk of long term damage, for example from loss of water, erosion or salt contamination, or to compel the owners of productive agricultural land to undertake significant changes to their farming practice to accommodate the gas industry.

4.86 Significant changes would include adopting less efficient production methods, re-equiping with machinery to operate on a smaller scale, cultivating different crops or undertaking major reconfiguration of a property to accommodate any of these changes.

4.87 The committee believes that the CSG industry can co-exist with agriculture but that this requires the industry to negotiate with landholders on matters such as the location of wells, the alignment of access roads and pipelines and the placement of major facilities such as compressor stations to ensure that they make the minimum intrusion on the management and operation of the property.

4.88 In some areas intensive CSG production may be incompatible with agriculture. The committee notes that Queensland and New South Wales are developing strategic cropping land policies to protect land use. Queensland's policy is explained thus:

> Strategic cropping land (SCL) is an important, finite resource that must be conserved and managed for long-term food and fibre production, and regional growth. Currently, the state's SCL resources are subject to a range of competing land-use activities, including agriculture, mining and urban development.
>
> It is important to find a balance between these sectors and minimise land-use conflicts by assessing potential impacts of development on this land.[45]

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45 Department of Environment & Resource Management, http://www.derm.qld.gov.au/land/planning/strategic-cropping/background.html

4.89 These policies will define land of high agricultural value which will be protected from development. The criteria which will be used to determine what is strategic cropping land in Queensland are:

- Slope;
- Rock size and content;
- Gilgai microrelief;
- Soil depth;
- Favourable drainage;
- ph levels;
- chloride content; and
- soil water storage capacity.

Strategic cropping land must also be in minimum areas of 50 hectares in the Eastern Darling Downs and 100 hectares in the Western Cropping Zone.[46]

4.90 New South Wales "... has a moratorium on issuing exploration licences while it develops regional strategic land use plans", which

> ... will identify the best places for cropping, viticulture, thoroughbred breeding, mining, coal seam gas extraction, conservation, and urban development.
>
> Until these plans are in place, all applications for licences will have to be exhibited for public comment and have to submit an agricultural impact assessment.[47]

Projects will not be supported if they have unacceptable impacts on agricultural lands or industries that are considered to have high strategic value.

Recommendation 17

4.91 The committee supports the concept of strategic agricultural land and recommends that, when identified, exploration for, or production of, coal seam gas be banned from land identified under defined criteria.

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46 Department of Environment & Resource Management, Queensland, *Protecting Queensland's strategic cropping land,* (April 2011), p. 4-5

47 NSW Department of Primary Industries, *States move to protect agricultural land for food production* (July 2011), http://www.dpi.nsw.gov.au/aboutus/news/agriculture-today/july-2011/states-move-to-protect-agricultural-land-for-food-production

4.92 This will protect areas such as the Liverpool Plains in New South Wales and the land east of the Condamine River in Queensland. The exclusion of land having these characteristics would apply to that land only; exploration and production could be permitted in a region containing strategic cropping land as long as it did not pose a risk to the reserved land.

4.93 It is important to note that a great deal of land subject to CSG exploration or production permits falls outside the areas identified in Queensland as 'strategic cropping land'. For example, AP LNG comment that the majority of their tenements lie outside the Strategic Cropping Protection and Management Areas.[48] In practice, drawing a distinction between 'high quality agricultural land' and the rest in trying to manage the impact of the CSG industry may oversimplify the issue.

4.94 To provide protection to agricultural land that falls outside the criteria of strategic cropping land the committee believes that the relevant laws relating to land access should be amended to make it clear that the overriding concern in access agreements for exploration or production must be the maintenance of the agricultural productivity or the land in question.

4.95 A grazing property may be average land and fall outside the definition of strategic cropping land but at the same time be a highly productive source of food. Thus the committee considers it appropriate to focus on agricultural productivity in general rather than restrict protection to 'prime' land.

4.96 At present where a dispute arises between a landholder and a gas company that dispute is resolved by going to either the Land Court in Queensland or the Land and Environment Court in New South Wales. Very few disputes, in practice, go to arbitration. Landholders have in the past been unwilling to go to arbitration because of cost and a perception that they can do little to prevent the gas company coming on to their land. Gas companies rarely enforce their rights through the courts.

4.97 The committee considers that the position of landholders when negotiating with mineral exploration and production companies needs to be strengthened, by making it clear that any arbitration process or the exercise of a ministerial discretion in relation to land access must be required to give priority to the protection of agricultural productivity.

4.98 Such a change is also consistent with the Queensland Government's draft food policy - *Food for a Growing Economy: An Economic Development Framework for the Queensland Food Industry* – as outlined in its submission to this inquiry.[49]

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48 AP LNG, S*ubmission 366*, p.13

49 Queensland Government, *Submission 358*, pp 26–27.

Recommendation 18

4.99 The committee recommends that the Commonwealth, through the Council of Australian Governments, or other appropriate forum, request the States to insert in the relevant legislation a requirement that arbitration bodies charged with resolving disputes between landholders and the holders of exploration or production titles – the Land Court in Queensland; the Land and Environment Court in NSW – must give priority to the maintenance of agricultural production with minimal disruption in deciding any dispute.

4.100 Similarly, where a ministerial discretion such as that exercised under s.71 of the NSW Petroleum (Onshore) Act exists, the exercise of that discretion should be required to give priority to maintaining agricultural production with minimum disruption to the existing land-use.

4.101 The committee notes that section 71 of the *Petroleum (Onshore) Act 1991(NSW)* provides a significant degree of protection to cultivated land generally while at the same time, through the exercise of a Ministerial discretion, providing protection for the interests of the holders of a production lease.

4.102 The committee believes that the inclusion of such a provision, extended to include exploration permit holders, in the relevant laws of all the states would further strengthen the position of landholders. At the same time the committee believes that it would be desirable to clarify the meaning of 'cultivated land' to include land that was generally cultivated but that might, as part of a normal rotation, be pastured in some years.

4.103 In speaking to this committee the companies have all stressed that they believe that their activities can co-exist successfully with existing land use. Clearly there are already examples of 'best practice' behaviour by companies that are working cooperatively with landholders. These should become the industry norm. The committee believes that, by making it clear in legislation that the protection of agricultural productivity must be the priority in developing plans for land access for the conduct of CSG mining operations, this will be achieved.

4.104 The committee believes that section 69D of the *Petroleum (Onshore) Act 1991 (NSW)* provides a reasonable guide to the sort of general issues that need to be covered by an access agreement. However certain matters need to be added to that list including an obligation to inform the landholder what chemicals a company may bring on to a property and arrangements with regard to fire safety.

4.105 The access agreement should also clarify the obligation on the gas company to advise the landholder when and for what purpose its workers will be on a property. Farming involves the use of heavy machinery and the application of chemicals, for example, and the use of contracted services can also reduce the landholder's flexibility. Avoiding interference with a landholders business and occupational health and safety considerations require that landholders know who is on their property at any given time.

4.106 A requirement to inform the landholder before any gas workers came on to a property would also do something to reduce the anxiety caused to families by the presence of strangers on a property.

Recommendation 19

4.107 The committee recommends that draft access agreements between landholders and gas companies include a requirement that company employees must have a landholder's approval whenever they wish to enter a property and that companies must maintain logs of staff entering private property.

Recommendation 20

4.108 The committee recommends that draft access agreements clarify the gas companies responsibility with regard to fire safety and require the gas company to advise landholders of all chemicals that are brought on to the land.

Compensation

4.109 The committee believes that the list of matters to be dealt with in compensation agreements contained in the Queensland *Guide* is, with two important exceptions, a good summary of matters for which compensation should be paid. As discussed above, the disruption to the lives of landholders when coal seam gas exploration or production occurs on their land is considerable and the intrusion into the landholders life is forced on him. It is appropriate that the compensation recognise both the involuntary nature of the landholder's situation and the loss of social amenity.

4.110 This view is supported in evidence to the committee:

> The compensation regime at the moment makes no allowance for the social impacts and no allowance for the compulsory nature of the imposition.[50]

4.111 It has been suggested that a premium of 20 per cent be added to any compensation package to recognise the involuntary nature of the landholder's participation. The committee does not wish to propose a specific figure but it certainly endorses the principle.

Recommendation 21

4.112 The committee recommends that legislation governing compensation to landholders include provisions that recognise as compensatable effects the involuntary nature of landholders' dealings with coal seam gas companies and the social impact of coal seam gas exploration and production.

4.113 A further proposal put to the committee was that, in extreme circumstances, a landholder should have the right to demand that he be bought out.

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[50] Mr P Shannon, *Committee Hansard*, 19 July 2011, p. 3.

> If a landowner loses his water and has to rely on water being piped from an uncertain source of uncertain quantity and quality, aside from the interference with his land values, there is likely to be a general interference with his enthusiasm to continue on the land. I see no reason why a landowner so affected should not have the right to require the immediate acquisition of his farm at its pre-market value and consequential damages.[51]

4.114 The committee is generally inclined to support such a proposal where CSG activity either renders an agricultural property unviable or requires fundamental changes to its operations to maintain its viability. However it is to be hoped that if the committee's recommendations are adopted then the situation where a farm was rendered non-viable would not occur.

4.115 It would be desirable to have a clear statement that where a property suffers irreversible damage due to unforeseen circumstances, for example long-term interruption to water supply or saline pollution over a significant area, the liability of the gas company to 'make good' must includes a liability to acquire the property "... at its pre-market value and consequential damages".

4.116 The committee also considers that compensation for legal costs incurred by a landholder in negotiating an agreement are unnecessarily restrictive. The exclusion of "... costs involved to resolve disputes via independent alternative dispute resolution" discourages a landholder from seeking independent arbitration of a dispute with a gas company.

Recommendation 22

4.117 The committee recommends that States' include in the relevant legislation as a compensatable effect the costs incurred by a landholder in seeking independent arbitration of a dispute over an access and compensation agreement, except where it can be demonstrated that the landholder had not negotiated reasonably and in good faith.

4.118 Some landholders were not fully informed of their legal rights or received misleading advice about the time available for landholders to respond to a request for access; some felt bullied and intimidated by the prospect of expensive and time-consuming legal action and were talked into signing confidential agreements about access and compensation, which prevented concerted action to assert and defend their rights.

4.119 Given the evidence the committee has received of wide variation in the terms of agreements and in standards of practice between companies, some requirement to review existing agreements in light of these published principles should be considered. For example, industry representatives did acknowledge in informal conversation that

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51 Mr P Shannon, *Committee Hansard*, 19 July 2011, p. 2.

there had been some 'cowboy' behaviour by companies and that they had put considerable effort into improving this aspect of their performance.

4.120 In view of the wide variation in practice by gas companies, particularly in the earlier stages of the rapid expansion of the industry, the committee supports a proposal put forward by the Basin Sustainability Alliance (BSA) and others, that land access and compensation agreements that have already been entered into should be subject to review. Such reviews could be conducted by a specially appointed official of the State Ombudsmen's offices, for example.

4.121 If a landholder believes that an agreement was entered into under duress or with inadequate or misleading advice then there should be some right of redress. The BSA identified the following circumstances that might trigger a review:

- Lack of independent legal advice;
- Age, language, lack of understanding of the implications, etc can be shown to have influenced the process;
- Where clauses in the agreement can be shown to have compromised make-good obligations, future rights or materially changed rights; and
- Where there is evidence of misleading or deceptive conduct; or where reasonably unforeseeable consequences or interference have affected the landholder subsequent to the agreement.

Recommendation 23

4.122 The committee recommends the Queensland and New South Wales governments establish mechanisms that provide where a landholder, having an access and compensation agreement with a coal seam gas exploration or production company, believes that that agreement was entered into without proper advice or understanding of its implications, then the landholder be entitled to seek a review of the agreement.

4.123 The committee notes that many landholders and residents of small regional communities having no gas facilities on their land, particularly those on small blocks, may be subject to many of the negative impacts of the gas industry but have no protection under an access and compensation agreement.

Recommendation 24

4.124 The committee recommends that the position of residents of small regional communities and on small blocks of land also be clarified and that enforceable conditions, including a buffer zone around houses, are included in exploration or production permits to ensure that, despite having no development on their land, they are not subject to excessive interference from coal seam gas developments.

4.125 There has been some discussion before the committee as to whether compensation payments to landholders should reflect the value of the gas being

extracted through wells on their land. The committee does not support this view. The minerals under the ground belong to the Crown, not to the landholder.

4.126 Payment for the right to extract those minerals is made to the relevant government through royalties, fees and other taxes and charges. In addition, the disruption to a landholder's activities may be wholly unrelated to the value of the gas being extracted through his land. Compensation to the landholder should reflect that disruption.

4.127 Representatives of the industry made it clear that they were not wedded to any particular distribution of the taxes they paid but that changes to one could not be isolated from consideration of the rest:

> We pay royalties, which in effect come to $6 billion. Those royalties ... are the compensation to the Australian people. On top of that we pay the landholders an additional sum. We are more than happy to look at different regimes covering where the money is distributed–whether it is Commonwealth, state or landholders. What we cannot do, however, is just have money added on top of money.[52]

4.128 The committee does not believe that it is necessary to take any action with regard to confidentiality clauses beyond ensuring that all parties to a negotiation are aware that they are optional.

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[52] Mr J Baulderstone, Santos, *Committee Hansard*, 9 August 2011, p. 14.