

**INDEPENDENT REVIEW OF THE
GASFIELDS COMMISSION
QUEENSLAND
AND ASSOCIATED MATTERS**

By Robert P. Scott
July 2016

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Gasfields Commission
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Glossary

ADR	Alternative dispute resolution.
AgForce	A peak organisation representing Queensland's rural producers, whose role is to ensure the long term growth, viability, competitiveness and profitability of broad acre industries of cattle, grain, sheep and wool in Queensland.
AMEC	Association of Mining and Exploration Companies - the peak industry representative body for mineral exploration and mining companies throughout Australia.
APLNG	Australia Pacific LNG is a CSG to LNG joint venture partnership between Origin, ConocoPhillips and Sinopec. Origin is responsible for construction and operation of the Project's gasfields and main gas transmission pipeline.
APPEA	Australian Petroleum Production and Exploration Association - the peak national body representing Australia's oil and gas exploration and production industry.
BSA	Basin Sustainability Alliance, established in early 2010 to represent landholder, community groups and individuals with concerns about the development of the coal seam gas industry across Queensland and the associated environmental, health and social impacts.
CCA	Conduct and compensation agreement – an agreement between a landholder and a resource company setting out land access and compensation arrangements.
Chairperson	The chairperson of the Gasfields Commission appointed under section 9 of the <i>Gasfields Commission Act</i> .
Commissioner	A person appointed under section 9 of the <i>Gasfields Commission Act</i> as either the chairperson or a part-time commissioner of the Gasfields Commission.
Conference (by an authorised officer)	A conference between a petroleum authority holder and landholder convened by an authorised officer at the request of one of the parties under the <i>Petroleum and Gas (Production and Safety) Act</i> or the <i>Water Act</i> , with an aim to negotiate a conduct and compensation agreement or a make good agreement.
CSG	Coal seam gas – an unconventional natural gas found in coal seams that is trapped underground by water pressure. Conventional gas, which like CSG is primarily methane, is found in porous sandstone formations capped by impermeable rock. Conventional gas is stored under high pressure which assists in its

	extraction using traditional methods of drilling down through the cap rock. CSG is referred to as an unconventional gas as it is produced from different types of rock and requires additional technology for its extraction. CSG production requires the extraction of the water from the coal seam so the trapped gas can be released. ¹
CSG Compliance Unit	Coal Seam Gas Compliance Unit – a unit within DNRM which responds to enquiries and complaints relating to the CSG industry and conducts investigations and audits into industry compliance.
CSIRO	Commonwealth Scientific and Industrial Research Organisation.
DDPHU	Darling Downs Public Health Unit.
DEHP	The Department of Environment and Heritage Protection.
DNRM	The Department of Natural Resources and Mines.
DSD	The Department of State Development.
Environmental authority or EA	Generally, an environmental authority issued under section 195 of the <i>Environmental Protection Act</i> that approves an environmentally relevant activity applied for in an application. Authorised activities under a petroleum authority that are environmentally relevant activities require an environmental authority before the activity can commence. An environmental authority imposes conditions to reduce or avoid potential environmental impacts.
<i>Environmental Protection Act</i>	<i>Environmental Protection Act 1994 (Qld)</i> .
Gasfields Commission or Commission	An independent statutory body established under the <i>Gasfields Commission Act</i> to manage and improve the sustainable coexistence of landowners, regional communities and the onshore gas industry in Queensland.
<i>Gasfields Commission Act</i>	<i>Gasfields Commission Act 2013 (Qld)</i> .
Holder	The holder of an exploration tenement, petroleum authority or mineral development licence.
Industry Capability Network (ICN)	Industry Capability Network (ICN) - a business network that introduces Australian and New Zealand companies to projects large and small for partnership and supply chain opportunities.
Land Access Code	Sets out the Queensland Government's expectations and mandatory conditions for how resource companies communicate and consult with landholders, and how they must conduct activities on private land. Section 24A of the

¹ APPEA, *What is coal seam gas?* <http://www.appea.com.au/oil-gas-explained/oil-and-gas/what-is-coal-seam-gas/>, accessed on 28 March 2016; Department of Environment and Heritage Protection, Conventional oil and gas, <https://www.ehp.qld.gov.au/management/non-mining/conventional.html>, accessed on 13 June 2016.

	<i>Petroleum and Gas (Production and Safety) Act</i> provides for the making of the Land Access Code by Regulation.
LGAQ	Local Government Association of Queensland.
LNG	Liquefied natural gas – natural gas that has been converted into liquid form for ease of storage or transport.
Make good agreement	An agreement entered into by a petroleum tenure holder and a bore owner about a water bore under the <i>Water Act</i> .
<i>Mineral Resources Act</i>	<i>Mineral Resources Act 1989 (Qld)</i> .
OGIA	Office of Groundwater Impact Assessment - an independent statutory entity established under the <i>Water Act</i> . It is housed within the Department of Natural Resources and Mines. OGIA is funded through an onshore gas industry levy. A key responsibility of OGIA is the management of impacts from CSG water extraction.
Onshore gas	Petroleum and gas on land in Queensland (other than submerged land).
Peak producer bodies	Bodies such as AgForce and Queensland Farmers Federation which represent primary producers.
<i>Petroleum and Gas (Production and Safety) Act</i>	<i>Petroleum and Gas (Production and Safety Act) 2004 (Qld)</i> .
Petroleum authority	An authority, a licence or a lease, other than a gas work licence or authorisation, issued under <i>Petroleum and Gas (Production and Safety) Act</i> – see section 18 of this Act.
PIN	Penalty infringement notice.
QFF	Queensland Farmers' Federation – a federation that represents 16 Queensland peak rural industry organisations, collectively representing primary producers in intensive agricultural sectors, local irrigator groups and emerging industry groups.
QGC	QGC Pty. Ltd. (previously Queensland Gas Company) - an explorer and producer of natural gas in Queensland.
QH	Queensland Health.
QMHC	The Queensland Mental Health Commission – a statutory body established under the <i>Queensland Mental Health Commission Act 2013</i> to drive ongoing reform towards a more integrated, evidence-based, recovery-oriented mental health and substance misuse system.
QRC	Queensland Resources Council - a not-for-profit peak industry association representing the commercial developers of Queensland's mineral and energy resources.
<i>Regional Planning Interests Act</i>	<i>Regional Planning Interests Act 2014 (Qld)</i> .

Submission	A submission received by this review including a response to the on-line survey, written correspondence or feedback received in an interview.
Terms of Reference	The Terms of Reference for this review – set out in Appendix 1.
Toowoomba and Surat Basin Enterprise (TSBE)	A network of nearly 500 businesses across the Toowoomba and Surat Basin region.
UWIR	The draft Underground Water Impact Report (UWIR) 2016 for the Surat Cumulative Management Area (CMA) provides an assessment of the impacts of water extraction by petroleum tenure holders on underground water resources in the Surat CMA, and specifies integrated management arrangements.
<i>Water Act</i>	<i>Water Act 2000 (Qld).</i>
2012 Land Access Review	A 12 month review undertaken by an independent panel to assess the effectiveness of Queensland's land access framework. The review provided its report to government in February 2012.
2013 Land Access Implementation Report	A report by the Land Access Implementation Committee for the Minister of Natural Resources and Mines outlining the Committee's preferred approach to implementing changes to the land access framework outlined in the Queensland Government's six point action plan.

Chapter 1 Executive Summary

The Gasfields Commission came into existence as a response to problems identified at the interface between rural landholders and the newly emerging coal seam gas industry. It was intended that the Commission would “manage and improve the sustainable coexistence of landholders, regional communities and the onshore gas industry in Queensland”.

Whilst the *Gasfields Commission Act* commenced on 1 July 2013, the Commission has been in existence from 2012. Given the incredible rate of development of the CSG industry in Queensland and its movement from construction into production and maintenance, the Queensland Government decided that now was an opportune time to review the Commission and its effectiveness and associated matters relating to the coexistence of the onshore gas industry, regional communities and landholders.

In this report I identify Commission functions that should be maintained or enhanced in order that a harmonious relationship between the CSG industry and agricultural land uses can be created and maintained. It will be noticed that the Terms of Reference for the review proceed on the implicit assumption that the Commission will continue into the future. Moreover, there is not included in the terms of reference any requirement that I should consider the discontinuance of the Commission. I do observe though, from the submissions received and the findings of my review, that the Commission still has a valuable role to play. However, it is entirely a matter for government to decide whether the Commission should be wound down, the timing of that and the identification of which agencies or organisations should deliver the functions identified in this report.

The review invited and received submissions from interested individuals and organisations. Additionally, I met with and interviewed a wide range of individuals, including landholders, the senior executives of CSG companies, peak producer bodies and members of the Gasfields Commission.

Key topics raised by submissions were: confusion about the roles and responsibilities of the Gasfields Commission; the lack of awareness about the work of the Commission behind the scenes; the lack of an independent and accessible source of information for landholders about dealing with CSG companies; and the need for a better way to reach agreement and deal with disputes about conduct and compensation than having to resort to court.

In relation to public health concerns associated with onshore gas activities, the overwhelming view expressed across the spectrum of stakeholders was that charging the Commission with a direct public health role is problematic.

I considered all of the information and suggestions made by the submitters and must express my gratitude for the effort put in by them. The degree of reliance I have placed on the material before me depended on its cogency and its relevance to the Terms of Reference. I also considered a range of other resources as set out at the end of this report in making my findings and recommendations.

I have concluded that the Gasfields Commission has contributed substantially to the improved coexistence of landholders, regional communities and the onshore gas industry in Queensland particularly by influencing the methods employed by CSG companies.

However, I also conclude that there are significant opportunities for improvement in the overall operation of the Commission and in the perception of it by a large number of stakeholders, particularly landholders. There is a lack of confidence by many of them in the Commission and questions as to its continued existence. Deficiencies identified by me related to the effectiveness of the Commission’s communications with stakeholders; the lack of rigorous collection, analysis and reporting of data; a failure to adequately address some of its statutory functions; and the sub-optimal strategic and operational planning and reporting.

To address these findings, I recommend a re-focus of the functions of the Commission to a more strategic level. The Commission should:

- facilitate and maintain a harmonious and balanced relationship between landholders, regional communities and the onshore gas industry in Queensland
- develop an extension and communication program to help landholders to become more informed and self-reliant in relation to their legal rights, the management of their land when subject to CSG activities and the developments in science and leading practice relating to the onshore gas industry

- proactively monitor and publish comprehensive data about formal interactions between landholders, CSG companies, government agencies and dispute resolution bodies
- proactively collect and publish data so the growth of the onshore gas industry in Queensland and the properties impacted can be better understood
- be the trusted advisor to government and stakeholder representative bodies on strategic issues including the status of the coexistence model.

There are also some existing functions which I recommend continue and receive more attention from the Commission.

In addition, the end of the boom days of CSG growth and the maturity in the industry (though there remain some risks to a harmonious and balanced relationship amongst stakeholders), lead me to identify the need for a smaller Commission. All of these recommendations are designed to lead to a focussed and improved operation of the Commission and the image that it presents to stakeholders, in particular to landholders.

My recommendations are also concerned with improving the information available to landholders with regard to land access, negotiation with CSG companies and complaints against those companies. They are concerned with landholders becoming better informed and more self-reliant and with creating a mechanism to allow peak producer bodies to provide direct input into the Commission decision making process. I also recommend continuing and improving communication with businesses and communities that interact with the CSG industry.

In relation to dispute resolution, my recommendations attempt to improve the balance between the parties, one being a substantial corporate entity, and the other being an individual landholder, often with an agricultural business to manage. Landholders expressed an overwhelming sense of powerlessness from the perceived imbalance in the land access framework and their inability to afford the legal and technical expertise necessary to understand the impacts on their land from CSG activities and to negotiate workable access arrangements and appropriate compensation.

The changes to the alternative dispute resolution framework which I recommend refine the current process but do not represent a significant rewrite of the legislative framework. They are targeted at the two key areas of dispute: the inability to agree the terms of a conduct and compensation agreement or a make good agreement and disputes arising once an agreement has been signed and the CSG activities have commenced on the land.

My key recommendations:

- establish arbitration as alternative to the Land Court that can provide a quicker, simpler, private and legally binding resolution for both parties
- establish an independent dispute resolution body – called the Moderator – to assist with disputes about conduct under an existing agreement between a landholder and a CSG company.

The new dispute resolution body does not carry out the role traditionally undertaken by an ombudsman – that of investigating complaints against government agencies – and should not be called an ombudsman.

On first blush the dispute resolution recommendations might appear to be adding layers and complexity to the current system. This is far from the case. These proposals have been designed (following comprehensive consultation) to produce a nuanced system of benefit to its users in time, cost, outcome, privacy and simplicity.

In addressing the Terms of Reference, I also recommend:

- harmonisation between the Commission and the CSG Compliance Unit but only in the sense that there should be more effective communication of their respective roles with the Commission having the strategic function mentioned above and the CSG Compliance Unit retaining its compliance role. The Commission and the CSG Compliance Unit should remain separate - locating enforcement functions in an independent body that should be operating on a strategic and holistic basis is problematic and not supported by the submissions I received. The Commission should exercise its existing function of overseeing the effectiveness of the CSG Compliance Unit and other government agencies
- that the CSG Compliance Unit build on its role as a one stop shop for all enquiries and complaints relating to CSG activities and that the CSG Compliance Unit be given the power to issue penalty infringement notices for breaches of the mandatory provisions of the Land

Access Code and other relevant provisions of the *Petroleum and Gas (Production and Safety) Act*. The ability to issue PINs will go some way to addressing landholders' sense of powerlessness in the event CSG companies do not comply with their obligations and to increasing the confidence of landholders in the regulatory processes

- that the Commission has a facilitative role in promoting mental health awareness and training. Given the need for expertise and privacy in this sphere, the Commission should not have a direct role in managing a response to public health issues in the regions impacted by the onshore gas industry. My recommendations on matters relating to public health are confined to the goal of realising coexistence of the onshore gas activities with other land uses, for example, early recognition of the signs of stress and mental health issues and referral.

I draw particular attention to the topic of public health. Personal health and wellbeing are first order issues in our society and citizens expect government to acknowledge that and to act accordingly. Many of my recommendations and observations are designed with this in mind. These recommendations address:

- the need to avoid stress and threats to emotional health
- the need for mechanisms to deal with disputes before they become conflicts
- the need to be cautious in conducting developments where health impacts are not clear, necessitating adaptive risk management through ongoing independent and transparent monitoring and reporting.

Finally, I emphasise that my recommendations are interlinked and operate across the Terms of Reference. They should be viewed in their totality and not in isolation.



Robert P Scott
Reviewer
29 July 2016

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Chapter 2 Recommendations

Is the Gasfields Commission achieving its purpose? Has it been effective? (Chapter 5)

Recommendation 1:

That:

- a) the Gasfields Commission should have a Chair (who now need not be full time) plus three part time Commissioners representing the interests of landholders, the onshore gas industry and the communities in which the onshore gas industry operates
- b) the position of general manager should be redesignated as Chief Executive, Gasfields Commission and should be filled as a matter of urgency
- c) the Gasfields Commission publish and communicate its role with clarity. It should say what it does and what it does not do by reference to examples
- d) the current membership of the Gasfields Commission author a document setting out the learnings of the Commission in discharging its responsibilities; that paper being in a form suitable to inform others embarking upon a task similar to that which confronted the Commission
- e) individual peak producer bodies and local governments impacted by the onshore gas industry be invited to attend Commission meetings and make submissions or raise issues with the Commission on a regular (annual or biannual) basis
- f) the Gasfields Commission encourage CSG companies to develop innovative and effective methods of engaging with landholders and associated gasfields communities to maximise the opportunities for trust and collaboration
- g) the Gasfields Commission review its Strategic Plan (consistent with the recommendations and observations in this report) and instruct the Chief Executive of the Commission to prepare an Operational Plan.

Recommendation 2:

That the *Gasfields Commission Act* be amended to reflect the following purpose:

The purpose of the Act is to continue the Gasfields Commission to create and maintain a harmonious and integrated relationship between landholders, regional communities and the onshore gas industry in Queensland.

That the *Gasfields Commission Act* be amended to reflect the following functions of the Gasfields Commission:

- a) facilitate and maintain a harmonious and balanced relationship between landholders, regional communities and the onshore gas industry in Queensland
- b) implement an extension and communication programme that:
 - (i) helps landholders to become informed and self-reliant and aware of their legal rights in their dealings with coal seam gas companies, including negotiations for a conduct and compensation agreement or a make good agreement
 - (ii) helps landholders in the management of land subject to a conduct and compensation agreement or a make good agreement and the management of any complaints or disputes that arise
 - (iii) informs landholders of current information and developments in science; leading practice or management; regulation, law or policy relating to the onshore gas industry
 - (iv) helps regional local governments, local businesses and communities to understand the timing and impact of CSG projects in their area including any business opportunities that may be generated
 - (v) ensures the consistency of information being publicly provided by government agencies with respect to the onshore gas industry

- c) review and report on the performance and effectiveness of government entities in implementing regulatory frameworks that relate to the onshore gas industry
- d) obtain, monitor and publish comprehensive relevant data concerning all recorded formal interactions between landholders, CSG companies, government agencies and judicial and quasi-judicial bodies (including the Queensland Ombudsmen, the Land Court, the proposed Moderator and arbitration process) to identify trends, deficiencies and any need for intervention or change of processes and mechanisms
- e) collect, maintain and publish information and data which quantifies and describes the growth of the onshore gas industry within rural Queensland including such matters as the number of properties affected, the number of wells and processing facilities on properties, the amount of funding invested and the number of jobs created. The purpose of this information is to assist stakeholders in identifying the level of impact of the CSG industry in Queensland. Such information may inform the need for intervention or change in policies
- f) make recommendations to the relevant minister that regulatory frameworks and legislation relating to the onshore gas industry be reviewed or amended
- g) make recommendations to the relevant minister and stakeholder representative bodies about leading practice or management relating to the onshore gas industry
- h) partner and network with other entities for the purpose of conducting research related to the onshore gas industry in relation to issues of science as well as legal arrangements, practices, policies and other innovations identified in Queensland or in other jurisdictions
- i) assist Queensland Health in its work in the onshore gas industry areas in the provision of health information and the establishment of risk assessment of health issues for the benefit of residents
- j) in response to requests for advice from the chief executive under the *Regional Planning Interests Act 2014* about assessment applications under that Act, advise that chief executive about the ability of landholders, regional communities and the resources industry to coexist within the area the subject of the application
- k) obtain advice about the onshore gas industry or functions of the commission from government entities.

Is an alternative dispute resolution model, such as an independent resources ombudsman, required to resolve disputes between resource companies and landholders? (Chapter 7)

Recommendation 3:

That the Gasfields Commission, together with the Queensland Ombudsman, provide information to landholders about the Queensland Ombudsman service, including the circumstances in which it is available in the context of government regulation of the CSG industry and how landholders can make complaints.

Recommendation 4:

That for negotiations for a conduct and compensation agreement, the *Petroleum and Gas (Production and Safety) Act* should be amended to remove the option of a conference with an authorised officer to satisfy the ADR requirement prior to a party being able to apply to the Land Court.

This recommendation does not apply to make good agreements.

Recommendation 5:

That information be provided to landholders setting out the different types of alternative dispute resolution processes and what they involve (including less common types of alternative dispute resolution such as case appraisal). In order to reach its required audience this information should be compiled by the Gasfields Commission and distributed in accordance with its extension and communication role.

Recommendation 6:

That:

- a) Government establish a panel comprising practitioners with expertise in each of the various ADR categories. This panel will comprise not only mediators, but also conciliators, case appraisers, and other alternative dispute resolution practitioners
- b) Government establish a panel of arbitrators
- c) Government should consult the Land Court and the Gasfields Commission in deciding the accreditation that the practitioners must have before they can form part of either panel.

Recommendation 7:

That the *Petroleum and Gas (Production and Safety) Act* and the *Water Act* be amended to provide that if the parties cannot agree on an ADR process or practitioner, the President of the Queensland Law Society or similar office can decide on the ADR process to be undertaken (apart from arbitration) by the parties (depending on the nature of the dispute) and select an appropriate practitioner from the ADR panel.

Recommendation 8:

That the *Petroleum and Gas (Production and Safety) Act* and the *Water Act* be amended to provide for a distinct arbitration process, as an alternative to making an application to the Land Court if a conduct and compensation agreement or make good agreement has not been agreed following the statutory negotiation or alternative dispute resolution process.

Consideration be given to the following rules being applied to an arbitration of this type:

- the arbitration option can be agreed to by the parties following statutory negotiation or alternative dispute resolution; or can be elected by the landholder within a statutory time period following ADR; or by the petroleum authority holder following the expiry of the statutory time period
- if either party elects to proceed to arbitration, then neither party can elect to take the matter to the Land Court
- the holder cannot undertake advanced activities on the land without the agreement of the landholder until the arbitration is decided and the 'appeal' period has expired. At this point, the holder can give an entry notice and after 10 business days undertake advanced activities under the *Petroleum and Gas (Production and Safety) Act* on the land
- evidence and submissions can be presented in person or in writing as determined by the arbitrator
- both parties are able to be legally represented if agreed or with the consent of the arbitrator
- the cost of the arbitrator is shared between the landholder and the holder (unless the parties have not been through an ADR process for which the holder paid the costs of the ADR practitioner, in which event the holder pays the costs of the arbitrator)
- each party pays its own costs of appearing in the arbitration, unless the arbitrator orders otherwise. This will act as an incentive to landholders to try to resolve the matter at ADR
- the arbitrator will make their decision according to the provisions of the relevant resources legislation, unless the parties agree that the arbitrator decide the matter on another basis (such as commercial terms)
- there is no right of appeal on the merits from an arbitration, but either party may seek a review of the arbitrator's reasoning because of a claimed error of law or some similar fundamental error
- the arbitrator should have statutory immunity for anything done or omitted to be done in good faith in his or her capacity as arbitrator.

Recommendation 9:

That:

- a) the *Petroleum and Gas (Production and Safety) Act* be amended to provide that the costs of the ADR facilitator are paid by the petroleum authority holder, not by the person who gives the election notice as is currently the case
- b) the *Petroleum and Gas (Production and Safety) Act* (and the *Water Act*) be amended to provide that a landholder's necessary and reasonable professional fees incurred in the

negotiation of a conduct and compensation agreement (or a make good agreement) be paid by the holder, even in the event of a conduct and compensation agreement (or a make good agreement) not being concluded between the parties. The liability for costs would commence from the giving of a negotiation notice by the holder (or the day that a bore assessment is undertaken in the case of a make good agreement)

- c) the class of professional fees that are the subject of compensation under the *Petroleum and Gas (Production and Safety) Act* and the *Water Act* be expanded to allow a landholder to retain an agronomist or other such technical expert to assist in evaluating the impact of the proposed CSG activities on the subject land
- d) jurisdiction be given to the Land Court to determine the appropriate level of professional fees claimed by a landholder in the negotiation of a conduct and compensation agreement or make good agreement.

Recommendation 10:

That an Office of the Petroleum and Gas Moderator be established to assist parties to a dispute about alleged breaches of make good agreements and conduct and compensation agreements on the following basis:

- to maintain the perception of independence, the Moderator should not be located in a government department. It could be co-located with an existing court or tribunal for ease of access to administrative and support services so as to lower costs
- the Moderator's recommendations would not be binding on the parties, but, in the event the parties cannot come to an agreement and the dispute proceeds to a court of competent jurisdiction, the recommendations may be tendered to the court
- the Moderator's recommendations will otherwise remain confidential to the parties.

Would harmonisation between the Gasfields Commission and the CSG Compliance Unit provide efficiencies and improve dispute resolution between resource companies and landholders? (Chapter 8)

Recommendation 11:

That the CSG Compliance Unit, the Office of Groundwater Impact Assessment and the Department of Environment and Heritage Protection provide clear and readily available information to stakeholders about their respective roles (including clarification of what they do not do).

Recommendation 12:

That the Department of Environment and Heritage Protection and the CSG Compliance Unit publish service delivery benchmarks for their CSG related functions and report against these benchmarks. These reports should be evaluated by the Gasfields Commission in the exercise of its function of independently reviewing the effectiveness of government entities (section 7(b) *Gasfields Commission Act*).

Recommendation 13:

That:

- a) the Gasfields Commission publish a document that refers to the CSG Compliance Unit as the preferred single point of contact for all landholder inquiries and complaints regarding the CSG industry and includes the Compliance Unit's contact information
- b) the Gasfields Commission, CSG Compliance Unit and Department of Environment and Heritage Protection publish a document explaining expectations of timeframes for responses to enquiries and complaints and how feedback to enquirers and complainants will be provided
- c) the Gasfields Commission, CSG Compliance Unit and Department of Environment and Heritage Protection provide guidance to landholders on the appropriate escalation steps and procedures if they are not satisfied with how their enquiry or complaint has been handled
- d) the CSG Compliance Unit be responsible for providing feedback to enquirers and complainants on the outcome of their enquiry or complaint and include information on how complaints can be escalated
- e) the Gasfields Commission develop a memorandum of understanding with the CSG Compliance Unit and the Department of Environment and Heritage Protection to formalise the

Commission's dealings with these government agencies agreeing on arrangements for referral of enquiries and complaints and provision on strategic information

- f) the CSG Compliance Unit develop a memorandum of understanding with Queensland Health to formalise procedures for referral and investigation of health related inquiries and complaints.

Recommendation 14:

That:

- a) provision be made for issuing of penalty infringement notices for infringements of the mandatory provisions of the Land Access Code and other relevant provisions of the *Petroleum and Gas (Production and Safety) Act*
- b) in order to increase stakeholders' confidence in the regulation of the CSG industry, compliance and enforcement actions such as the issuing of penalty infringement notices by the CSG Compliance Unit and Department of Environment and Heritage Protection should be published for the community's information. Any legal impediments to publishing penalty infringement notices, including naming of offenders, should be removed with changes to legislation.

Are there benefits in expanding the Gasfields Commission role to include coal and mineral as well as petroleum and gas resources? (Chapter 9)

Recommendation 15:

That Government carry out investigations to identify circumstances where multiple small mining operations are located on a single property, the scale of this phenomenon and issues of coexistence identified, and the manner in which coexistence issues should be dealt with.

Should the Gasfields Commission's functions include a role in managing or facilitating responses to public health and community concerns arising from onshore gas activities? (Chapter 10)

Recommendation 16:

That:

- a) Queensland Health in consultation with mental health specialists and service providers (including non-government organisations) develop material on mental health awareness and services available in the region
- b) the Gasfields Commission facilitates the provision of information on mental health awareness and services through its extension and communication initiative
- c) the Gasfields Commission facilitate the convening of training on mental health awareness for regional service providers (such as rural legal practitioners and AgForce), businesses and community/social groups in the region and CSG Compliance Unit staff.

Recommendation 17:

That the community reference group, as envisaged in the 2013 Queensland Health Report, be formed whereby:

- an appropriate agency at the discretion of Government, lead and support the convening of the reference group. Government could call on the Gasfields Commission to assist in the formation of the reference group, if required
- in consultation with the reference group, Queensland Health, together with the Department of Environment and Heritage Protection, Department of Natural Resources and Mines, and the Department of Science, Information Technology and Innovation, should undertake further work in the assessment of health risks and environmental monitoring as a follow-up to the 2013 Queensland Health Report.

Recommendation 18:

That the Department of Environment and Heritage Protection in consultation with and input from the reference group and other stakeholders, develop and implement an environment (air quality, noise, dust) monitoring plan in CSG fields, particularly in areas with sensitive receptors, and that outcomes be published and communicated to stakeholders.

Chapter 3 Introduction

3.1 The review

In December 2015, the Hon. Anastacia Palaszczuk, Premier of Queensland and Minister for the Arts, committed to an independent review of the Gasfields Commission.

The independent review commenced on 23 March 2016.

The Terms of Reference for the review require that a report be provided to the Director-General of the Department of State Development by mid-2016.

3.2 Scope of review

The scope of this review is set by the Terms of Reference.²

3.3 What this report covers

In accordance with the Terms of Reference, this review considers and makes findings and recommendations on the following:

- (a) Is the Gasfields Commission achieving its purpose? Has it been effective?
- (b) Are the functions given to the Gasfields Commission sufficient to allow it to effectively manage disputes about land access and other disputes between resource companies and landholders?
- (c) Is an alternative dispute resolution model, such as an independent resources ombudsman, required to resolve disputes between resource companies and landholders?
- (d) Would harmonisation between the Gasfields Commission and the CSG Compliance Unit provide efficiencies and improve dispute resolution between resource companies and landholders?
- (e) Are there benefits in expanding the Gasfields Commission's role to include coal and mineral as well as petroleum and gas resources?
- (f) Should the Gasfields Commission's functions include a role in managing or facilitating responses to public health and community concerns arising from onshore gas activities?
- (g) Other matters I consider relevant to this review.

While the Gasfields Commission was established to improve coexistence with the onshore gas industry generally, in practice the Commission's work has been heavily focussed around CSG coexistence issues in the Surat and lower Bowen basins, between Roma in the west, Wandoan in the north and Dalby in the east. In this report, I have therefore predominantly referred to CSG, however, in almost all cases the legislative frameworks referred to in this report apply generally to all onshore gas.

3.4 What this report does not cover

(a) Coal and mineral activity

This report does not investigate issues arising from coal and mineral activities, though that sector's framework for land access and dispute resolution is included in the summary of the legislative framework in Appendix 4.

Questions relating to the possible expansion of the Gasfields Commission's role to include coal and minerals, and the possibility of a resources ombudsman are generally considered in this context.

(b) Specific complaints about public health and environmental impacts

This report considers how public health and community concerns arising from onshore gas activities are currently managed and opportunities for improvement.

² The Terms of Reference are contained in Appendix 1.

It does not examine or assess the merits (or otherwise) of specific complaints, environmental issues and impacts, decisions or expert opinions.

(c) Right to veto access to land

As is the case in other jurisdictions in Australia, the State of Queensland generally owns all minerals, coal, petroleum and CSG on and below the ground and controls the right to access these resources for exploration, development and extraction. Consistent with the Terms of Reference, this report does not discuss whether landholders should have the right to prevent access to their land by a resource company. However, I acknowledge that the impacts on landholders arising from CSG exploration and extraction on their land can be considerable and the landholder can often be an involuntary party to activities undertaken by CSG companies on their land. How to reduce these impacts underpins my findings and recommendations.

(d) Native Title

As this review is primarily concerned with the role of the Gasfields Commission, its focus has been directed to landholders' as that word is defined in the *Gasfields Commission Act*. In that Act, a landholder means an entity that holds either a freehold or leasehold interest in land within Queensland. The review has also considered the provisions of the *Petroleum and Gas (Production and Safety) Act* in relation to access to private land by resource companies and the resolution of disputes between landholders and resource companies over access. Again, this discussion is largely informed by the definitions in that Act.

Negotiations between resource companies and native title holders and claimants occurs under the *Native Title Act 1993* (Cth) and so lie outside the scope of this review. No submissions were received that made reference to issues affecting native title or the experience of native title holders or claimants in dealing with resource companies.

(e) Underground coal gasification

This report does not discuss underground coal gasification (UCG) which is the process by which coal is converted via controlled partial combustion to gases and liquids while it is still underground. UCG is a different process from the production of CSG. All UCG activities are now prohibited in Queensland following a policy decision announced by the Queensland Government on 18 April 2016.³

3.5 Process of the review

Extensive consultation with numerous stakeholders was undertaken to obtain an understanding of the issues and concerns of a wide range of stakeholders.

The review commenced on 23 March 2016, with letters issued to 58 stakeholders inviting participation in the review (see Appendix 2 for details of those stakeholders). Advertisements inviting submissions appeared in the Chinchilla News, Queensland Country Life, Toowoomba Chronicle, Dalby Herald and Roma Western Star between 31 March and 2 April 2016 and between 14 and 16 April 2016.

An on-line questionnaire was also made available on the Department of State Development website⁴. A copy of the questionnaire is at Appendix 3.

The call for public submissions closed on 22 April 2016. However, submissions were accepted throughout the review period. A total of 58 submissions were received, comprising 30 online questionnaire responses and 28 detailed written submissions.

Targeted consultation (through face-to-face and some telephone interviews) was conducted with the Commissioners, the CSG Compliance Unit and other key stakeholders, including CSG companies, landholders, community and interest groups, peak bodies, chambers of commerce, Queensland government departments and agencies and various local governments in the Surat Basin. I travelled to the regions to meet with landholders and other stakeholders from 25 April - 29 April 2016 and 5 May - 6 May 2016.

³ Department of Natural Resources and Mines, Queensland Portal, Brisbane, <https://www.dnrm.qld.gov.au/our-department/corporate-information/policies-initiatives/mining-resources/resources-policies/underground-coal-gasification>, accessed 13 June 2016.

⁴ Department of State Development, Queensland Portal, Brisbane, <http://www.statedevelopment.qld.gov.au/industry-development/gasfields-commission-review.html>, accessed 17 June 2016.

In total, interviews were conducted with 82 individuals.

A list of the organisations and individuals that made submissions or who were interviewed during the review is in Appendix 2. A summary of the number of submissions and interviews by group is in Table 1. This report does not contain a summary of all of the submissions received or the results of the on-line questionnaire. Instead, the key themes and, in some cases, extracts from submissions, are referred to throughout the report.

Submitters and interviewees included supporters of the current land access process, detractors and those somewhere in between. Amongst the individual landholders who responded to the review, the weight of submissions were critical of the current land access process.

In preparing this report and my recommendations I have considered the issues raised in submissions and interviews. I have also conducted further research on some issues and the resources used are listed at the back of this report.

The review considered the framework for petroleum and gas exploration and production in other jurisdictions in Australia and Canada. However, there is little guidance to be gained from these jurisdictions as the underlying frameworks for access to land differ. Indeed, I have heard that some States and the Northern Territory are looking to Queensland as the State with the most advanced model for guidance.

Officers of the Department of State Development provided secretariat and research support to this review. The officers scheduled appointments, provided administrative support, attended consultation meetings with me and took minutes, undertook research and assisted with preparation of some preliminary parts of this report that were then finalised and settled by me. I wish to record my appreciation for the energy, time and intellectual contribution of those officers in fulfilling their important role.

Table 1: Summary of submissions and consultation by Group

Group	Submissions	Interviews
Gasfields Commission	1	8
Landholders and regional residents	32	17
Onshore gas industry	7	12
Agriculture peak bodies	3	4
Community and environment groups	4	4
Regional Chambers of Commerce and business interest groups	0	4
Government agencies (Local, State and Commonwealth)	5	22
Professionals associated with CSG industry/activities	4	9
Others	2	2
Total	58	82

3.6 Legislative framework

(a) Gasfields Commission Act

The Gasfields Commission is established by the *Gasfields Commission Act*. An overview of the Commission and the Act is set out in Chapter 4 of this report.

(b) Land access, compensation and dispute resolution

As mentioned above, the State of Queensland owns all minerals, coal, petroleum and gas on or below the ground in Queensland (subject to some limited exceptions). The State receives royalties

from resource companies in exchange for the right to extract these resources.⁵ As the owner of the resources, the State controls the right to access the resources for exploration, development and extraction.

Individuals or companies must apply for a petroleum authority to explore for and produce petroleum and gas, including CSG, for example:

- an 'authority to prospect' allows the authority holder to explore for petroleum and gas in a specific area
- a 'petroleum lease' allows the authority holder to produce, transport and process petroleum and gas
- a 'pipeline licence' allows the authority holder to build and operate a pipeline to transport petroleum and gas.

Before the holder of one of these types of authorities can enter private land, the holder must comply with Queensland's land access laws. While these laws give rights to landholders to receive compensation and agree on the conduct of the authority holder on their land, there is no power of veto allowing landholders to refuse resource development on their land. Queensland's land access framework needs to be considered in this context.

The key piece of legislation in Queensland regulating the exploration, production, processing, storage and transportation of petroleum and gas is the *Petroleum and Gas (Production and Safety) Act*. The exploration, development and mining of coal and other minerals is governed by the *Mineral Resources Act*.⁶

Appendix 4 provides an overview of the current legislative framework in Queensland for land access and compensation for petroleum and gas exploration and production and mineral and coal exploration on private land.

(c) Compliance

Appendix 5 provides a brief overview of the various government agencies involved in the regulation and monitoring of the CSG industry in Queensland and their functions.

⁵ Section 8 *Mineral Resources Act 1989* (Qld) and Section 26 *Petroleum and Gas (Production and Safety) Act 2004* (Qld).

⁶ These Acts will be amended upon commencement of the *Mineral and Energy Resources (Common Provisions) Act 2014* (Qld) and by the *Mineral and Other Legislation Amendment Act 2016* (Qld).

Chapter 4 The Gasfields Commission

4.1 Overview

The Gasfields Commission is an independent statutory body established under the *Gasfields Commission Act*.⁷ Its purpose is 'to manage and improve the sustainable coexistence of landowners, regional communities and the onshore gas industry in Queensland'.⁸

There have been significant landholder and community concerns about the impacts of CSG development, including the loss of prime agricultural land, the depletion of underground water, the issue of land access, the location of CSG infrastructure close to residential dwellings and urban areas and the increased pressures on existing regional infrastructure.

In 2010 in response to these concerns, the Queensland Government established the Surat Basin CSG Engagement Group with representatives from rural landholders, gas companies and government agencies.⁹ The Gasfields Commission was subsequently established in 2012 to facilitate relationships between stakeholders.

The Commission consists of a full time Commissioner, who is also the chairperson, and up to six part-time Commissioners.¹⁰ There are currently six Commissioners that each have their own portfolio and strategic objectives as shown in Table 2.

Table 2: Gasfields Commission's portfolios and strategic objectives¹¹

Portfolio	Community and Business	Local Government and Infrastructure	Gas Industry Development	Science and Research	Land Access	Water and Salt Management
Strategic Objective	Long term sustainability of regional communities	Local governments, in onshore gas regions, effectively planning and managing services and infrastructure	Promote greater transparency and confidence in the onshore gas industry's activities	The community understands the science that underpins coexistence issues	Land access conduct and compensation negotiations reflect professional standards	The quantity and quality of groundwater is not compromised and promote the beneficial use of produced water and salt as a resource

In addition to the Commissioners, there are approximately ten staff based in Toowoomba and Brisbane who support the Commission's work.

In the 2014-15 financial year budget, the Commission received funding of \$2.5 million per year for four years.

4.2 Functions and powers of the Commission

The *Gasfields Commission Act* prescribes the following broad functions for the Commission, namely:

- (a) facilitating better relationships between landholders, regional communities and the onshore gas industry
- (b) reviewing the effectiveness of government entities in implementing regulatory frameworks that relate to the onshore gas industry

⁷ Prior to its establishment as a statutory authority on 1 July 2013, the Commission was administratively part of the former Queensland Department of State Development Infrastructure and Planning (from 2012).

⁸ Section 3 *Gasfields Commission Act 2013* (Qld).

⁹ Gasfields Commission Submission

¹⁰ Section 9(1) *Gasfields Commission Act 2013* (Qld). There must be a Commissioner representing landholder interests, a Commissioner representing communities where the onshore gas industry operates, and a Commissioner representing the onshore gas industry.

¹¹ Source: Gasfields Commission Queensland Strategic Plan 2015-2019.

- (c) advising ministers and government entities about the ability of landholders, regional communities and the onshore gas industry to coexist within an identified area
- (d) responding to requests for advice from the chief executive under the *Regional Planning Interests Act* about assessment applications under that Act
- (e) making recommendations to the relevant minister that regulatory frameworks and legislation relating to the onshore gas industry be reviewed or amended
- (f) making recommendations to the relevant minister and onshore gas industry about leading practice or management relating to the onshore gas industry
- (g) advising the minister and government entities about matters relating to the onshore gas industry
- (h) convening landholders, regional communities and the onshore gas industry for the purpose of resolving issues
- (i) obtaining particular information from government entities and prescribed entities
- (j) obtaining advice about the onshore gas industry or functions of the Commission from government entities
- (k) publishing educational materials and other information about the onshore gas industry
- (l) partnering with other entities for the purpose of conducting research related to the onshore gas industry
- (m) convening advisory bodies to assist the Commission to perform the above functions.¹²

The Commission has the powers necessary or convenient to perform its functions. It also has certain specific powers, such as the power to compel onshore gas companies (and their contractors) and landholders to provide the Commission with the information or documents required for the effective and efficient carrying out of the Commission's functions.¹³ It can also compel a government entity to provide it with advice or information.¹⁴

The Commission noted in its submissions that it was established to facilitate relationships at a strategic level and to ensure the sustainability of these relationships.¹⁵ The Commission has no powers to investigate, mediate, arbitrate or make binding decisions concerning individual disputes between landowners and onshore gas companies. Its submission notes that:

"In individual cases, the Commission has been asked to facilitate communication between the parties. However, it was not set up nor resourced to manage individual disputes nor does it have the powers to determine resolutions".¹⁶

However, it sometimes acts as an informal intermediary in disputes when invited by the parties¹⁷.

4.3 Key activities and publications

Appendix 6 outlines the Commission's key activities in the 2013-14 and 2014-15 financial years. Appendix 6 also lists publications of the Gasfields Commission.

¹² Section 7 *Gasfields Commission Act 2013* (Qld).

¹³ Section 26 *Gasfields Commission Act 2013* (Qld).

¹⁴ Section 23 and 24 *Gasfields Commission Act 2013* (Qld).

¹⁵ Gasfields Commission submission.

¹⁶ Gasfields Commission submission.

¹⁷ Gasfields Commission submission.

Chapter 5 Is the Gasfields Commission achieving its purpose?

5.1 Introduction

At a broad level it may be said that the relationship between CSG companies, landholders and regional communities has improved since the heady and conflict-ridden days starting in 2008 when the CSG industry got underway in the Surat Basin within southern Queensland. In that early period:¹⁸

- Frequently CSG companies would tell landholders they were going to drill for gas and demanded entry onto private land. The companies operated with a sense of urgency. Some of the early, small companies were taken over in due course by larger corporations who displayed a somewhat more benign attitude towards landholders.
- The development of CSG in Queensland has been rapid, with approximately 80 per cent of the State's (including those outside Surat Basin) 9000 CSG wells drilled in the past six years. A measure of the scale of the CSG undertaking can be gathered from the QRC submission:

“The creation of the onshore gas industry in Queensland was the largest concentration of private capital in Australia’s history. With the best part of 70 billion dollars invested, the investment in Queensland LNG is the equivalent of three Snowy Mountain Schemes (expressed in terms of today’s dollars). In drawing this comparison, it should be noted that the Snowy Mountain Scheme was constructed over a quarter of a century, not just seven years”.
- The CSG companies often entered into a conduct and compensation agreement which provided the landholder with much less compensation than might result today, and conduct arrangements that took incomplete notice of the landholder’s needs. There were reports of bullying and sharp practices.
- There was no Land Access Code or adequate regulatory framework in place, until late 2010.
- Often, less than fulsome information was available from a CSG company about their proposed activities in an area or on a particular parcel of land. This made it difficult for the landholders to identify the anticipated impact on their land.
- The level of scientific understanding of the environmental impact of CSG activities, in particular as it related to the effect on groundwater, was limited.
- Rural towns were ‘invaded’ by gas workers, readily identified by their fluoro shirts. Workers would fly in and fly out and were usually accommodated in work camps located out of town. They were there, but were not part of the community.
- The level of trust between landholders and CSG companies and of the government was low, leading to tension which resulted in a protest in Cecil Plains in April 2010 and then at a community cabinet meeting at Roma in July of that year. There were also protest meetings in Brisbane.
- The CSG industry’s growth and development coincided with a devastating drought which impacted the farming community and reduced job opportunities and rural town populations.
- To some, the CSG initiative was therefore seen as an opportunity arriving at the right time. To others, the intrusion onto private land and the uncertainties about the impacts of CSG extraction were difficult to tolerate.
- The impact on local infrastructure was often substantial and unplanned.
- The government of the day moved late in 2010 to form the Surat Basin CSG Engagement Group. Rural landholders, CSG companies and government agencies were represented in that group, which facilitated round table communication between the stakeholders in an attempt to address the issues confronting them.

¹⁸ This introduction selects pertinent historical features of the growth of the CSG industry. It is derived from the range of sources including written submissions, interviews, newspaper reports and the resources listed at the back of this report.

- Early in 2012 the Gasfields Commission was established and a Chair and Commissioners appointed. The observation can be made at this point that the Commission had the unenviable task of addressing a set of challenging issues. Clearly, it would have been preferable had the Commission started its work in advance of the CSG industry.
- The *Gasfields Commission Act* passed Parliament in April 2013 and was proclaimed into law from 1 July 2013. I understand this was with bi-partisan support.

Now jump forward to mid-2016:

- It is safe to say that there is broad tolerance in rural communities of the existence of CSG and agricultural businesses in the same landscape, however that is not without complaint or exception¹⁹. Some landholders are aggrieved by the CSG intrusion onto their land or onto neighbouring land, but the submissions received in this review and discussions with contributors indicate that group to be in a minority.
- Along with that minority there are landholders today who feel that their original conduct and compensation agreement with a CSG company is deficient either in compensation or its conduct provisions. This was seen as recently as mid-June 2016 on a '60 Minutes' television program.²⁰ Others have ongoing concerns/complaints as to how the CSG company or its contractors conduct themselves on their land (leaving gates open, introducing noxious weeds, etc.) as well as the potential impact on groundwater.
- There is some support for the claim of the inadequacy of some of the early agreements in that at least one CSG company is moving to review such conduct and compensation agreements. That initiative, of itself, is evidence of a 'softer' stance being adopted by that company. Notwithstanding this, there is a prospect that a slide in CSG company profits could lead to a hardening of attitude in some dealings between a company and landholders.
- In their submission, the Gasfields Commission reported that 5000 land access agreements had been signed by more than 2000 landholders. \$238 million in compensation has been paid to landholders in the previous five years and \$189 million is to be paid to landholders in the next five years. Other benefits for landholders include 'accommodation works' in the form of fences, roads, grids etc. Some landholders sold water or gravel to a CSG company. There are instances where the landholder has been able to obtain CSG water for beneficial use to expand their agricultural enterprise.
- Law firms have benefited from the process of negotiation between landholders and CSG companies to the extent that larger firms have moved into some rural centres to take advantage of the business on offer. Whilst the CSG companies must pay the landholder's reasonable and necessary legal fees (and other expert fees) when a conduct and compensation agreement is entered into, the companies and others expressed to me a view that the legal fees were often excessive. However, I was told by one lawyer who represents landholders that negotiating a conduct and compensation agreement often includes consideration by the landholder of a range of associated legal issues, for example, the effect on business structures and succession planning.
- The Commission reports that there was \$6 billion in total direct spending by the CSG industry in Queensland in the years 2014-15 benefiting 3587 local businesses.
- Whilst some businesses in rural towns have benefited in being part of the supply chain for CSG companies, others, such as motels and restaurants, have modernised or sprung up to service the expanded and cashed-up clientele. Some such businesses over-capitalised and were caught short when the CSG construction phase finished and the supplementary population of workers reduced substantially. Tapering down of development and construction was anticipated, however the rapid decline in energy prices put paid to those plans. Other businesses put in an effort to qualify for CSG company contracts but fell short and were bruised by that failure.

¹⁹ In 2014, the CSIRO undertook a study into community wellbeing in the Western Downs – an area that has been the focus of major CSG development over the last five years. Attitudes towards CSG development in the Western Downs results were mixed with: 22 per cent either embracing or approving; 69 per cent either accepting or tolerating; 9 per cent rejecting CSG development in the region. Walton, A., McCrea, R., and Leonard, R. (2014). *CSIRO survey of community wellbeing and responding to change: Western Downs region in Queensland. CSIRO Technical report*: CSIRO, Australia. Study of 400 people randomly selected from Western Downs, residents within and outside towns of Dalby, Chinchilla, Miles and Tara.

²⁰ "Keep out" about the conflict between a CSG company and grazier outside of Chinchilla, broadcast 19 June 2016, 60 Minutes, Channel 9.

- In some towns, houses were sold to CSG companies or to investors for high prices and the vendors moved elsewhere with their windfall. I was told in some interviews that the price of houses was often found to be too high for young people who elected to leave their home town, frequently with children who would have previously helped populate the local school. As construction finished many investors were left with houses whose value plummeted, but whose mortgages remained high. Vacant houses and reduced school populations induced a level of despondency in some communities, I was told.
- Stress on individuals and consequent mental and emotional health issues have affected some people, mainly those on farms or on rural residential blocks; and other health consequences have been raised by some.
- Whilst there are legacy issues from the earlier development of the gasfields, the days of crisis and confrontation of 2010 have passed. The CSG companies have gained a better understanding of landholder needs and the cultural differences between farmers and miners. Though I formed the opinion that there has been an improvement to the relationship between CSG companies and landholders, in particular, this is not to say that there is a harmonious and balanced relationship between them. There was evidence from submissions, for example, that told of instances as recently as 2015 where the conduct of a CSG company representative merited the description of 'bullying'. In addition, I am of the view that the current dispute resolution arrangements and some aspects of compensation work against the interests of landholders and should be adjusted.
- Many landholders have received a stable income from CSG operations on their land and this has given some the opportunity to improve farm infrastructure. There are some landholders who are motivated to seek CSG wells on their land and some who advertise their properties for sale and include mention of CSG income that runs with the land. However, difficulties remain, and recommendations in this report seek to address some of those. There is some breathing space now to be able to do that.

Looking forward

- The three LNG export facilities at Gladstone are expected to be at peak production by 2017-18. Most of the future developments in the Surat Basin planned for implementation over the next five to ten years are aimed at supplying CSG feedstock for export LNG. Gas companies have indicated to this review that at current market conditions, planned exploration expenditure is expected to be half of that in peak growth years.
- To appreciate the size and extent of CSG activity growth in the Surat Basin, the review has relied on the publicly available growth model used in the draft *Surat Underground Water Impact Report 2016*, which is based on work programs submitted by companies to meet current contracted supply. The report shows that the number of exploration and production wells in the Surat Basin is expected to increase from approximately 4600 in 2015 to around 11 000 by 2023²¹. The report further illustrates the extent and location of the planned and potential production areas in the Surat Basin (see map at Appendix 7).
- Actual construction may be influenced by market conditions. Even under the current subdued market conditions, the above clearly illustrates that the total number of wells is expected to almost double and will be located over an area larger than that already developed. In my view this significant expansion of the number of wells and the footprint of the CSG industry activities, together with predicted cumulative groundwater impacts from CSG activities in the Surat Basin, will continue to require a third party to strategically monitor, facilitate and manage coexistence issues between gas companies and agricultural landholders in the region in the medium term.
- Predicting the size and nature of the CSG industry in Queensland beyond this medium-term timeframe would be purely speculative and in some respects not particularly relevant for the purpose of this review.

²¹ Approximated from *Underground Water Impact Report for the Surat Cumulative Management Area Consultation Draft March 2016*, Fig 2-7, Office of Groundwater Impact Assessment, page 14.

5.2 Measuring the effectiveness of the Gasfields Commission

A consideration of effectiveness should be based on the outcome desired. In this case, the outcome is provided for in the *Gasfields Commission Act* which states that it establishes the Gasfields Commission to:

*“manage and improve the sustainable coexistence of landholders, regional communities and the onshore gas industry in Queensland”.*²²

In the list of “Commission Functions” in section 7 of the Act, this function is included:

“(a) facilitating better relationships between landholders, regional communities and the onshore gas industry”.

The Act does not supply a definition of the term ‘coexistence’, nor was one suggested by the Commission in its submission to this review. A perusal of Hansard (second reading of the *Gasfields Commission Bill 2012*, 17 April 2013) reveals a reticence in the legislature to propose a definition.

To the critics of the CSG industry and of the Gasfields Commission, the term ‘coexistence’ is described in derisory terms. The tenor of the Act and the history leading up to it, lead me to the view that the legislature had in mind an outcome of harmonious existence of the CSG and agricultural industries in the same landscape; one where each industry respected or at least tolerated the differences between them and who moved to address issues where the different land uses overlapped. The word ‘balanced’ or perhaps ‘integrated’ may have more closely described the intention, which is not clarified in the Act by the need to ‘improve’ coexistence described as being ‘sustainable’ (see section 3 of the Act).

As I say above, the purpose of the Act is tolerably clear, with its language being influenced, it seems, by the desire to improve the prevailing atmosphere found on the ground in 2009 to 2010. Having said that, I suggest that it is desirable that the language of the Act be revisited to describe in contemporary terms, the purpose of the Act and the Commission’s functions and powers as an expression of legislative intent and to make it clear to stakeholders what they should expect of the Commission. I include a recommendation below concerning this, following my discussion of the Commission’s functions and its structural arrangements.

The data

I return now to the question of the effectiveness of the Gasfields Commission having regard to the evidence provided in submissions and in the context of my stated understanding of the purpose of the Commission. I referred above to there being 5000 conduct and compensation agreements entered into – the context in which that data was supplied implied that figure to be an indicator of success, not because the Commission helped negotiate these agreements, but, I infer, because the volume of agreements indicated a healthy environment between CSG companies and landholders.

The data provided does not say whether conduct and compensation agreements resulting from renegotiation and amendment are included. Situations where landholders and a CSG company may renegotiate or amend a conduct and compensation agreement could include where:

- the supply of gas on a field requires infill wells
- a CSG company needed to change its activities owing to ground constraints and/or original deficient planning
- a short term conduct and compensation agreement has come to an end and a new conduct and compensation agreement is required for the next phase of activity
- a CSG company has stepped up its activities
- the activities provided in a conduct and compensation agreement have a greater impact than originally envisaged
- an earlier conduct and compensation agreement is quite properly renegotiated by a CSG company because of its apparent unfairness.

The figures provided do not reveal that some landholders, as I have been told, elected to sign a conduct and compensation agreement to avoid having to pay a large legal bill which would only be paid by the CSG company if the conduct and compensation agreement was executed. Nor do they

²² Section 3 *Gasfields Commission Act 2013* (Qld).

provide an insight into the level of satisfaction with the negotiation experience and its outcome. Such data is available from annual surveys carried out by AgForce, which reports as follows²³:

“Both annual surveys (2014 and 2015) asked landholders that had negotiated a Conduct and Compensation Agreement (CCA) to rate their level of satisfaction with the outcomes of the negotiations/agreement. Of the 228 respondents in 2015, 50% had signed a CCA and 12% had been approached to negotiate a CCA, compared to 46% and 12% from 2014 respectively (170 respondents). The results of both surveys are shown below:

Survey Question	2015 survey result	2014 survey result
Very satisfied	2.5%	1.5%
Satisfied	8.5%	31.1%
Somewhat satisfied	35.4%	n/a (did not include)
Not satisfied	34.5%	39.5%
Very unsatisfied	18.5%	27.3%

(I assume that some of those surveyed did not answer all the questions.)

Even if allowances are made for a generous margin of error, including ‘buyer’s remorse’, a clear indication remains that a large, indeed a predominant, portion of landholders who entered into the 5000 conduct and compensation agreements were less than satisfied with the outcome.

Other data provided by the Commission refers to the number of enquiries it actioned. In 2013-14, the Gasfields Commission reported it had actioned 111 enquiries from 54 landholders on a range of topics including land access, bores, and coal seam gas water.²⁴ In 2014-15, the Commission reported it received and actioned 91 enquiries from 44 landholders on a range of topics including land access, impacts on physical and social/cultural environments, bores and water (one-quarter of these enquiries related to land access matters).²⁵ It is not clear whether this data included complaints along with enquiries, how the enquiries were dealt with and whether all issues were resolved.

The Commission reports that to date, no formal CSG disputes have had to be resolved by the Land Court. Submissions to the review reveal that the CSG companies do not want to contest such matters against landholders in the Land Court and would usually prefer to walk away or pay an increased compensation figure, rather than to pursue the litigation route. CSG companies are intent on establishing stable and ongoing relationships with landholders. Landholders do not generally want to go to court because of the anticipated expense, the complexity, the loss in time devoted to their business and the preference for a commercial outcome. The information about a lack of disputes before the Land Court is, therefore, wholly unreliable in identifying the effectiveness of the Commission.

Data sourced from the CSG Compliance Unit (see Appendix 5) indicates an upward trend in complaints from 50 in the 2012-13 financial year to 132 in 2013-14, followed by a declining trend to 78 in 2014-15 and 52 in 2015-16. There was a slight upward trend in information requests starting at 240 for the financial year 2012-13, 292 in 2013-14 and 340 in 2014-15, and then a further increase to 352 in 2015-16.

The data also says that 93 per cent of enquires (that is information requests, complaints and cases) were resolved. On the face of it that would suggest that the CSG Compliance Unit has been successful in those respects, however, it may be that the positive changes can be sheeted home, at least in part, to the Commission, the landholders’ own efforts, the CSG companies or other players. Apart from that it is not clear what constitutes a ‘resolved’ enquiry. Does it mean that a letter has been sent or that the original enquirer was satisfied? I was told that by the CSG Compliance Unit that

²³ Submission by AgForce.

²⁴ *Annual Report 2013-14*, Gasfields Commission Queensland.

²⁵ *Annual Report 2014-15*, Gasfields Commission Queensland.

it means that the party has either accepted the response or is not willing to pursue it any further.²⁶ Also, I have no data on the question of situations being endured, with no complaint being made because, for example, of a lack of faith in the system.

According to DEHP compliance reporting, there is a general declining trend in CSG activity related complaints since 2013 (228) to 2015 (63).²⁷ Compliance data provided to me also show that small numbers (nil in 2012 to a high of 6 in 2015) of complaints have resulted in enforcement actions by regulatory agencies. As small as the enforcement numbers are, landholders and groups representing landholders appear to me to have little awareness of these enforcement actions and have a strongly held view that enforcement effort by regulators is wanting.

Whilst complaints data shows that the numerical trend in complaints is declining, I have been advised that complaints tend to be focused around specific issues and clustered around specific areas. Stakeholder submissions also foreshadow that disputes related to make good agreements would be an increasing area of complaint as impacts from current and planned wells start to affect bores. The recently released draft *Underground Water Impact Report 2016* predicts an additional 64 bores in the immediately affected area, for example.²⁸ A new Underground Water Impact Report will be released in three years' time, presumably identifying further newly affected bores.

The reporting of complaints data to the Coordinator-General from three CSG companies suffers in that each company's report differs in the way it categorises complaints, the reporting period and the statistical form.²⁹ APPEA also collects statistics for formal disputes about land access (one only) and complaints (none to date).³⁰

Recent University of Queensland case study research (yet to be peer reviewed) has identified the time taken to report, iterate and resolve issues/complaints have been a source of concern in those cases. Submissions to this review and interviews with landholders were consistent with that conclusion. Other University of Queensland Research (yet to be peer reviewed) indicates that trust in the sector remains highly variable between, and sometimes within, key stakeholder groups.³¹

In a 2015 survey conducted by AgForce, landholders were asked to indicate the sources of information they used to inform their opinion of the CSG Industry. The results:

"In the 2015 annual survey landholders were asked to indicate sources of information they used to inform their opinion of the CSG industry. The results returned showed that:

- 14 per cent went to the Gasfields Commission
- 38 per cent used Government sources
- 77 per cent utilised AgForce Projects (CSG Project)
- 70 per cent used other landholders
- 60 per cent went to legal advisors".³²

Of particular interest in the AgForce survey work is the question asked of landholders concerning the levels of trust towards key stakeholders as set out in Table 3.

It would be surprising if a survey of this nature did not result in AgForce receiving strong support, however, the figures relating to the Gasfields Commission indicate a high level of distrust. No explanation is provided for the quantum of change in the 'not sure' figure, however it is difficult to ignore the results in the remaining two categories of measure.

²⁶ Information provided by CSG Compliance Unit 22 July 2016.

²⁷ Department of Environment and Heritage Protection, *Summary of Complaints, Notification and Enforcement by Mining Tenures in Queensland*. Provided on 12 May 2016.

²⁸ Draft Underground Water Impact Report 2016 for Surat Cumulative Management Area – Consultation Draft, March 2016, OGIA, DNRM. https://www.dnrm.qld.gov.au/data/assets/pdf_file/0007/345616/uwir-surat-basin-2016.pdf, page xiii.

²⁹ Submission by the Centre for Coal Seam Gas, University of Queensland.

³⁰ Submission by the Centre for Coal Seam Gas, University of Queensland.

³¹ Submission by the Centre for Coal Seam Gas, University of Queensland.

³² Submission by AgForce.

Table 3: AgForce survey of landholders on their levels of trust towards key stakeholders³³

Stakeholder/Organisation	2015 Result (n = 224)	2014 Result (n = 170)
Gasfields Commission Queensland	<ul style="list-style-type: none"> Trust: 8% Distrust: 50% Not sure: 15% 	<ul style="list-style-type: none"> Trust: 6% Distrust: 40% Not sure: 53%
Queensland Government	<ul style="list-style-type: none"> Trust: 7% Distrust: 51% Not sure: 11% 	<ul style="list-style-type: none"> Trust: 6% Distrust: 44% Not sure: 50%
CSG Industry	<ul style="list-style-type: none"> Trust: 1% Distrust: 78% Not sure: 5% 	<ul style="list-style-type: none"> Trust: 1% Distrust: 73% Not sure: 26%
AgForce Projects CSG and Mining Landholder Support Project	<ul style="list-style-type: none"> Trust: 70% Distrust: 5% Not sure: 8% 	<ul style="list-style-type: none"> Trust: 70% Distrust: 3% Not sure: 27%

(I note that not all of the above boxes add up to 100 per cent).

Both the 2015 and 2014 AgForce surveys sought responses as to who landholders contacted if they had concerns/complaints relating to a CSG company or with general industry concerns. The results for 2015 and 2014 respectively are:

- Commission: 12 per cent and 9 per cent
- AgForce Projects (CSG Project): 41 per cent and 34 per cent
- Government/CSG Compliance Unit: 47 per cent and 49 per cent
- Legal advisors: 50 per cent and 31 per cent
- CSG Company: 35 per cent and 29 per cent.³⁴

This data points to a range of potential conclusions:

- A high level of use of the CSG Compliance Unit.
- An increased use of legal advisors during the two years under survey. Some potential causes of this include:
 - a level of mistrust of CSG companies associated with the perception that these companies employ a lot of lawyers
 - a, not unexpected, low level of knowledge by landholders of the complexities involved in CSG matters and corresponding low levels of self-reliance
 - the improved reputation and/or marketing of law firms.
- A low level of reliance on the Commission. This may not be a bad thing if the Commission is understood to not act in individual cases and the landholders are aware of that; however, submissions from landholders to this review suggests this is not the case.

It is unfortunate that the level of complaint concerning the Commission arises to some extent because landholders have often been unaware of the work of the Commission 'behind the scenes' and the fact that the Commission was not created for the purpose of dealing with individual disputes. The Commission has, as discussed below, been a powerful influence on the conduct and decisions of CSG companies and has facilitated communication between those companies and community leaders, local government, industry bodies and business.

³³ Source: Submission by AgForce.

³⁴ Submission by AgForce.

Nevertheless, one benefit in directing my mind to the available data is that I can now conclude that the available data does not provide a suitable foundation to conclusively identify success nor to attribute cause. The AgForce survey results are very helpful, however, they do not consist of hard, objective data. The data from the CSG Compliance Unit and DEHP, although incomplete, are also of assistance in identifying positive themes.

It is highly desirable that data concerning complaints and enquires be collected and reported consistently notwithstanding that different agencies are involved. Such reporting has the benefit of helping to identify the outcome of particular strategies, informing changes to strategies and mechanisms and in helping stakeholders to develop trust in the mechanisms involved. It is data at this strategic level which can assist the Commission in its facilitative role. A recommendation in this regard appears towards the end of this chapter.

I do not propose any intrusion into confidential elements of any arrangements or transactions, but the assemblage of statistical data. I do not propose to duplicate the collection or generation of data already carried out by other agencies, but the comprehensive assemblage of such data for the purpose of policy analysis.

Given the state of the statistical evidence I am driven to broader indicators of success.

5.3 Where does the credit for the change between 2010 and 2016 lie?

A range of organisations that made submissions to this review claim at least some of the credit for the level of stability that has developed during this period, the Gasfields Commission being one of those.

In its submission to the Senate Select Committee on Unconventional Gas Mining (March 2016) AgForce said:

“During this period [2010-16] steps to better manage, regulate and facilitate greater interaction between the resources and agricultural sectors in Queensland have been introduced including;

- *Introduction of the Land Access Code (LAC) and supporting land access framework;*
- *Introduction of the Strategic Cropping Land Act 2011 (SCL Act) and then its replacement within the Regional Planning Interests Act 2014;*
- *Amendments of the Water Act 2000 to include pre-development groundwater modelling and setting 'make good' requirements for impacts on groundwater supplies/users;*
- *Formation and operation of the CSG Compliance and Engagement Unit (Department of Natural Resources and Mines);*
- *Establishment of the Gasfields Commission Queensland; and*
- *The declaration of the Surat Basin Cumulative Management Area (CMA) and subsequently the Surat Basin Underground Water Impact Report (UWIR), commissioned by an independent statutory body: The Office of Groundwater Impact Assessment (OGIA).*

AgForce believes that through these positive steps and the ongoing engagement and support provided to landholders via the CSG Project delivered through AgForce Projects that the operating landscape for Queensland landholders dealing with CSG has greatly improved during this time. We would also acknowledge the significant and necessary improvements in the approach by resource companies to negotiations and dealings with landholders, from a heavy-handed, legal-rights-enforcement approach to a greater understanding of the need for long-term, mutually-beneficial relationships with landholders”.

This quotation from the AgForce submission is important because it identifies the Commission as contributing to the level of stability that has developed in the interface between the resources and agricultural sectors. This submission by AgForce also represents a notable shift by that organisation from the CSG resistance stance that it had adopted at the outset of CSG development in Queensland.

From the submissions I received, the Commission, through its functions, also enjoys good support from a number of other organisations including the LGAQ, the Centre for Coal Seam Gas, (University of Queensland), the Commonwealth Department of Industry, Innovation and Science and CSG companies and their peak associations, APPEA, QRC and AMEC. Each of these organisations supports the continued operation of the Commission. Support from individuals, however, is at a

much lower level. One peak producer body, the QFF, did not support the continuation of the Commission particularly because, in its view, the Commission had lost the trust of landholders. The QFF did, however, identify the need for an entity such as the Commission, but proposed investigation into an alternative model.

Whilst it is not apparent from the planning documents of the Commission what overall strategy it decided to adopt in discharging its duty, all of the evidence leads me to conclude this: the Commission decided that the attitude, behaviour and power of the CSG companies was such that improvement in coexistence was possible only if the companies were influenced to change. Without this change no amount of landholder training, information and support would help many landholders who were unwilling participants in the new industry.

The CSG companies were few in number; had internal lines of command and control; were motivated by the need for production and profit; and were time-bound. In contrast, landholders comprised a heterogeneous group of individuals with individual needs and dislikes and individual goals. Focussing on the CSG companies had the advantage of leverage not available in the landholder community. The Commission therefore chose to focus on and influence the CSG companies.

Much of that effort came from Mr John Cotter, the Gasfields Commission Chairman who demonstrated a willingness to confront CSG company executives with problems that he thought should be addressed. On occasion he took them out of their comfort zone and led them to take decisions and embark on initiatives they then understood needed to occur. He established allies in the CSG leadership and employed personal contact as a tool to do so and to discuss issues in a relaxed environment – driving in a car, or walking a pipeline. Whilst Mr Cotter was the primary change agent, other Commissioners assisted and there were undoubtedly other influences coming from the broader community and from the realisation from the CSG company leaders that organisational change would bear fruit; that is, coexistence was better than confrontation.

Another area of influence from the work of the Commission is that of science. In the early days of CSG development in Queensland there were many questions about such matters as: hydraulic fracturing; impact of CSG extraction activities on aquifers; the use of CSG water; the potential impacts of CSG extraction activities on agricultural land; and fugitive methane gas emissions. The Commission moved to recognise such issues, to provide answers and to facilitate and monitor some ongoing research. I touch on other contributions from the Commission, below.

The Commission did not adopt a role of being an advocate for landholders, nor of addressing individual cases, neither of which was required by the statute, but both of which were, and still are, expected by many landholders. There were media reports of criticisms apparently associated with Mr Cotter's appointment – the criticisms coming from landholders and their representatives. Mr Cotter therefore did not come to his task with a cloak of goodwill. His strategy of focusing on the CSG companies; as valid as that appears to have been; together with messages from the Commission promoting the benefits of CSG development, attracted further criticism. Communications to landholders included stories about how some landholders successfully negotiated with a CSG company. Such good news stories have been viewed with cynicism by landholders who already had a jaundiced view of the Commission's role and its perceived allegiance to the onshore gas industry.

Indeed some landholders expressed a range of criticisms in their submissions including:

- The Commission does not represent landholders but represents the CSG industry and government. Commissioners are not members of landholder peak bodies yet one Commissioner is a member of APPEA.
- Some Commissioners are conflicted in the discharge of their duties.
- Commissioner attendance at football matches and the ballet as guests of a CSG company were cited.
- When issues are raised with the Commission the response is often in a noncommittal 'form' letter. Advice is not forthcoming.

I do not make any findings or recommendations based on these particular submissions. However, as I observed earlier, the relationship that the Chairman in particular, was able to build with the CSG companies was a key factor in the change of attitude by the CSG companies.

I also note that some of the Commissioners are necessarily drawn from the gasfields region so perceived conflicts of interest may be difficult to avoid.³⁵

It also seems to me that the mere fact that the Gasfields Commission was created to manage and improve coexistence between “*landholders, regional communities and the onshore gas industry in Queensland*” identifies it as a supporter of the CSG industry. The subject matter and range of publications produced by the Commission, the intensity of work on the ground, the scientific work carried out, the information forums, and the electronic communication tools all bear witness to the Commission also supporting agricultural industries.

There is little doubt in my mind that the work of the Commission has contributed significantly to improving the coexistence of CSG companies and landholders, largely, but not exclusively by acting to modify the behaviour and methods of operation of the CSG companies. A by-product of that strategy (together with landholder expectations that were not addressed and clarified by the Commission) was the creation of a dissatisfied landholder cohort.

5.4 The way forward

The current climate in the CSG industry (low gas prices and finalisation of the construction phase in most areas) and its stage of development, maturity and stability, is such that the reasons for the creation of the Commission in 2012 have been satisfied to some extent.

The implications of the future growth of the CSG industry, described above, on the continued need for the Gasfields Commission are twofold.

First, in my view, the continued expansion of gas exploration and production will create ongoing need for education and support to land owners in greenfield areas. Second, I also feel that if the current low oil prices continue to persist, resulting in reduced profitability, CSG companies may be tempted to be less generous in their compensation to landholders and potentially adopt a harder negotiation stance, resulting in disputes and deterioration of relationships. This may be magnified if there is a movement by the CSG industry into the rich country of the Darling Downs. It may also be complicated by any changes in ownership or leadership of the CSG companies. The Commission will need to meet such challenges.

I have formed the view that the Gasfields Commission needs a better balance and focus in its strategic role including improved planning, monitoring and evaluation; and improved communication.

It also would be preferable for the Commission to have a more positive image amongst its stakeholders. That would lead to improved cooperation between the Commission and its stakeholders and would improve the credibility of messages coming from the Commission.

To generate that improved image there must be a renewal of the Commission – one that is able to be identified as such by stakeholders. A number of recommendations are directed to this renewal.

Some submitters adopted the view that the Commission is beyond redemption. That is an understandable position in my view. To those I would say three things.

First, the recommendations in this report should be viewed in their totality, because it is the complete framework that needs to be considered, and not a part or component parts. Second, the learnings of the Commission are of such value that they need to be articulated and retained. That is not to say that every action in the past is to be applauded, but it is as useful to learn from failures as from successes. Third, those learnings and the information resource of the Commission provide an excellent foundation to move forward. In addition, it needs to be kept in mind that the abolition of the Commission is not within my terms of reference.

5.5 Governance

The Commission comprises the Chair together with up to six part-time Commissioners who can collectively be described as ‘the ‘Board’.³⁶

Section 21 provides:

The purposes of commission board meetings are to:

³⁵ Section 9 *Gasfields Commission Act 2013* (Qld).

³⁶ Sections 20, 21 and 22 *Gasfields Commission Act 2013* (Qld).

- (a) ensure the commission performs its functions and exercises its powers in an appropriate, effective and efficient way; and
- (b) set the strategic priorities of the commission; and
- (c) develop plans to address key issues being considered by the commission.

Section 35 provides for the preparation of an annual report for the minister, including how efficiently and effectively the Commission has carried out its operations.

The chairperson has specific powers including the power to require particular information from government entities (Section 23); the power to require advice (Section 24); the power to require particular information from prescribed entities (Section 26); and the power to establish advisory bodies (Section 28).

Section 30 provides that the “*chairperson may appoint a person, other than a Commissioner to act in the office of the general manager during*” absences of the general manager or in the case of any vacancy in that position.

The explanatory notes say that the general manager is responsible for the financial administration of the Commission and directing the other staff of the Commission.

These provisions readily lead to the conclusion that the Commission comprises two elements. First, there is the Board of Commissioners who are charged with the strategic overview and planning of the Commission work. Within this element there is the Chairperson with specific powers, best exercised by an individual as a member of that Board. Second, there is the administrative group comprising the general manager and the staff who perform the day to day operations of the Commission (Sections 30 and 31).

This distinction between providing strategic direction and carrying out operations in response to those directions is a recognisable feature of corporate management. It is not unique to the Commission. It is a distinction that has, however, become blurred by the way in which the Commission has operated.

The present governance of the Gasfields Commission is the product of its history and other influences. At the time the Commission came into existence (and during the time of its predecessor the Surat Basin CSG Engagement Group) the Commission was confronted with a range of disputes, poor sharing of information and equally poor regulation and guidance, along with conflicting positions and attitudes. In that environment, one could appreciate the need to get out and get things done rather than in contemplating the issues of governance, planning and evaluation. That was the world that the Commission was born into and it, and the Chairman in particular, responded accordingly. In so doing it established a management and operational style that was the genesis of its current style and governance.

Section 30 of the *Gasfields Commission Act* provides that the Gasfields Commission must employ a general manager. Two such appointments have been made since the Commission commenced, however, at the time of writing of this report the position remains vacant, the previous general manager having left in late December 2015. At the time of his appointment the position of general manager had, I was told, remained vacant for a period of nine months.

Duties of the general manager have been allocated between two staff members. I understand that an attempt has been made to fill the position of general manager; however, it has been difficult to attract candidates since this review was announced.

The position of Chairman is full time and has, in effect, led to the incumbent assuming an executive role that ought to properly be that of the general manager. Not unexpectedly, the overlap between the day to day role of an Executive Chairman and general manager has led to the role of the general manager not being fully utilised. Where a Chairman takes on such a role he becomes, in effect, the general manager, the key (if not the sole) decision-maker about priorities, thus taking on the powers of the board. This leads to a large power imbalance between the Executive Chair and the other board members. It confuses the functions of policy and development, priority setting and management. It compromises the continuity of the organisation and its responsiveness to the environment.

The level of remuneration received by the Chairman has been substantially greater than that of the other Commission members.³⁷ The justification for that may lie in the expectation that the Chairman

³⁷ The notes to and forming part of the financial statements 2014 – 15 to the Commission annual report show the remuneration for the chairman at \$327 000 per annum; the remuneration for 4 of the Commissioners at \$ 35 000.00 each per annum; and the remuneration for 2 of the Commissioners at \$57 000.00 per annum and \$39 000.00 per annum, respectively.

would be a full time position and would shoulder larger responsibilities (as has been the case), however, it is not a differential that is appreciated by some Commission members.

Whilst there may have been a need for a full time Chair at the outset of the Commission, that is not the case now. In my opinion the current Chairman has been incredibly hands on and active in performing his role. That level of activity arose because of the critical situation that existed on the ground in 2012 and as a result of his personnel style, energy and need to succeed.

The Chairperson should be the Chair of a board of Commissioners to which the general manager is responsive. Certainly the Chairman would usually need to commit more time to Commission work than other individual Commissioners and would need to be available to deal with issues at the upper levels of CSG companies, landholder peak bodies, government agencies and so on, and should be remunerated accordingly. The remaining Commissioners' remuneration needs to take into account that each of them will undertake a communication role on occasions, including the need for personal appearances at significant events of interest to the Commission.

Functioning as a board, the Commissioners should focus on policy and planning not management. The board should decide strategic objectives and the priorities in the settling of an operational plan, then would oversee performance. The Commission Chair would take forward to the minister any policy recommendations requiring legislative or regulatory change and provide advice to the minister concerning the onshore gas industry and any leading practice or management issues relating to that industry.³⁸ The Chair and the other members of the board would act as external advocates and diplomats with respect to the business of the Commission.

To underscore the distinction between the strategic direction and operations, the position of general manager should be redesignated as Chief Executive, Gasfields Commission and should be filled as a matter of urgency.

The position of Chief Executive needs to be filled by a person who is comfortable in the company of landholders and CSG Company executives; has drive and energy; is able to put into action the plans and policy of the board and who communicates well. The Chief Executive would be the first port of call if issues arise with a CSG company, but would need to call on the Chair where needed. The Chief Executive would therefore need to be a good networker.

5.6 Membership

Some submissions objected to there being a member of the Commission who is also currently a member of APPEA, on the basis that this member represented the CSG industry whereas landholders were not represented in a similar manner in that no landholder peak bodies were represented. I note that there is no single landholder or producer peak body in Queensland.

I do not see the need for the Commission to be a representative body though I acknowledge the need for the Commission to understand the viewpoint of such peak bodies. I say that, notwithstanding that the term 'represents' is to be found in section 9 of the *Gasfields Commission Act*.

The current part-time Commissioner from APPEA brings to the Commission technical expertise that would not otherwise be readily available to it. The Commission could seek such technical advice on an as needed basis; but that would be quite impractical. It is preferable that the CSG industry expertise be available to the Commission at its meetings.

The Commission membership should, in my view, provide a suitable range of skills and knowledge which are pertinent to the business of the Commission. Section 9(2)(b) of the *Gasfields Commission Act* provides:

"(b) the Commissioners will include:

- (i) a Commissioner who represents the interests of landholders; and*
- (ii) a Commissioner who represents the interests of communities in which the onshore gas industry operates; and*
- (iii) a Commissioner who represents the onshore gas industry".*

I see no need at this stage for the Commission to have any greater than three members who can meet the requirements of the above provision, together with a Chair. I say that having regard to the maturing of the relationship between the stakeholders and the apparent growing capacity for those stakeholders to meet many of the challenges that confront them.

³⁸ See sections 7(d), (e) and (f) *Gasfields Commission Act 2013* (Qld).

Also, the Chair may establish advisory bodies to provide advice on a matter relevant to the function of the Commission.³⁹ That has happened in the past. Thus the Commission can call on assistance where needed and need not maintain membership of the Commission at a level of six that might be said to 'cover the field' with respect to the issues that the Commission might encounter in its work.

Elsewhere in this report I outline the allocation of portfolios between part-time Commissioners. Whilst there may be justification in the subject matter of most of these portfolios being part of the business of the Commission, (though with a decline in the level of demand in some, and overall) a difficulty of having six Commissioners with such portfolios is that they can generate a level of work demand that overtakes the resources available within the Commission staff support group. That group comprises the general manager and up to nine other staff including some of junior rank. I also suggest that a reduced membership would give the Commission greater focus and would lead to a more considered identification of priorities. I acknowledge that the Commission has in the past retained additional expertise and resources where the need has arisen (for example in the development of the CSG Globe) and I would expect that to continue in the future.

Whilst the Act speaks of a Commissioner who represents landholders, I do not think that the relevant appointee should be an actor in agri-politics. It is important that the appointee have the capacity to discuss and deal with the issues of science and/or economics with respect to rural land use. Similarly, the Commissioner who represents communities should have capacities relating to local government and/or business.

The Commission membership suffers in its work in my view, by being an all-male group. This deficiency would be addressed by the application of the policy that 50 per cent of all new board appointees in Queensland government bodies will be women.⁴⁰

In passing, let me say that I do not consider it appropriate that the government be represented on the Commission. Any officer of the government could not represent the range of government agencies with an interest in the work of the Commission; nor could such an officer be held to a decision of the Commission whether he supported that decision or not. The Commission should retain operational independence from the Queensland Government, an aspect that I consider essential in its dealings with the stakeholders and, in particular, the CSG companies. Indeed, whatever lies in the future for the Commission, there would appear to be a continuing need for an entity independent of government to fulfil the purpose of the Commission, even if that were reduced in profile.

5.7 Focus of the Gasfields Commission

I now turn to consider other issues relevant to coexistence. Perusal of the annual reports for the Commission and its submission to this review indicate a range of activities of the Commission falling mainly under the functions in section 7(a), (ca) and (g) to (l) of the *Gasfields Commission Act*. Whilst the Commission has shown itself to be responsive to matters arising under other functions it has been less active in functions listed in section 7 (b), (c), (d), (e) and (f).

I have written above about the view of many landholders that the Commission does not provide them with the help they need, particularly in resolving disputes. It is important that the Commission clarifies its role, with landholders particularly in mind. This can be achieved by both communicating and demonstrating what it does and saying, with clarity, what it does not do. For example, it needs to say that the Commission does not handle individual disputes nor provide advice to individuals.

There needs to be a recognition that resources and structures exist in commerce, government, academia and the community to service some of the requirements of the CSG industry and its impact. That is, there are experts including lawyers who can manage negotiations, experts and Courts to resolve disputes, scientists who can conduct research, peak bodies who can represent and assist landholders, local governments, Chambers of Commerce and the list goes on.

In this environment the role of the Commission appears to me to have two components:

³⁹ Section 28 *Gasfields Commission Act 2013* (Qld).

⁴⁰ Queensland Government, The Queensland Cabinet and Ministerial Directory Portal, Media Statements, *Gender targets can help to grow Queensland Economy*, The Honourable Shannon Fentiman, Minister for Communities, Women and Youth, Minister for Child Safety and Minister for Multicultural Affairs, 29 July 2015, <http://statements.qld.gov.au/Statement/2015/7/29/gender-targets-can-help-to-grow-queensland-economy>, Accessed on 17 June 2016.

- (i) Recording the learnings from the past.
- (ii) Act as a monitor, facilitator and communicator to provide connections between the various services and structures identified above and provide strategic information and advice to stakeholders including government.

(a) Recording learnings

The first of these components can be best addressed from the records and collective memory of the current membership of the Commission. It would provide a valuable springboard to assist in the management of any future wave of CSG development or any development with similar characteristics; namely, a need to integrate industries to manage impacts and ensure complete communication and transparency.

A speech by the Commission Chairman to the Northern Territory Cattleman's Association annual conference provides a good start to implementing this recommendation.⁴¹

(b) Commission's role as monitor, facilitator, communicator and strategic advisor

Under this heading I focus largely on strategic methodology together with some specific initiatives that should be undertaken. At the end of this chapter, I draw a number of threads together and set out a comprehensive recommendation that describes the functions that I consider the Commission should have. That recommendation draws on some discussions that appear in later chapters.

The role of the Gasfields Commission should be that of:

- A monitor that identifies systemic and strategic issues and needs in the interface between the CSG industry and landholders.
- A facilitator that draws on (and/or creates partnerships between) service entities and stakeholders to address the identified systemic and strategic needs.
- A communicator that facilitates the communication to stakeholders of their existing information needs and information generated in respect of the developments and changes relevant to the interface between the CSG industry and landholders in particular.
- A trusted advisor to government and stakeholder representative entities on strategic issues including the status of the coexistence model.

The CSG industry attracts the interest of a multifaceted set of stakeholders whose activities can be the source of hard data and other information of interest to other stakeholders. It is appropriate that a single credible body be charged with monitoring and assembling this data and information, evaluating it and distributing it as appropriate.

I list below the type of data and other information the Commission should gather and evaluate as part of its monitoring role. For brevity I have bundled some items together that would be individually collected, assessed and evaluated. I did not intend this list to be exhaustive nor do I limit the sources of information that might be tapped. Both the data collected and the sources may change over time, depending on the growth of the onshore gas industry and the entities, both government and private, that service it.

Data

- Time taken to negotiate a conduct and compensation agreement and a make good agreement.
- Number of negotiations for a conduct and compensation agreement that are discontinued.
- Number and type of conduct and compensation agreements e.g. supplementary infill opt-out and deferral agreements etc.
- Number of properties with CSG infrastructure.
- Number of wells and processing facilities on properties.
- Number of wells sealed.
- Number of complaints and enquiries to CSG Compliance Unit, DEHP and their treatment.
- Number of prosecutions for breaches of the Land Access Code and environmental authorities.
- Number of PINs issued by the CSG Compliance Unit and DEHP.
- Number of complaints escalated to internal departmental review of the CSG Compliance Unit and DEHP actions.

⁴¹ Held in Alice Springs on 18 March 2016.

- Number of complaints raised with State Ombudsman concerning the CSG Compliance Unit and DEHP.
- Delivery standards by the CSG Compliance Unit and DEHP and degree to which standards were met.
- Number of audits conducted by the CSG Compliance Unit and their outcomes.

Stakeholder Perspective

- Landholder satisfaction levels with the CSG Compliance Unit and DEHP.
- Local council satisfaction levels with CSG companies.
- Landholder satisfaction with information or advice provided through ADR provided and to what degree landholders report they are self-reliant.
- CSG companies' satisfaction with dealings with landholders and local government.
- Impacts on community and businesses.
- CSG production volumes.
- Issues on the ground that generate scientific inquiry, measurement or research or practical solutions.

Dispute Resolution

- Number and different types of ADR processes undertaken and the outcomes.
- Time taken in ADR processes.
- Number of matters going to arbitration and the Land Court and outcomes.
- Numbers of matters going to the Moderator and outcomes (see later recommendation).
- Number of matters going to Superior Courts and outcomes.

Information/Legislation/Regulation about CSG

- Information published in Queensland, nationally and internationally.
- Changes in legislative and regulatory arrangements in Queensland, nationally and internationally.
- Changes in processes in Queensland, nationally and internationally.

Overall Issues

- Aquifer impacts.
- Capital invested.
- Jobs created.
- Infrastructure impacts.

Monitoring is akin to obtaining intelligence. It is this intelligence that informs policy change and planning. Much of the data could be collected electronically at the source or would be readily available from stakeholders or other bodies such as the Centre for Coal Seam Gas, University of Queensland or APPEA.

The Commission could utilise the AgForce survey technique either directly or through AgForce or other bodies to identify the perception of landholders and others in the client group. Again, interpretation of the generated information can lead to changes or other responses.

Some examples of the role I identify may assist: an issue of current interest at the interface between landholders and CSG companies is that of 'gassy bores' and the question of make good agreements. That issue requires technical input, positional input from landholders and CSG companies and policy input, possibly leading to legislative or regulatory change. There is no power in the Commission to require a government department to participate in policy development, however, I would expect reasonable cooperation would occur.⁴² The Commission should facilitate an investigation into and consideration of that issue (including any legislative action needed) and communicate the process and outcome to the responsible minister and stakeholders.

Another example is that of pipeline rehabilitation – a past initiative of the Commission. That involved a gas pipeline over a large number of properties – one where the construction work failed to take into account some landholder needs, including land management. The Chairman intervened directly with senior CSG company officers and organised for the companies to provide a solution. Here there was monitoring and facilitation.

⁴² Sections 23 and 24 *Gasfields Commission Act 2013* (Qld) provides for a government entity to provide advice or information to the Commission.

The Commission could, through broad-based monitoring, also act to identify opportunities for innovation such as in the reuse of CSG water and in the efficient disposal of salt. One current Commissioner has a real interest in these matters. The Commission is not alone in identifying such opportunities but this lies within its area of interest. The investigation and development of such innovative ideas would be facilitated by the Commission through relevant government organisations or other entities.

Changes in legislation and regulation affecting the CSG associated sector need to be monitored, interpreted and communicated. If such changes occur in a jurisdiction other than Queensland, the Commission will need to consider whether Queensland could benefit from similar changes. In so doing the Commission would facilitate the process by consulting with interested stakeholders including government (sections 7(d) and 24 of the Act). Similarly, the Commission would monitor developments in the CSG industry in other jurisdictions, (including internationally) that could lead the Commission to making further recommendations for legislative or regulatory change or the provision of strategic advice to stakeholders.

5.8 The extension and communication role

The Gasfields Commission's submission makes reference to some specific achievements, namely:

- the CSG Globe initiative in association with DNRM
- the publication of a wide range of factual publications employing both electronic and hard copy media
- facilitating research and publishing simple fact sheets explaining highly technical reports
- maintaining networks in the research community
- the publications set out in Appendix 6 of this report.

This work is designed to help build understanding about key coexistence issues, particularly in the area of science – an outcome that has been advanced, according to my interviews with contributors to this review and from a range of submissions. Indeed, the simple factsheet format has been very well done in my view.

Perusal of the Commission's publications indicates some conformity with the 'primary concerns' identified by landholders surveyed (170 in 2014 and 224 in 2015) by AgForce. These concerns were:

- 78 per cent - potential cumulative groundwater impacts
- 74 per cent - potential impacts of CSG on their individual groundwater supplies/bore
- 71 per cent - weed and biosecurity risks on property from CSG
- 62 per cent - time taken away from their property/business to negotiate agreements and/or manage CSG activities.⁴³

My observation taken from submissions is, however, that whilst each of these issues is significant, it is the fourth mentioned concern (time lost) that warrants more attention as well as the issue of 'make good' agreements relating to water bore concerns.

The Gasfields Commission invested a great deal in initiating forums that facilitate communication between key stakeholders to share information and to, hopefully, establish networks. Whilst it seems clear that some of the maturity in the development of the CSG industry can be attributed to such forums, submissions to this review reveal that the impact was uneven with some landholders feeling left out. I was given an example of one recent forum being attended by two landholders only, along with attendees from business.

The Commission should as a priority concentrate on facilitating the provision of information and advice to landholders to assist them to become more informed and self-reliant in their dealings and negotiations with CSG companies in the resolution of issues and disputes between landholders and companies and in the management of land subject to a conduct and compensation agreement or make good agreement. This is not to suggest that the Commission has neglected the information/skills needs of landholders, but that communication has been clouded by the perception of the Commission by landholders and by a need for improved cohesion in its communications.⁴⁴

⁴³ Submission by AgForce to the Senate Select Committee on Unconventional Gas Mining.

⁴⁴ A view expressed in similar terms in a submission from the Department of Agriculture and Fisheries.

The following conclusion expressed in the External Review of the Gasfields Commission concerning communication is consistent with the evidence encountered by me:⁴⁵

“Communication was rated average at best during the review. It was noted and perceived by most stakeholders that some of the things the Commission does is ‘behind closed doors’ and perceived as not appropriate for public release for various reasons. It was also noted that local Leaders, Councils and Community Forums were a good source of communication.

Regional stakeholders of all levels and backgrounds felt that there isn’t enough media releases or social media activity initiated by the Commission. When there is information disseminated by the Commission, the stakeholders felt the messages being delivered were mixed and unclear, some were still unsure of the Commission’s exact role, and the message still isn’t reaching the mainstream farmer. Regional communities believe this needs to improve ASAP as it will assist in reducing the anxiety and stress levels being felt”.

Online submissions to this review found that over 70 per cent of respondents disagreed that information for rural landholders and regional communities about CSG was readily available. Over 60 per cent of respondents disagreed with the statement that there was sufficient high quality information relating to land access and negotiating with CSG companies available to them. Most tellingly, 93 per cent of respondents thought that more needed to be done to improve the awareness and access of rural landholders and regional communities to relevant information.

As the AgForce survey data shows, landholders also place reliance on other landholders, a not uncommon practice in rural areas. The quality of information obtained in that manner would, at best, be variable and at worst unreliable and misleading. In contrast the Commission is well placed as a source of reliable information.

For these reasons the Commission needs to critically review its current communication activities and develop an extension and communication program that leads to landholders becoming informed and self-reliant in their dealings with the CSG companies, both in terms of what they know and in terms of their capacity to source information and advice as required.

This should include information on the processes used by CSG companies in the approach to landholders for preliminary access and in the commencement of initial negotiations, together with information on the rights of landholders, being made explicit and accessible to landholders and CSG companies.

This would not only assist in the management of those dealings but would go towards addressing the feeling of disempowerment of landholders, many of whom find themselves having to put more faith in others, including lawyers, than they would prefer. Such a feeling of disempowerment is a cause of stress and a threat to coexistence.

The term ‘extension’ is often associated with agricultural extension where change agents are involved in the application of scientific research and new knowledge to agricultural practices through farmer education. In that context it can also involve the identification of issues requiring scientific research; that is, there is a two way flow. There is a range of definitions of ‘extension’⁴; some of which are useful in the present context:

- extension involves the conscious use of communication of information to help people form sound opinions and make good decisions
- extension is the organised exchange of information and the deliberate transfer and adoption of skills
- extension is a series of imbedded communicative interventions, which are meant, among other goals to develop and/or induce innovations that help resolve (often multi-actor) problematic situations.

Extension is not therefore simply the passive provision of fact sheets or the provision of information via the internet, but involves (in the present context) the provision, adoption and exchange of information. The term ‘extension’, it will be understood, includes communication. I have elected to use the phrase ‘extension and communication’, however, to convey some clarity to those to whom the term extension is new.

To undertake an extension and communication program in this environment one needs a plan that takes into account existing channels, structures and facilities (for example AgForce, QFF, CSG

⁴⁵ Yule Strategic (Gasfields Commission Qld – External Review – Evaluation and Outcome Report – February 2015).

Compliance Unit, DEHP, agronomists, valuers, banks, newspapers, lawyers, accountants, etc.), the type of information and advice needed; the need for face to face learning; the timeliness of information (i.e. have it when it is needed); and the delivery (including the medium – and the entity delivering the information). It must also take into account the information content and the distribution systems used by relevant government agencies.

It will be apparent that an extension and communication plan has as its basis an analysis of the needs of the client. In so doing it would take into account such views as were expressed in one submission:

“Most landholders feel as though they have little control over the process and many will not seek information via a website. Most would prefer personal access to information, where they are able to ask questions, seek clarification and to feel assured that their concerns will be addressed”.

Similar issues were raised by other submitters.

The extension and communication plan would, also provide for the sharing of information, (particularly that obtained through the monitoring role) with relevant government agencies. It should also ensure that there is consistency between information provided by the various agencies and the Commission.

In developing an extension and communication plan the Commission would probably need to retain the services of an expert in extension and communication services, rather than simply relying on a communication expert. The Commission has put considerable effort into planning its communications, generally identifying the information message and the audience in the context of the individual portfolio needs as and when identified. There is, however, not a single comprehensive plan (such as an extension and communication plan) into which a particular information initiative can be absorbed.

Given the effort put in so far and the comprehensive information resource available in the Commission, I do not think that the creation of an extension and communication plan would be a very large undertaking for the Commission.

The extension and communication plan should include a continuation of the AgForce CSG project. Both government and the CSG industry have resourced and supported AgForce’s CSG project to provide CSG information sessions and advanced CSG negotiations and support workshops. In its proposed role, the Gasfields Commission will take a strategic role in ensuring that information provided by AgForce is consistent with that issued by other parties.

In my suggestions concerning extension and communication I do not propose a bold new venture or role for the Commission. Rather, I propose the development and adoption of a planned and improved means of delivery of information such that it has an impact on the knowledge and self-reliance of landholders and the understanding of other target groups in the community. Not all communication needs to be identified with the Commission. Indeed, trusted sources should be used e.g. the use of AgForce for AgForce members; QFF for its members.

In its ‘Gas Industry Snapshot 2010-15’ the Commission says that there are an estimated 2188 landholders with CSG infrastructure on their properties. When one takes into account family members of these landholders the number in this group would be multiplied a number of times when identifying the size of the group with an interest in understanding the processes involved in negotiating and dealing with CSG companies.

In addition there are those landholders who do not yet have CSG infrastructure on their properties (but who would wish to be prepared for an approach from a CSG company in that regard); new owners of properties already subject to a conduct and compensation agreement; and there are lawyers, accountants, bankers, valuers, stock and station agents and others who service the landholders concerned. In addition to that there is the general community in the gasfields area, members of whom would continually interact with affected landholders; local governments and those who have an interest in the development of their region in the CSG context.

There is therefore a quite large group with information needs. Those who are well informed already, but would still need to be provided with new information as it becomes available, for example:

- Legislative and regulatory changes.
- Scientific developments.
- Operational changes.

- Development in other jurisdictions.

The status of information in this topic of coal seam gas is not static. If I add to this the above observation by Aaron Yule⁴⁶ the submissions to this review and the AgForce survey data mentioned earlier, it is not contestable that there is a current and future need for landholders and the other client groups mentioned above to obtain reliable and accurate information.

I am of the view that work done so far provides a valuable information resource that can be used as a basis for a future education, awareness and adoption by clients. Included within this is information assembled by the Gasfields Commission, including information available from the Commission's website. The submission by the Commission said:

"The Commission looks to use its enewsletter, traditional and social media, principally Twitter and LinkedIn, to share stories and information and help drive more traffic to the Commission website".

The Commission's website 'use' statistics show there are large numbers of unique users (just over 9600 in 2014-15 with similar numbers likely in 2015-16, given current use trends) as well as significant repeat visits (over 42 000 page views in 2014-15).

The Commission distributes a regular electronic newsletter (e-newsletter) to a current database of 1000 subscribers that include landholders, regional communities, government, gas industry, media and other stakeholders. The Gasfields Commission's website statistics further show that almost half of the subscribers opened the e-newsletter and that a third of these accessed the website to view e-newsletter stories and information.

These engagement and access rates are substantially higher than, for example the DSD or Queensland Government e-newsletter subscriptions.

The Gasfields Commission website and e-newsletter usage statistics show there is some degree of acceptance and trust of information provided by the Commission at least via electronic means.

I support the continuing development and use of traditional, website and social media as part of a comprehensive extension and communication plan.

5.9 Rural community input

Section 29 of the *Gasfields Commission Act* provides that the Commission must establish a 'gasfields community leaders council' to assist the Commission in identifying issues relevant to the remit of the Commission. Two such Councils have been formed: one for the south covering the Surat Basin and Southern Queensland and another for the north covering the Bowen, Galilee and other basins in central and north Queensland.

The Northern Leaders Council has met on two occasions, once in 2013 and again in 2014 whilst the Southern Leaders Council has met on five occasions, the most recent being in February this year and in November 2014. Communiques concerning the Community Leaders Council Meeting reveal that they are usually attended by disparate groups of individuals raising a range of issues.

There is evidence that suggests that information provided by the Commission at such meetings does not adequately filter down to the individual landholder level. Whilst there may be some benefit in such 'councils' the content of the communiques and the frequency of the meetings leads me to suggest another alternative which I sourced from the QFF submission.

Peak producer bodies should be invited to attend a Commission meeting (perhaps on an annual basis or as issues arise) and to make submissions to the Commission concerning issues of importance to each body's membership. In that way the whole of the Commission can hear a submission, participate in discussion and gain a good appreciation of the issues and how they might be addressed. That would provide a more focused view than a leaders council. It would also establish the Commission as a body to which a peak body could turn to when needed. Communication of outcomes would then usually fall to the relevant peak body to undertake. A similar arrangement should be put in place for affected local governments, though I would expect the frequency to be less than with peak producer bodies.

⁴⁶ Yule Strategic (*Gasfields Commission Qld – External Review – Evaluation and Outcome Report* – February 2015).

In the External Review of the Commission by Aaron Yule⁴⁷ the author suggested that representatives of the Gasfields Commission based in a local community could be trained and become the eyes and ears of his/her particular region in CSG matters. That representative could deal with issues as they arise and could refer to the Commission when they felt the matter was outside their expertise.

Whilst I appreciate the rationale behind this suggestion, I think that it suffers in that it would act to reinforce the perception that the Commission existed to deal with individual local issues.

I would suggest that a local representative could be appointed by a relevant peak producer body within the structure of each individual organisation, as required and would report to that peak body which could in turn provide information or advice to the Commission on any strategic issues developing. Such local representatives would need to be supported with information to guide them in providing assistance to landholders on topics such as land access, compensation, water issues and so on. These representatives could be utilised in the Commission's extension and communication program through their respective peak bodies.

I suggest that peak producer bodies be approached by the Commission with the suggestion that each peak producer body appoint a representative of each body to identify CSG related matters in affected areas which then can be reported to the peak body leadership who can raise such matters with the Commission if of a systemic or strategic nature.

This suggestion actually forms part of an extension and communication plan. It provides a feedback mechanism to the Commission and creates an opportunity for the Commission to engage with peak bodies.

5.10 CSG companies

Let me make this aside: this is not a review into CSG companies, however, in the course of the review, landholders have consistently reported that CSG companies either have very little understanding of or very little regard for the landholders' rights and requirements to continue the use of their land with as little disruption as possible. While there is acknowledgement that this understanding and attitude have improved since the boom days of the CSG industry, there remains a widespread perception that CSG companies are not respectful of landholders' needs.

This suggests that CSG companies could improve their engagement with landholders. I suggest that the Commission could assist in this endeavour.

If landholders became more self-reliant in their dealings with CSG companies and if they had confidence that the companies would do the right thing (as they often seem to) when difficulties arise, then not only would there be a more harmonious relationship between these parties, but the need to resort to legal advice as a first port of call would decline. If CSG companies focused on the establishment of trust and collaboration between them and landholders, each party would benefit. In my discussions with CSG company executives I formed the view that an observation such as this would sit comfortably with them.

5.11 Plans

Various documents sourced from the Gasfields Commission (Strategic Plan, Annual Report, submission to this review) reveal a comprehensive range of activity by Commissioners and staff directed towards the Commission's purpose. A particular difficulty lies, however, in making use of such documents to evaluate outcomes. That is, the documents are largely activity focused, rather than outcome focused, include subjective measures and lack identifiable key performance indicators.⁴⁸ Having said that, I must express some sympathy for those charged with identifying outcomes and indicators relevant to a purpose of the type found in the *Gasfields Commission Act*. It is a situation where the creative use of surrogate indicators might be required.

There is a clear need for the Commission to develop plans which identify priorities that are achievable within available resources. It is for the Commission to prepare its Strategic Plan which guides the Operational (or Business) plan prepared by the Chief Executive. The annual report is then prepared to report on the outcomes achieved against those plans.

⁴⁷ Yule Strategic (*Gasfields Commission Qld – External Review – Evaluation and Outcome Report* – February 2015).

⁴⁸ I note that section 35(4)(d) of the *Gasfields Commission Act 2013* (Qld) requires the Annual Report to refer to 'effectiveness'.

I do not, in this report, intend telling the Commission everything its plans must include. It would be clear, however, that I propose the development of the extension and communication plan as a priority. Another priority is the development of a template arbitration agreement (see Part 7.3).

In addition, my observations during the conduct of this review lead me to suggest that in its planning, the Commission consider the investigation of the gassy bore issue; the transparency and completeness of current make good agreement policies and legislation; the linking of small businesses to assist in their pre-qualification for CSG company business; the scope for accessing data held by the CSG companies (and the scope for sharing of such data); the development of a standard conduct and compensation agreement (now underway by APPEA) and the scope for making the level of compensation payments more transparent to assist landholders in their negotiations with CSG companies.

5.12 Business, local government and the community

I have written above about the impact of CSG development on rural communities, including local government. The Gasfields Commission has made some effort in this regard with one Commissioner having a portfolio 'Community and Business' and another 'local government and Infrastructure'. The work they have done did have some influence in assisting local governments and local businesses, however the scope and rate of CSG development was such that it could not be expected that the Commission could achieve more.

The Commissioners charged with these portfolios brought energy and skill to the task. Indeed, the submission from the LGAQ to this review comments favourably on this work. That task is, however, multifaceted and involves decisions and initiative taken in boardrooms, offices and chambers beyond the gaze of the Commission.

Thus, for example the decisions about fly in fly out workers; the establishment of camps; the strictness of pre-qualifications for suppliers; the purchase of large areas of land (including a coinciding land purchase for coal mine development) leading to a reduction in farmer population and so on, were beyond the influence of the Commission which was only able to nibble at the edges, albeit with some positive outcomes.

One example was in reducing the time for payment of invoices from 90 to 30 days for small operators doing business with CSG companies. I should also mention here the observation in one submission that the Commission does good work in providing updates on developments and on new and emerging business opportunities. The Commission is active in assisting business in the supply chain to qualify for CSG company business and to capture business opportunities.

DSD (Toowoomba Office) has taken some initiatives in this area. They have worked with Origin Energy in particular and have assisted local businesses of various sizes to win contracts during the CSG construction phase. DSD has conducted workshops throughout the Surat Basin to support local businesses in dealing with other CSG companies, particularly in developing their capabilities and in profiling their businesses on the Industry Capability Network.

Another mechanism for facilitating business connections throughout the gasfields is the Toowoomba and Surat Basin Enterprise (TSBE). This is what I would describe as a networking organisation which services its own members. Members include many of the larger business entities in the region.

The Gasfields Commission should utilise the DSD and TSBE initiatives, to the extent possible, rather than acting in competition with them.

Responsibility for the impacts and outcomes in regard to the broader community (including local government – particularly as it relates to information needed by local government for disaster management, health, essential services, roads and affordable housing), in my view, should be allotted to project proponents and the government. That is not to suggest that the Commission's purpose and functions should be changed to remove reference to 'regional communities'; however there needs to be an appreciation that the Commission is limited as to what it can achieve in this respect.

Recommendation 1:

That:

- a) the Gasfields Commission should have a Chair (who now need not be full time) plus three part time Commissioners representing the interests of landholders, the onshore gas industry and the communities in which the onshore gas industry operates
- b) the position of general manager should be redesignated as Chief Executive, Gasfields Commission and should be filled as a matter of urgency
- c) the Gasfields Commission publish and communicate its role with clarity. It should say what it does and what it does not do by reference to examples
- d) the current membership of the Gasfields Commission author a document setting out the learnings of the Commission in discharging its responsibilities; that paper being in a form suitable to inform others embarking upon a task similar to that which confronted the Commission
- e) individual peak producer bodies and local governments impacted by the onshore gas industry be invited to attend Commission meetings and make submissions or raise issues with the Commission on a regular (annual or biannual) basis
- f) the Gasfields Commission encourage CSG companies to develop innovative and effective methods of engaging with landholders and associated gasfields communities to maximise the opportunities for trust and collaboration
- g) the Gasfields Commission review its Strategic Plan (consistent with the recommendations and observations in this report) and instruct the Chief Executive of the Commission to prepare an Operational Plan.

I do not intend embarking upon a project of legislative drafting, however I do suggest that the 'charter' provisions of the *Gasfields Commission Act* be amended to reflect the purpose of the Commission and its functions as discussed in this part of the report. The suggestion includes the replacement of the term 'coexistence' in Section 3 and the expression in plain language of the functions of the Commission.

Recommendation 2:

That the *Gasfields Commission Act* be amended to reflect the following purpose:

The purpose of the Act is to continue the Gasfields Commission to create and maintain a harmonious and integrated relationship between landholders, regional communities and the onshore gas industry in Queensland.

That the *Gasfields Commission Act* be amended to reflect the following functions of the Gasfields Commission:

- a) facilitate and maintain a harmonious and balanced relationship between landholders, regional communities and the onshore gas industry in Queensland
- b) implement an extension and communication programme that:
 - (i) helps landholders to become informed and self-reliant and aware of their legal rights in their dealings with coal seam gas companies, including negotiations for a conduct and compensation agreement or a make good agreement
 - (ii) helps landholders in the management of land subject to a conduct and compensation agreement or a make good agreement and the management of any complaints or disputes that arise
 - (iii) informs landholders of current information and developments in science; leading practice or management; regulation, law or policy relating to the onshore gas industry
 - (iv) helps regional local governments, local businesses and communities to understand the timing and impact of CSG projects in their area including any business opportunities that may be generated
 - (v) ensures the consistency of information being publicly provided by government agencies with respect to the onshore gas industry

- c) review and report on the performance and effectiveness of government entities in implementing regulatory frameworks that relate to the onshore gas industry
- d) obtain, monitor and publish comprehensive relevant data concerning all recorded formal interactions between landholders, CSG companies, government agencies and judicial and quasi-judicial bodies (including the Queensland Ombudsmen, the Land Court, the proposed Moderator and arbitration process) to identify trends, deficiencies and any need for intervention or change of processes and mechanisms
- e) collect, maintain and publish information and data which quantifies and describes the growth of the onshore gas industry within rural Queensland including such matters as the number of properties affected, the number of wells and processing facilities on properties, the amount of funding invested and the number of jobs created. The purpose of this information is to assist stakeholders in identifying the level of impact of the CSG industry in Queensland. Such information may inform the need for intervention or change in policies
- f) make recommendations to the relevant minister that regulatory frameworks and legislation relating to the onshore gas industry be reviewed or amended
- g) make recommendations to the relevant minister and stakeholder representative bodies about leading practice or management relating to the onshore gas industry
- h) partner and network with other entities for the purpose of conducting research related to the onshore gas industry in relation to issues of science as well as legal arrangements, practices, policies and other innovations identified in Queensland or in other jurisdictions
- i) assist Queensland Health in its work in the onshore gas industry areas in the provision of health information and the establishment of risk assessment of health issues for the benefit of residents
- j) in response to requests for advice from the chief executive under the *Regional Planning Interests Act 2014* about assessment applications under that Act, advise that chief executive about the ability of landholders, regional communities and the resources industry to coexist within the area the subject of the application
- k) obtain advice about the onshore gas industry or functions of the commission from government entities.

I note that Section 8 of the Act would continue to provide that the Commission would have sufficient powers to perform these functions.

Chapter 6 Dispute resolution functions of the Gasfields Commission

The Gasfields Commission was not created (or resourced) to resolve individual disputes between landholders and CSG companies.

The purpose of the Commission is to “*manage and improve the sustainable coexistence of landowners, regional communities and the onshore gas industry in Queensland*”.⁴⁹ The functions given to the Commission under the *Gasfields Commission Act* do not include a function for resolving disputes.

While the Commission is able to convene meetings between landholders, representatives from regional communities and representatives from the onshore gas industry for the purpose of resolving issues, this is not a dispute resolution service for individuals. It is concerned with system issues.

The Commission has on many occasions convened parties for the purposes of discussing issues and formulating solutions on broad strategic issues facing landholders, the community and CSG companies. The Commission has often been successful in brokering solutions in such cases, for example where the Commission brought landholders’ concerns regarding pipeline rehabilitation to the attention of company management which resulted in changes in the company’s operational practices and in benefits to landholders. That work was and should remain part of the Commission’s role. It is not dispute resolution involving an individual landholder and a CSG company. While the Commission has assisted with negotiations between landholders and CSG companies on the odd occasion, the Chairman and Commissioners view that work as having been done ‘informally’ and at the request of the parties.

If it was intended that the Commission have a formal dispute resolution function, it would be expressly set out in the *Gasfields Commission Act*. In order to effectively resolve disputes, the Commission would also require additional powers that it does not currently have, such as the ability to notify parties that they must attend a formal dispute resolution meeting and perhaps even the power to make a decision that binds the landholder and CSG company.

Arguably, a role in dispute resolution would detract from the Commission’s other functions and cause confusion as to its role and purpose. Some stakeholders noted that the division between the functions of managing coexistence and managing disputes is appropriate and necessary to achieve both objectives.⁵⁰ The Commission’s functions are aimed towards facilitating relationships and promoting cohesion between landowners, CSG companies and the regional communities in which the companies operate. The Commission achieves this through the exchange of information, partnering with bodies to conduct research and publishing educational material. Recommendations in this report seek to build on this work and give it focus, but not to redirect it to a level of providing a direct service to individuals.

In this sense, the Commission’s activities are proactive and broad. Managing or resolving disputes is reactive and personal in nature, and requires a different focus and skill set from the functions mentioned above. Other stakeholders saw the Commission’s role as limiting disputes by providing information, advice and expertise. By providing information and working to defuse disputes, and building and maintaining relationships, the Commission assists in reducing the sources of dispute between landholders and the onshore gas industry. It is concerned with dispute avoidance, not dispute resolution. Having the Commission participate in dispute resolution would run the very real risk of its desired image as an honest broker being tarnished through being associated with failed dispute resolution.

⁴⁹ Section 3 *Gasfields Commission Act 2013* (Qld).

⁵⁰ For example, QRC, APPEA, Gasfields Commission, University of Queensland.

Chapter 7 Alternative dispute resolution models

7.1 An ombudsman

This review has received a number of submissions calling for the establishment of an office of ombudsman. In the online questionnaire that received 30 responses, 70 per cent of respondents answered ‘yes’ to the question of whether another model, such as a resources ombudsman, would deliver improved outcomes for rural landholders and regional communities. However, only a few written submissions were supportive of the need for an ombudsman:

Property Rights Australia submission stated:

“The Ombudsman should have the power to impose a moratorium placed on any future activities on an individual landowner’s property by the coal seam gas company until the matter is resolved”.

APPEA submission stated:

“...the focus for any new landholder dispute resolution body should be compliance with CCAs, dispute resolution during the CCA negotiation stage (the existing statutory role of the Land Court should remain), and dispute resolution for make good agreements”.

In relation to a resources ombudsman model, APPEA in its submission outlined the types of powers and functions an Ombudsman should have:

- focus on matters directly relevant to the landholder/company relationship
- fair, accessible, efficient
- no increase in regulatory burden
- transparency
- complaints management timely and consistent with government processes.

For example:

“Consistent with the powers of the Queensland Ombudsman, if the Resources Ombudsman identifies a breach of responsibilities, the Ombudsman may issue a recommendation to the company or landholder. Resource Ombudsman recommendations should be non-binding on both parties but the Ombudsman should speak publicly on its activities and results”.

A submission from a rural legal practitioner:

“[There should be] the appointment of an ombudsman and/or a tribunal with overarching ability, no matter what the contractual position, to interfere with, vary, amend, or act as it considers appropriate to attain fair and just compensation and outcomes for Landholders in all the circumstances”.

Other submitters thought there was a need for an ombudsman to resolve disputes concerning the make good framework for landholders’ water bores.⁵¹

In interviews, I became concerned that some members of the public had a misperception of what an ombudsman could do, for example, ‘stop the gas industry’. The overall focus of interviews was not so much that an ombudsman was required, but that there needed to be a body to ensure landholders received the right advice and support up front and that if disputes did arise, there was a non-court option to deal with them quickly and fairly.

As required by the Terms of Reference, this review had regard to what occurs in other jurisdictions (Australian states and Alberta, Canada). These jurisdictions are broadly similar to Queensland in that the State owns the mineral and energy resources and compensation is payable for impacts of resource development on the surface landholder, however the land access frameworks differ. None of these jurisdictions uses an ombudsman model for land access disputes. Arbitration and tribunals are variously used throughout Australia and in Alberta when there are disputes about compensation, and in some cases conduct.

⁵¹ Basin Sustainability Alliance, written submission.

(a) What an ombudsman usually does

The term ‘ombudsman’ usually refers to an independent body that can investigate complaints made about government. Historically, an ombudsman represents the interests of the public by addressing complaints of maladministration or violation of rights. The name is an indigenous Nordic term although the concept can be traced back to the Qin Dynasty (221BC) in China. Its modern creation is usually referable to the Swedish creation of the office in 1809, although it had existed under the Swedish King’s umbrella of power from 1713.

In Queensland there are four ombudsmen operating:

- the Queensland Ombudsman investigates complaints about state government agencies, local governments and public universities. The Queensland Ombudsman is an officer of the Queensland Parliament
- the Health Ombudsman deals with complaints about the provision of health services in Queensland
- the Energy and Water Ombudsman investigates and resolves disputes involving consumer contracts with energy and water suppliers
- the Training Ombudsman can mediate disputes or recommend action relating to complaints about the vocational education and training sector.

Of the four ombudsmen mentioned above, only the Energy and Water Ombudsman can make binding orders. The others make recommendations only. Public statements by an ombudsman on a matter, however, can be persuasive even when they are not binding.

At the Federal level there are two ombudsmen of interest:

- the Telecommunication Industry Ombudsman⁵².
- the Financial Ombudsman Service⁵³.

Determinations of these two ombudsmen are enforceable unless the consumer (not the corporation) elects to take the matter further.

Some submitters felt the term ‘ombudsman’ was entirely the wrong label for a role that assisted with dispute resolution between CSG companies and landholders. I am inclined to agree. Given the antiquity of the role of an ombudsman and its significance in the machinery of the State, the name should not be misapplied to other offices with different functions.

Whilst I recommend the creation of an independent body to assist in the resolution of certain disputes between CSG companies and landholders, this body should not be called an ‘ombudsman’ (see Part 7.5 of this report).

(b) Dispute resolution for coal and minerals

The Terms of Reference required me to consider whether an ombudsman was required for disputes relating to all resources, not just petroleum. As stated at Part 3.4 this review has primarily focused on the petroleum and gas sector, specifically CSG. Only two submitters with interests related to coal and mineral resource development made contact with the review.

In its submission, QRC commented:

“QRC does not see any need for the dispute resolution mechanism to apply to the whole resources industry. It would seem like an odd conclusion for a review of the Gasfields Commission to conclude that all commodities now need a new process of resolving disputes. QRC is not aware of any evidence which identifies the need for such a broadly based new institution in Queensland”.

In its written submission AMEC said that without any further detail about a proposed resources ombudsman role, it was not able to provide further comments.

Having regard to these submissions, I make no recommendation about an ombudsman or any similar office for the coal and mineral resources sector.

⁵² Telecommunications Industry Ombudsman, Victoria <https://www.tio.com.au/>, accessed on 25 July 2016.

⁵³ Financial Ombudsman Service Australia, Victoria <https://www.fos.org.au/>, accessed on 25 July 2016.

(c) The existing Queensland Ombudsman and its relevance to petroleum and gas regulation

CSG companies are required to comply with the Land Access Code (administered by DNRM) and environmental authority conditions (administered by DEHP). In instances where landholders (or third parties, such as neighbours or community groups) make complaints about CSG company compliance with these instruments, officers of the CSG Compliance Unit or DEHP will investigate. If an individual is not satisfied with the response they have received from the CSG Compliance Unit or DEHP, they can make a complaint with either agency, internally. If not satisfied with the outcome of that review, the individual is able to take their complaint about the CSG Compliance Unit or DEHP investigation to the Queensland Ombudsman.

In discussions with the Queensland Ombudsman, he mentioned that only a very small number of complaints about government agency regulation of CSG had been received. The Queensland Ombudsman was open to entering into discussions with the Gasfields Commission about the Ombudsman's role and how the Ombudsman's service could be better promoted to landholders who remain unsatisfied with individual CSG Compliance Unit or DEHP investigations.

Recommendation 3: That the Gasfields Commission, together with the Queensland Ombudsman, provide information to landholders about the Queensland Ombudsman service, including the circumstances in which it is available in the context of government regulation of the CSG industry and how landholders can make complaints.

7.2 Dispute resolution

The Terms of Reference require consideration of alternative dispute resolution and in that respect, recommendations in this report attempt to improve the balance between the parties, one being a substantial corporate entity, and the other being an individual landholder, often with an agricultural business to manage. The recommendations attempt to take into account that a landholder is usually compelled into negotiations for a conduct and compensation agreement. Negotiation occurs with a commercial entity; not with an agency charged with development of a public project. Additionally, a landholder cannot formally object to the grant of petroleum tenure, unlike the situation regarding a mining tenure.⁵⁴

Of the 30 respondents to the review's online survey, 70 per cent thought another model, such as an ombudsman, would deliver improved outcomes for landholders and regional communities. Some of the functions or powers of the alternative model that respondents wanted to see were:

- power to ensure compliance with conduct and compensation agreements
- power to appoint a mediator
- investigative powers
- ability to facilitate genuine commercial arrangements and outcomes for the landholder
- dispute resolution
- powers to obtain relevant information.

Whilst the recommendations in this part of the report are concerned with dispute resolution, it would be hoped that over time (and some time has run so far) a body of practice will be built up between the parties as to how issues are sorted out. Once that occurs, resort to a dispute resolution body would only arise rarely, it would be hoped.

Finally, whilst my report contains a number of recommendations for changes to the ADR framework, they refine the current process but do not represent a significant rewrite of the legislative framework. They are targeted at the two key areas of dispute: the inability to agree the terms of a conduct and compensation agreement or a make good agreement and disputes arising once an agreement has been signed and the CSG activities have commenced on the land.

In this chapter, I use the term 'holder' to refer to the holder of a petroleum authority or other resource tenure. As a petroleum authority holder is usually a CSG company, I use the term 'holder' and 'CSG company' interchangeably.

⁵⁴ However, submissions can be made on the environmental impact statement process, for example, under the *Environmental Protection Act 1994* (Qld).

7.3 Negotiating conduct and compensation and make good agreements

Under the relevant legislation, a holder of an exploration tenement, petroleum authority or mineral development licence cannot access private land to carry out an advanced activity unless the holder complies with the negotiation requirements of the legislation.⁵⁵

To commence negotiations under the legislation, the holder must give a landowner a notice that the holder wishes to negotiate a conduct and compensation agreement with the landowner.⁵⁶ The holder and the landowner must then “use all reasonable endeavours to negotiate a conduct and compensation agreement”.⁵⁷ A period of at least 20 business days, which is referred to as the minimum negotiation period, must be provided for negotiations to take place.⁵⁸

During the minimum negotiation period, the holder cannot access the land to carry out advanced activities, even if a conduct and compensation agreement has been signed during this period. The minimum negotiation period may be extended by agreement because of reasonable or unforeseen circumstances.⁵⁹

A make good agreement is required where a landowner’s water bore has or is likely to have an impaired capacity owing to the taking of underground water for CSG activities.⁶⁰ The negotiation process for entry into a make good agreement falls under Chapter 3 of the *Water Act*. The agreement details how impaired capacity in the bore will be ‘made good’ by the CSG company, for example either by deepening an existing well or the payment of compensation. There is a requirement for the tenure holder to use its best endeavours to enter into a make good agreement within 40 business days after a bore assessment has been undertaken, however this time is able to be extended.⁶¹

If, at the end of the negotiation period, the parties have not entered into a conduct and compensation agreement or a make good agreement, either party may elect to:

- ask for an ‘authorised officer’ to call a conference to negotiate a conduct and compensation agreement or make good agreement;⁶² or
- request the other party to agree to an ADR process to negotiate a conduct and compensation agreement or make good agreement.⁶³

(a) Conference by an ‘authorised officer’

In the last financial year there have been three conferences with an authorised officer requested by a party negotiating a conduct and compensation agreement for CSG activities (no conferences were requested in the coal and mineral space).⁶⁴ Since March 2016 all conferences by authorised officers for petroleum and gas are undertaken by officers of the CSG Compliance Unit. Previously this role was performed by staff from Mining and Petroleum Operations in DNRM. The role of the authorised officer at the conference is to endeavour to help the parties reach an early and inexpensive settlement.

⁵⁵ Sections 500 and 500A and Chapter 5, Subdivision 4 *Petroleum and Gas (Production and Safety) Act 2004* (Qld) and Schedule 1, section 10 *Mineral Resources Act 1989* (Qld).

⁵⁶ Section 535(1) *Petroleum and Gas (Production and Safety) Act 2004* (Qld) and Schedule 1, section 17 *Mineral Resources Act 1989* (Qld). The notice is called a negotiation notice. The holder may also give a negotiation notice stating they wish to enter into a deferral agreement with the landowner.

⁵⁷ Or a deferral agreement, see section 536(1) *Petroleum and Gas (Production and Safety) Act 2004* (Qld) and Schedule 1, section 17 *Mineral Resources Act 1989* (Qld).

⁵⁸ The negotiation period is generally 20 business days from the date that the negotiation notice is given. See section 536A(1) *Petroleum and Gas (Production and Safety) Act 2004* (Qld) and Schedule 1, section 18(1) *Mineral Resources Act 1989* (Qld).

⁵⁹ Section 536A *Petroleum and Gas (Production and Safety) Act 2004* (Qld) and Schedule 1, section 18 *Mineral Resources Act 1989* (Qld).

⁶⁰ Sections 409, 418 and 423 *Water Act 2000* (Qld).

⁶¹ Section 423 *Water Act 2000* (Qld).

⁶² For CCA conferences the officer is authorised pursuant to section 537A *Petroleum and Gas (Production and Safety) Act 2004* (Qld), for make good conferences the officer is authorised pursuant to Chapter 3 *Water Act 2000* (Qld).

⁶³ See section 537A(2) *Petroleum and Gas (Production and Safety) Act 2004* (Qld) and Schedule 1, section 20 *Mineral Resources Act 1989* (Qld). For make good agreements, section 426 *Water Act 2000* (Qld).

⁶⁴ Information provided by DNRM on 19 July 2016.

Seven notices for a conference for a make good agreement dispute have been provided to DNRM (for context – there were 66 immediately impacted bores requiring make good agreements).⁶⁵ There are still approximately 10 cases where a make good agreement is to be finalised.⁶⁶ The CSG Compliance Unit can call on ground water expertise and is well placed to assist parties with a dispute about a make good agreement.

An advantage of the conference is that it is perceived that the landholder is receiving information ‘from the horse’s mouth’ as the authorised officer will often explain how the legislation works. Conferences also avoid any dispute over which type of ADR and practitioner should be chosen and who should pay the costs of the ADR.⁶⁷

Some, though not all, stakeholders consider that a conference with an authorised officer for conduct and compensation negotiations should not be offered as an acceptable ADR process, which, if it resulted in failure, would allow either party to make an application to the Land Court. This sentiment was also reflected in the 2013 Land Access Implementation Report, which found that conferences with authorised officers were not achieving effective outcomes in terms of resolving disputes on conduct and compensation agreements. According to the report, some stakeholders perceived the departmental officers as not independent and lacking the relevant expertise.

I also have concerns that the conferences are being run by officers of the CSG Compliance Unit, which is also concerned with investigating CSG company compliance with the Land Access Code. Whilst there are some benefits of the parties having a conference ‘in house’ (that is, before an officer of DNRM), in my opinion these conferences are not of the requisite standard to be an alternative to ADR with an expert practitioner when attempting to negotiate a conduct and compensation agreement.

Recommendation 4: That for negotiations for a conduct and compensation agreement, the *Petroleum and Gas (Production and Safety) Act* should be amended to remove the option of a conference with an authorised officer to satisfy the ADR requirement prior to a party being able to apply to the Land Court.

This recommendation does not apply to make good agreements.

(b) Information for landholders about ADR

Figures on the number of alternative dispute resolution processes undertaken pursuant to the legislation are not available. Feedback from stakeholders during my review was that ADR processes are valuable. A body of practice is evolving, with one stakeholder noting that every land access mediation that the practitioner had been involved in had settled. However, in conducting this review it has become apparent there are some inadequacies in the current ADR regime.

There is little guidance provided in the legislation or government publications about the various types of ADR that can be used under the legislation and what they involve. The petroleum legislation mentions that ADR may include arbitration, conciliation, mediation or negotiation.⁶⁸ The evolving nature of dispute resolution in Australia has, however, seen the emergence of new and sometimes hybrid forms of dispute resolution that could also be helpful in parties reaching an agreement on a dispute of this nature.⁶⁹

One such process is case appraisal. The case appraisal which I have in mind is where a dispute resolution practitioner, chosen on the basis of their expert knowledge of the subject matter, investigates disputes following submissions by the parties. The case appraiser then provides advice on possible and desirable outcomes and the means whereby these may be achieved.⁷⁰ Landholders in particular could benefit from hearing the independent advice that the case appraiser has to offer

⁶⁵ Information provided by CSG Compliance Unit, 31 May 2016.

⁶⁶ *Draft Underground Water Impact Report for the Surat Cumulative Management Area*, March 2016, page xiii states 36 cases – updated information provided by DNRM in June 2016.

⁶⁷ Whilst the legislation clearly sets out that the party who calls for ADR is responsible for paying for the facilitator, this does not mean that in practice the costs and choice of facilitator are not disputed between the parties.

⁶⁸ Section 537A(4) *Petroleum and Gas (Production and Safety) Act 2004* (Qld).

⁶⁹ D Spencer and T Altobelli, *Dispute Resolution in Australia – Cases, Commentary and Materials* (2004) Lawbook Co.

⁷⁰ *Your guide to dispute resolution*, National Alternative Dispute Resolution Advisory Council, 2002 and *ADR terminology: a discussion paper*, Attorney-General’s Department, Australian Government, 2012.

and this could result in breaking down deadlocks on particular issues.⁷¹ I use the word 'hearing' because in cases of deadlock the case appraiser would often have greater impact if they deal with the parties face to face.

Recommendation 5: That information be provided to landholders setting out the different types of alternative dispute resolution processes and what they involve (including less common types of alternative dispute resolution such as case appraisal). In order to reach its required audience this information should be compiled by the Gasfields Commission and distributed in accordance with its extension and communication role.

(c) ADR panel

Some stakeholders also mentioned that the expertise of ADR practitioners currently used varies greatly and that there is no central resource which contains a list of acceptable practitioners.

The 2013 Land Access Implementation Report considered this issue and recommended that:

- an independent panel arrangement should provide ADR experts who:
 - possess the necessary skills and experience to facilitate fair resolutions, with previous land access negotiation experience or knowledge of the resources and agricultural sectors being highly desirable
 - can respond to matters within the statutory timeframe
 - are available in the appropriate localities.
- the panel arrangement should be implemented via a competitive open tender process
- the panel arrangement should be reviewed after 12 months and then every three years.

I consider this recommendation is still applicable today, however, I do not think it necessary that the panel arrangement be established by competitive tender. Instead, practitioners can be included on the panel if they meet pre-determined accreditation criteria.

There was some support in the submissions for the ADR system being located within the courts system, such as by using a registrar for this work. However, I see no need for public funding to be used for the ADR function which can continue to be privately funded. More importantly, by having a panel of private practitioners, there is a greater likelihood of having a range of skills to choose from and a greater chance of having a practitioner available within a suitable timeframe.

Information about the panel should be publicly available. It should include the charge out rates that each practitioner has agreed to charge on a standard basis for their services and the experience of each practitioner. The constitution of the panel can be reviewed annually. Those on the panel can review their charge out rates annually as well. The Land Court and the Gasfields Commission should be consulted on the appropriate accreditation criteria for membership of the panel.

Recommendation 6:

That:

- a) Government establish a panel comprising practitioners with expertise in each of the various ADR categories. This panel will comprise not only mediators, but also conciliators, case appraisers, and other alternative dispute resolution practitioners
- b) Government establish a panel of arbitrators
- c) Government should consult the Land Court and the Gasfields Commission in deciding the accreditation that the practitioners must have before they can form part of either panel.

⁷¹ S Kirschner and Dr D Moore, 'What's the Problem: Choosing an Optimal ADR Process for Resolution of Conflict' in M Legg (Ed) *The Future of Dispute Resolution* (2013), Lexis Nexis Butterworths.

(d) If the parties cannot agree on an ADR process

Another deficiency identified with the current ADR process is that the legislation is not clear on the 'next steps' if parties cannot agree on the type of ADR process or the practitioner. This has the effect of holding up negotiations and creating another dispute for the parties – about the process or individual practitioner. This occurred in the case of *Australian Pacific LNG v Golden*, where the parties were not able to agree on arbitration as an alternative dispute resolution process to resolve a conduct and compensation agreement negotiation. The Court of Appeal was asked to consider the legal effect of an election notice that nominated arbitration.⁷²

Recommendation 7: That the *Petroleum and Gas (Production and Safety) Act* and the *Water Act* be amended to provide that if the parties cannot agree on an ADR process or practitioner, the President of the Queensland Law Society or similar office can decide on the ADR process to be undertaken (apart from arbitration) by the parties (depending on the nature of the dispute) and select an appropriate practitioner from the ADR panel.

This is not an uncommon dispute resolution practice under contracts and other agreements.

(e) If ADR fails

Under the current legislation, if ADR does not result in a conduct and compensation agreement, and if the tenure holder still wishes to access the land, it must make an application to the Land Court or continue to try to strike an agreement with the landholder.⁷³ In order to obtain a make good agreement either party can also take the matter to the Land Court.⁷⁴

Presently, for conduct and compensation agreements the Land Court has the jurisdiction to determine compensation issues only, not issues relating to conduct. However, I understand that once legislative amendments commence, the Land Court will have the jurisdiction to determine how and when the holder may enter the relevant land.⁷⁵ I also understand that despite the Land Court being able to determine compensation for a conduct and compensation agreement, there are no cases where it has done so as yet.⁷⁶

While the court system performs a vital service for Queenslanders, many individuals find it an expensive, time consuming and stressful experience. Many landholders I spoke to wanted to avoid court at almost any cost.

Another reason why I consider that landholders have not taken matters to the Land Court is that negotiated agreements can result in higher compensation than they would likely receive in the Land Court on a strict reading of the compensation provisions of the *Petroleum and Gas (Production and Safety) Act*. That is, at present landholders are often able to negotiate compensation on commercial terms. Additionally, once the matter is before the Land Court, the CSG company can enter the landholder's property, after giving the required entry notice, and undertake advanced activities before the compensation is determined.⁷⁷ That would also militate against a landholder referring the matter to the Land Court.

Feedback received from stakeholders also suggests that most resource companies are now focused on building and maintaining ongoing relationships with landholders (in some cases that relationship can last for 30 years) and collaborating to ensure both parties can undertake their respective businesses rather than engaging in a combative approach often associated with court processes.

However, as a result of neither party being willing to take a matter to the Land Court, stakeholders noted that where negotiations broke down, the process tended to drag on indefinitely, frustrating all involved and costing time and money. Cotton Australia in its submission noted some conduct and compensation agreement negotiations have been on foot for periods of up to three years. They favoured a time-bound process that reduces the need for landholders to engage in discussions for

⁷² [2013] QCA 366 (13/11785) Muir JA 09/12/2013 (delivered *ex tempore*).

⁷³ Section 537B *Petroleum and Gas (Production and Safety) Act 2004* (Qld).

⁷⁴ Section 434 *Water Act 2000* (Qld).

⁷⁵ Section 96(2) *Mineral and Energy Resources (Common Provisions) Act 2014* (Qld). See footnote 82 below. Note also section 537DB of the *Petroleum and Gas (Production and Safety) Act 2004* (Qld) which provides for additional jurisdiction of the Land Court in certain circumstances including where the parties cannot reach agreement about a conduct and compensation agreement.

⁷⁶ QGC has referred one case to the Land Court due to an estranged relationship between two landowners, one of whom is overseas – however there has been no hearing or decision recorded.

⁷⁷ Section 495, 496 and 500A *Petroleum and Gas (Production and Safety) Act 2004* (Qld).

significant periods of time. AgForce thought there was a need for an arbitrator or ombudsman to resolve disputes that prevent conduct and compensation agreements from being reached.

An issue associated with the imposition of mandatory timeframes is that the consequences of such a policy may be unacceptable to either or both of the parties. For example, the legislation now provides for a 20 day negotiation period plus an option to extend that period by agreement. If the option to extend was not provided, the parties may then have to move to ADR prematurely. Similarly, if arbitrary time limits are placed on ADR, the parties may be, quite unwillingly, forced into the Land Court.

The 2012 Land Access Review stated that although the dispute resolution process produced mixed results, neither landholders nor holders were generally willing to refer matters to the Land Court for determination. Landowners suggested that the Land Court is too slow and expensive, whereas resource companies saw court action as problematic in maintaining landowner relationships.

Submissions I received argued for a better way to resolve disputes than having to resort to court. Stakeholders agreed that there needs to be a step in the relevant legislation between the alternative dispute resolution process and the matter reaching court. A simpler, less formal and faster method of dispute resolution was requested by many stakeholders.

APPEA stated:

“This [land access] framework has been amended and reviewed multiple times in recent years with constructive input from industry and agricultural groups. APPEA does not support significant amendment to the framework”.

APPEA further stated that

“We therefore consider that the focus for any new landholder dispute resolution body should be compliance with CCAs, dispute resolution during the CCA negotiation stage (the existing statutory role of the Land Court should remain), and dispute resolution for make good agreements”.

Stakeholders used various terms to describe the type of practitioner or forum they had in mind: arbitrator, conciliator, an ombudsman, tribunal or adjudicator.

In this regard, QRC stated:

“QRC much prefers the language of the land access reviews which identified the need for a swift and low-cost system of alternative dispute resolution through mediation and arbitration”.

Whatever it is called, the overall theme from the submissions was that the dispute resolution process must have the following characteristics:

- produces a final result or determination
- preserves the privacy and confidentiality of the parties (unless waived).

I also observe that many landholders sought a system which results in a commercial outcome. As noted above, many conduct and compensation agreements result in payments of compensation above what would strictly be required under the compensation provisions in the legislation.

An alternative to court that also can provide a legally binding resolution for both parties is arbitration. Arbitration is a process in which the parties to a dispute present arguments and evidence to a dispute resolution practitioner (the arbitrator) who makes a determination. The arbitrator is a neutral third party, who makes a determination or award based on the facts and evidence that the parties have presented.⁷⁸ A benefit of arbitration over the Land Court is that an arbitrator can decide a matter according to the rules and principles agreed to by the parties (for example commercial terms, rather than the compensation provisions of the relevant legislation). There is no right of appeal as such from an arbitration, but either party may seek a review of the arbitrator’s reasoning because of a claimed error of law or some similar fundamental error.

Unlike a court hearing, arbitration is usually held in private and only those parties that need to be present attend. This could promote a flow of information when evidence is to be heard in person that may not otherwise occur in a court room. Arbitration fulfils the three aspects of a preferred dispute resolution process raised by stakeholders: certainty, privacy and, potentially, commerciality of outcome.

⁷⁸ D Spencer and T Altobelli, *Dispute Resolution in Australia – Cases, Commentary and Materials* (2004) Lawbook Co.

Arbitration is currently available as a form of ADR under the legislation, however it is rarely utilised, the parties usually adopting mediation which tends to act as a controlled form of negotiation. Arbitration leads to a final result – something not attractive to parties who may have yet to explore the differences between their respective cases. Also, under current law the landholder would have to pay the arbitrator's fees if elected by him.

I propose that arbitration be available as an alternative to the Land Court. Arbitration might more usually be adopted following, say, a mediation. However, if the negotiations between the parties had been conducted in such a manner that they were of the view that mediation would add little value, they should be able to proceed directly to arbitration if they agree to. It is open to the parties to include in their agreement rules of procedures; and the terms, including commercial terms, applicable to the determination of compensation. In order that it be quite clear that arbitration is available as a distinct stage, it should be excluded as an ADR process which a party may request under section 537A(2) of the *Petroleum and Gas (Production and Safety) Act* and section 426 of the *Water Act*.

Many landholders I interviewed felt intimidated by the CSG company with whom they were negotiating. Some told me that company representatives had threatened that the company would take the matter to the Land Court if the landholder failed to settle the conduct and compensation agreement. Even if such threats are not actually made, the perception and concern that the matter could finish up at the Land Court unless the parties execute an agreement, is one that is easy to understand.

In order to negate that prospect, I think that the landholder should have the option of proceeding to arbitration if the ADR process has not produced a resolution and if the CSG company wishes to continue the matter. It would be appropriate then for the ADR practitioner to issue a certificate of completion once it is apparent that the ADR process will not bear fruit. A landholder would then have a period (say 7-14 days) within which to elect to proceed to arbitration. The parties could, of course, agree to the arbitration option and execute an agreement which deals with process and with compensation principles. In the absence of an election by the landholder within the timeframe provided for, either party could elect to take the matter to the Land Court; or the CSG company could elect to proceed to arbitration.

If either party elects to proceed to arbitration, then neither party can elect to take the matter to the Land Court.

My proposal:

- disposes of the prospect of the landholder feeling concerned that the matter will go to the Land Court (or of a threat being made in that respect) and therefore feeling compelled to execute an agreement
- provides that the parties may agree to arbitration and in such agreement include any agreed rules of procedure and principals of compensation (including commercial terms).

As the arbitration option that I recommend is an alternative to the Land Court; the outcome of such an arbitration should have the similar characteristics, that is, the ability for the holder to give an entry notice to enter onto the land to conduct advanced activities.

Recommendation 8: That the *Petroleum and Gas (Production and Safety) Act* and the *Water Act* be amended to provide for a distinct arbitration process, as an alternative to making an application to the Land Court, if a conduct and compensation agreement or make good agreement has not been agreed following the statutory negotiation or alternative dispute resolution process.

Consideration be given to the following rules being applied to an arbitration of this type:

- the arbitration option can be agreed to by the parties following statutory negotiation or alternative dispute resolution; or can be elected by the landholder within a statutory time period following ADR; or by the petroleum authority holder following the expiry of the statutory time period
- if either party elects to proceed to arbitration, then neither party can elect to take the matter to the Land Court
- the holder cannot undertake advanced activities on the land without the agreement of the landholder until the arbitration is decided and the 'appeal' period has expired. At this point, the holder can give an entry notice and after 10 business days undertake advanced activities under the *Petroleum and Gas (Production and Safety) Act* on the land

- evidence and submissions can be presented in person or in writing as determined by the arbitrator
- both parties are able to be legally represented if agreed or with the consent of the arbitrator
- the cost of the arbitrator is shared between the landholder and the holder (unless the parties have not been through an ADR process for which the holder paid the costs of the ADR practitioner, in which event the holder pays the costs of the arbitrator)
- each party pays its own costs of appearing in the arbitration, unless the arbitrator orders otherwise. This will act as an incentive to landholders to try to resolve the matter at ADR
- the arbitrator will make their decision according to the provisions of the relevant resources legislation, unless the parties agree that the arbitrator decide the matter on another basis (such as commercial terms)
- there is no right of appeal on the merits from an arbitration, but either party may seek a review of the arbitrator's reasoning because of a claimed error of law or some similar fundamental error
- the arbitrator should have statutory immunity for anything done or omitted to be done in good faith in his or her capacity as arbitrator.

For the purposes of clarity, the above recommendation includes some matters found in the *Commercial Arbitration Act 2013* (Qld). Government should therefore also consider to what extent the provisions of this Act should be applicable to these arbitrations.

Another option for arbitration after ADR would be that it became available only if the parties agreed. That option offers the prospect of the parties agreeing to commercial terms, however the threat of going to the Land Court would remain.

I suggest that the Gasfields Commission facilitate a project involving the onshore gas industry and the agricultural industry to develop a template arbitration agreement which may assist the parties in utilising the arbitration option.

Figure 1 (at the end of this Part) shows the process for reaching a conduct and compensation or make good agreement with the option of arbitration included.

(f) Costs of ADR practitioner/arbitrator

Under the current legislation, the party who gives an election notice calling for ADR must pay for the costs of the practitioner. It seems unreasonable to require the landholder to pay for such costs if they request ADR.⁷⁹ The landholder may be an unwilling participant in the conduct and compensation agreement negotiations. It would be preferable, therefore, that the costs of the ADR be paid by the company. Anecdotally, this has been a common practice in the past. If the parties proceed to arbitration the costs of the arbitrator should, similarly, be paid by the resource company, but only if the costs of an ADR practitioner have not previously been paid by it.

I have already concluded that the availability of access to an 'authorised officer' for the negotiation of make good agreements should remain.⁸⁰ Any conference conducted by such an officer is without charge. In those circumstances, it would be appropriate for a party, who preferred to use a private ADR practitioner, to pay the cost of that practitioner (as distinct from the professional fees incurred in whichever process is employed).

⁷⁹ Section 537A(3)(b) *Petroleum and Gas (Production and Safety) Act 2004* (Qld) and Schedule 1, section 20(3)(b) *Mineral Resources Act 1989* (Qld).

⁸⁰ Section 426 (2)(a) *Water Act 2000* (Qld).

(g) Payment of professional fees without a conduct and compensation agreement

I earlier made reference to the fact that a landholder is entitled to have his or her necessary and reasonable legal and some associated professional fees of negotiating a conduct and compensation agreement paid for by the CSG company. Such fees are part of the CSG company's compensation liability under Section 532 of the *Petroleum and Gas (Production and Safety) Act*. Under that section, the CSG company must pay:

“accounting, legal or valuation costs the claimant necessarily and reasonably incurs to negotiate or prepare a conduct and compensation agreement, other than the costs of a person facilitating an ADR”;

Examples of negotiation – an ADR or conference

It appears to have been a 'common understanding' that such fees are only payable when and if a conduct and compensation agreement is executed for the property or if compensation is determined by the Land Court. If the CSG company decides to walk away during negotiations, then the landholder is liable for their own professional fees (which may be quite substantial). In that situation a landholder can only request the CSG company to reimburse all or part of the professional fees, as a gesture of goodwill.

A number of interviewees and submitters made reference to the inequality of bargaining power that results from a landholder not being able to walk away from negotiations and also potentially being liable for professional fees if a suitable conduct and compensation agreement cannot be negotiated. This compounds the landholder's poor bargaining position and is likely to have induced more than a few landholders to enter into conduct and compensation agreements that they may otherwise not have, had their professional fees been covered. I have been told of cases where this has occurred involving fees of up to \$79 000.00.

Addressing this imbalance by requiring CSG companies to pay a landholder's professional fees even in the case of no agreement being reached is to my mind fair and necessary. On one interpretation of the Act that may be the case already; however, I proceed on the basis of the 'common understanding' referred to above. Of course, this does not mean that a landholder's lawyer should be given free rein to run up large legal and other bills in a short period of time, confident in the knowledge they will be paid. A change such as this will require some parameters around it to ensure professional fees are reasonable – such as timely reporting of fees to CSG companies. Importantly, CSG companies are in control of negotiations to the extent that they are able to walk away at any time and thus limit their exposure to such costs.

It is worthwhile noting here that when a constructing authority discontinues a land resumption, the authority is liable for the cost of compensating the landowner for costs and expenses incurred by the person and any actual damage done to the land.⁸¹ In my opinion the landholder dealing with a CSG company is an analogous position to a landholder facing a resumption of their land – in both cases landholders are not voluntary participants.

These considerations and my related recommendation do not apply to make good agreements – these agreements are mandated by the *Water Act* which requires that a make good agreement be entered into, leaving no option of a unilateral withdrawal by the CSG company.

(h) All professional fees

Currently accounting, legal or valuation professional fees are payable by the CSG company in accordance with Section 532(4) of the *Petroleum and Gas (Production and Safety) Act* and by Section 423(3) of the *Water Act*.

A conduct and compensation agreement (and a make good agreement) can lead to the conduct of gas extraction activities on a landholder property for up to 30 years. Landholders will often have difficulty in being able to anticipate the impact of CSG activities on their farm plan for such an extended period, necessitating assistance from an expert such as an agronomist. If such experts are necessary for the landholder to put forward a well-reasoned case in negotiations, there is no justification for the associated fees not being paid by the CSG company.

The advice of such experts would usually be given once the landholder is acquainted with a CSG company's proposal and before legal advice is sought.

⁸¹ Section 16 *Acquisition of Land Act 1967* (Qld).

Whilst the liability in a CSG company to pay the necessary and reasonable professional fees of the landholder can be clearly identified, the level of these that meet the statutory description can be the subject of debate. I have been told both by CSG companies and landholders that the level of legal fees is often excessive. It is appropriate, in my view, that a CSG company which is of that opinion should have the opportunity of having the issue tested in the Land Court.

If an overall compensation dispute were to proceed to the Land Court that would require that court to determine the issue of professional fees unless otherwise agreed. It follows that determination of professional fees as a discrete head of compensation is not a distinctly novel jurisdiction for the Land Court.

Recommendation 9:

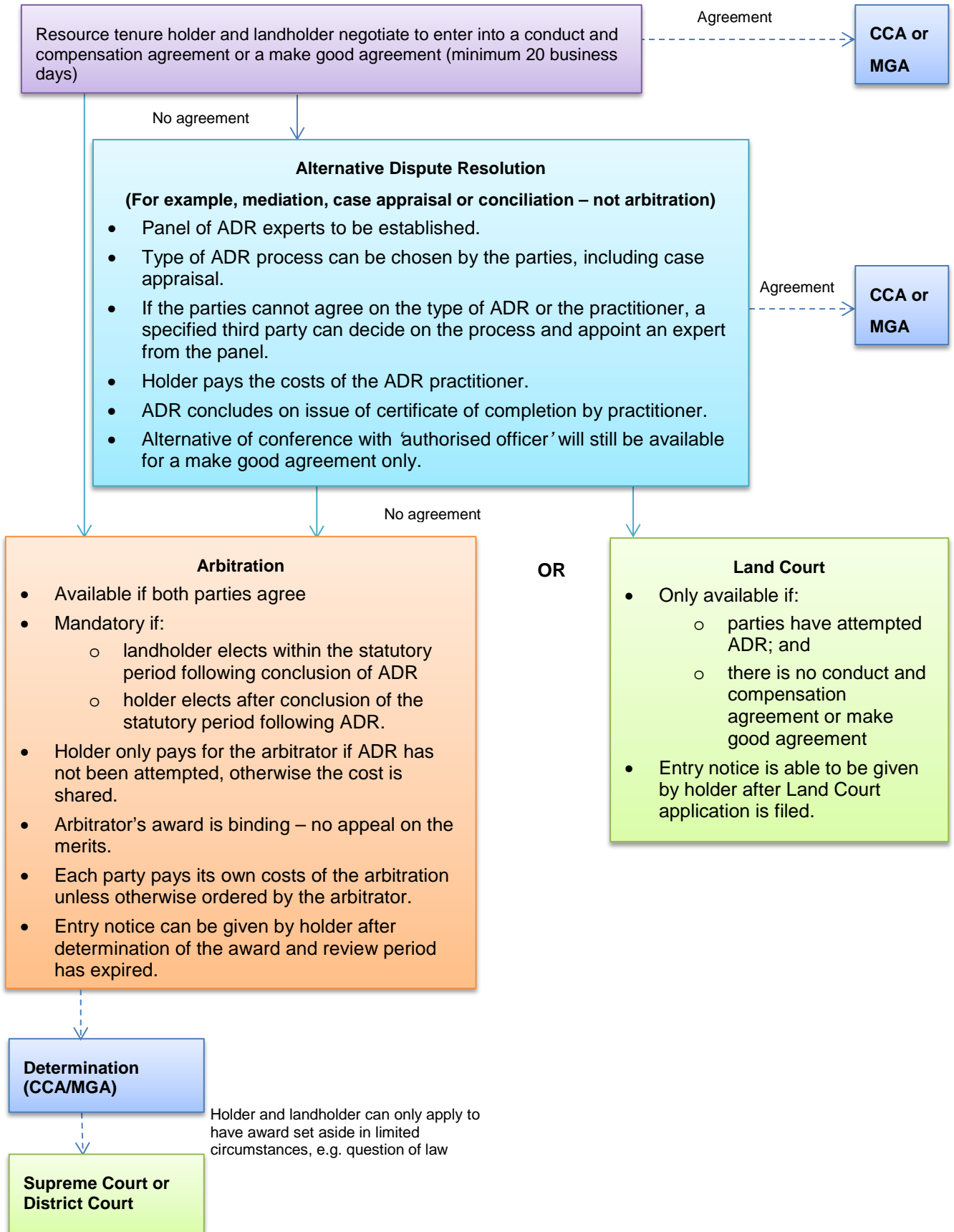
That:

- a) the *Petroleum and Gas (Production and Safety) Act* be amended to provide that the costs of an ADR facilitator are paid by the petroleum authority holder, not by the person who gives the election notice as is currently the case
- b) the *Petroleum and Gas (Production and Safety) Act* (and the *Water Act*) be amended to provide that a landholder's necessary and reasonable professional fees incurred in the negotiation of a conduct and compensation agreement (or a make good agreement) be paid by the holder, even in the event of a conduct and compensation agreement (or a make good agreement) not being concluded between the parties. The liability for costs would commence from the giving of a negotiation notice by the holder (or the day that a bore assessment is undertaken in the case of a make good agreement)
- c) the class of professional fees that are the subject of compensation under the *Petroleum and Gas (Production and Safety) Act* and the *Water Act* be expanded to allow a landholder to retain an agronomist or other such technical expert to assist in evaluating the impact of the proposed CSG activities on the subject land
- d) jurisdiction be given to the Land Court to determine the appropriate level of professional fees claimed by a landholder in the negotiation of a conduct and compensation agreement or make good agreement.

I note that there will soon be common legislative provisions applying to coal and minerals and petroleum and gas tenures and that my recommendations could apply equally to the land access framework for landholders with coal and mineral resource exploration or development tenures on their land⁸².

⁸²Certain amendments to the *Mineral and Energy Resources (Common Provisions) Act 2014* (Qld) passed by Queensland Parliament on 26 September 2014 will come into effect from 27 September 2016. In addition, upon commencement of the *Water Reform and other Legislation Amendment Act 2014*, the underground water framework for petroleum and gas will also apply to coal and minerals (including the requirement for a make good agreement).

Figure 1 – Process to reach a conduct and compensation agreement or make good agreement



7.4 Enforcing conduct and compensation agreement and make good agreement

According to industry data, over 5000 conduct and compensation agreements have been entered into.⁸³ At least 55 make good agreements have been entered into.⁸⁴

This part of the review considers the options for landholders and resource companies in enforcing conduct and compensation agreements and make good agreements and resolving disputes arising out of a signed conduct and compensation agreement or make good agreement.

At the outset it needs to be made clear that a conduct and compensation agreement or a make good agreement is a contract between the parties, albeit one authorised and required by statute. A breach of contract on its own is not subject to a statutory penalty, nor under contract law can a conduct and compensation agreement or make good agreement provide for a penalty to be imposed on a party which errs.

My review highlighted the following prominent issues:

- the costs of having to resort to a court of competent jurisdiction or to arbitration to have the dispute under the conduct and compensation agreement or make good agreement resolved
- where the issue complained of is a recurring breach, though individually minor in nature, it can have a cumulative practical effect, including on the relationship of the parties, e.g. the creation of dust over pasture
- the complexity of some conduct and compensation agreements⁸⁵ and the impact on landholder's time and capacity to manage their property whilst also monitoring compliance with the terms of the conduct and compensation agreement
- evidentiary difficulties in proving a breach of a conduct and compensation agreement or make good agreement and the burden of presenting that evidence in court
- a desire by both parties to maintain their ongoing relationship.

At present, a party's only legal remedy for a breach of a conduct and compensation agreement is to sue for breach of contract, which would involve making an application to a court of competent jurisdiction. Arbitration is an alternative (which must be pursued if provided for in the conduct and compensation agreement) but can be expensive for such matters as contractual disputes.⁸⁶ In the case of a make good agreement, a party may apply to the Land Court if that party reasonably believes the other party has not complied with the agreement or if a party considers a provision in the agreement is no longer appropriate.⁸⁷

The Land Court has limited jurisdiction in relation to a conduct and compensation agreement under the *Petroleum and Gas (Production and Safety) Act*. For example, the Land Court may declare that a proposed authorised activity for a relevant petroleum authority would, if carried out, interfere with the carrying out of lawful activities by a landowner and impose conditions that, for example, the resource company must modify its activities. Those conditions are taken to be conditions of a conduct and compensation agreement.⁸⁸

The Land Court may also review compensation if there has been a material change in circumstances.⁸⁹

If the breach of the conduct and compensation agreement is also a breach of an environmental authority, petroleum authority, resource or environmental legislation or the mandatory provisions of

⁸³ *Fourth Quarter 2015 CSG Statistics*, APPEA <http://www.appea.com.au/industry-in-depth/industry-statistics/> accessed 27 June 2016.

⁸⁴ As make good agreements are not lodged with government it was not possible to obtain a definitive figure.

⁸⁵ Agforce noted that "...the level of complexity and technical data required in CCAs has been observed to have increased over the past 2-3 years".

⁸⁶ This may be the District Court or the Supreme Court, depending on the amount in dispute.

⁸⁷ Section 425 *Water Act 2000* (Qld).

⁸⁸ Sections 537DB and 537DC *Petroleum and Gas (Production and Safety Act) 2004* (Qld). These sections differ from the equivalent sections (Schedule 1, Part 7, sections 26(2) and 27) *Mineral Resources Act 1989* (Qld) which only includes additional jurisdiction in relation to compensation liability.

⁸⁹ Section 537C *Petroleum and Gas (Production and Safety Act) 2004* (Qld).

the Land Access Code, noncompliance action may be taken by the relevant government agency.⁹⁰ I understand that it is common for compliance with the mandatory parts of the Land Access Code to form a condition in the conduct and compensation agreement – in this case the landholder may have a remedy in breach of contract in addition to any compliance action taken by the CSG Compliance Unit.

In addition, a CSG company that unreasonably interferes with the lawful activities of anyone else when undertaking authorised petroleum and gas activities commits an offence.⁹¹ Compliance action can also be taken if activities that are not authorised by the conduct and compensation agreement are conducted on someone's land.⁹² For breaches of an environmental authority, there is also an option for a landholder (as a person affected by the subject matter) to ask the Planning and Environment Court to restrain or remedy a breach of the *Environmental Protection Act 1994*.⁹³ The Court has powers to direct the activity be stopped and order compliance with the Act.

7.5 Moderator

Many submitters noted that the current framework could be enhanced by providing a dispute resolution body to assist with disputes related to conduct under an existing conduct and compensation agreement.

APPEA stated:

"It is also relevant to the consideration of an Ombudsman that the direct relationship between landholders and resource companies is founded on the conduct and compensation agreements (CCAs) that are the contractual framework for land access."

"...We therefore consider that the focus for any new landholder dispute resolution body should be compliance with CCAs...and dispute resolution for make good agreements".⁹⁴

The BSA in its written submission also favoured an independent position to resolve disputes around make good agreement issues.⁹⁵

The QFF supported the investigation of alternative models for dispute resolution between landholders and resource companies, including models that have power to provide independent advice and can refer parties to ADR, investigation or arbitration.

There was also support for this dispute resolution body being separate from the Gasfields Commission.

AgForce in its submission said:

"AgForce is of the view that the most effective role for the GFC is to engage with [broader] rural communities, industry, Government and business rather than resolve individual landholder disputes and complaints. Thus reiterating our view that an independent arbitrary body is better suited to fulfil this position and supported by the existing functions of the GFC at a [broader] level".⁹⁶

QRC stated:

"... while QRC supports the establishment of a new body to provide low-cost dispute resolution this should be in addition to the Commission rather than as an alternative to the Commission".⁹⁷

To my mind it is unsatisfactory that there is no avenue available to landholders or tenure holders to ventilate any complaints concerning an alleged breach of a conduct and compensation agreement or make good agreement once any dispute resolution provisions in the agreement have been exhausted, other than resorting to a court of competent jurisdiction or to arbitration. Of course if arbitration has been employed, that will usually dispose of the dispute.

⁹⁰ Section 790 *Petroleum and Gas (Production and Safety Act) 2004* (Qld).

⁹¹ Section 804 *Petroleum and Gas (Production and Safety Act) 2004* (Qld).

⁹² Section 803 and section 500 *Petroleum and Gas (Production and Safety Act) 2004* (Qld).

⁹³ Section 430 and section 505 *Environmental Protection Act 1994* (Qld).

⁹⁴ Submission from APPEA, page 10.

⁹⁵ However, BSA went a lot further in its submission and made a number of recommendations to change the make good agreement framework.

⁹⁶ Submission made by AgForce.

⁹⁷ Submission by QRC.

Some submissions suggest one way to deal with the alleged breaches by CSG companies is to introduce legislation that provides that a breach of a term of a conduct and compensation agreement by a CSG company is a breach of the holder's tenure. This would require oversight by government. There is a precedent for this for mining leases, where it is a condition of a mining lease that the holder must comply with a compensation agreement negotiated with a landholder.⁹⁸ If compensation is not paid as per the agreement, compliance action is able to be taken by DNRM.

I have not been able to peruse any conduct and compensation agreements given their confidential nature. From my discussions with stakeholders it appears that conduct and compensation agreements for petroleum and gas are more complicated than compensation agreements with mining lease holders. This is likely due to the nature of coexistence between petroleum and agricultural activities, unlike the situation with a mining lease holder, where the landholder generally loses all rights to use the surface of the land the subject of a mining lease.

In terms of compensation only, if the compensation part of a conduct and compensation is as straightforward as is the case for a mining lease, then there is no apparent reason why enforcement should not occur in the same way.

On the other hand, the contractual and often confidential nature of the agreements militates against requiring compliance of the conduct and compensation agreement to be a condition of tenure, a breach of which would be actionable by DNRM. It would be problematic for a government agency to be responsible for ensuring compliance with complex contractual obligations, even though such contracts are required by statute. This is especially the case for the conduct provisions in a conduct and compensation agreement.

Instead, I recommend an Office of the Petroleum and Gas Moderator be established to assist parties to a dispute about alleged breaches of make good agreements and conduct and compensation agreements. The Moderator's service should be available for disputes under a conduct and compensation agreement if dispute resolution required under the agreement itself does not result in settlement. For alleged breaches of a make good agreement, the Moderator could perform its service before the parties undertake formal ADR under the *Water Act* (a pre-requisite before the matter can proceed to the Land Court). ADR in that context is a step in the process to litigation.

The Moderator should be established by statute and have the power to make practice directions (for example about how to apply, timeframes and the making of submissions). The Moderator should also be able to compel the production of documents (such as a conduct and compensation agreement). If the conduct and compensation agreement is subject to confidentiality, it will remain confidential.

Parties would be able to present evidence to the Moderator without the stringent evidentiary rules imposed in a court setting, with the Moderator able to decide how to obtain information from both parties.

The Moderator would meet with parties to a dispute about an alleged breach of a conduct and compensation agreement or make good agreement and offer an opinion on the merits of each party's position; options for going forward; and a recommendation to the parties as to how the dispute could or should be resolved.

A similar model exists in the Office of Commissioner for Body Corporate and Community Management. The Department of Justice and Attorney-General provides a low cost conciliation function for parties to a dispute relating to body corporates and community management. The conciliator does not make a binding decision but aims to help the parties reach a resolution to their dispute in a confidential and impartial setting.⁹⁹

The jurisdiction of the Moderator would be limited to assisting those who are a party to a conduct and compensation agreement or a make good agreement. The Moderator would not be involved in negotiations before a conduct or compensation agreement or a make good agreement is signed, or offer advice at that preliminary stage. This would avoid 'forum shopping' at a stage when a number of options are already available. Any advice at the negotiation stage of the process could be sought from a case appraiser.

The service provided by the Moderator should aim to be holistic. The Moderator's role should be advisory and involve listening to the parties and providing advice on the options to resolve the dispute, including recommending new options that the parties may not have previously contemplated.

⁹⁸ Section 276(1)(i) *Mineral Resources Act 1989* (Qld).

⁹⁹ Queensland Government Portal, <https://www.qld.gov.au/law/housing-and-neighbours/body-corporate/body-corporate-disputes/types-of-dispute-resolution/conciliation-for-body-corporate-disputes/>

The benefits of this service are that it would give the parties an opportunity to ventilate their concerns and feel heard, help to maintain good relationships between the parties and offer the prospect of avoiding litigation in court.

If the dispute appears likely to result in health issues, the Moderator should, with the agreement of the affected party, refer that party to the relevant health service to assist in lowering the stress faced by landholders to a dispute.

Anything discussed before the Moderator will remain confidential as will the Moderator's recommendations. An exception to this will be that, if the dispute subsequently ends up before a court, then either party may tender the recommendations to the court. It will then be for the court to accord the recommendations the weight it considers appropriate and determine whether the recommendations are relevant in any decision about the costs of the court proceedings.

Legal representation before the Moderator would be discouraged (that is, lawyers are not able to represent parties unless both parties agree).

In order to minimise costs for landholders and to assist in acceptance of the Moderator, he/she should travel to the nearest local centre to the landholder where appropriate facilities are located. It may also be appropriate for the Moderator to undertake a site visit in some circumstances.

Where the nature of disagreements is technical, the Moderator should be able to call on the relevant government agency (for example, the CSG Compliance Unit) for assistance and to conduct investigations into the matters the subject of the complaint.

If the Moderator is of the view that the dispute may involve a breach of a statutory approval, the Land Access Code or other legislation, the Moderator can refer the dispute to the relevant government agency (such as the CSG Compliance Unit or DEHP).

The Moderator should report to the relevant minister annually on the nature and of number of matters considered and whether they resulted in an agreement between the parties. The reporting could be used by the Gasfields Commission, as part of its monitoring role, in advising government on policy or legislative change for the CSG industry.

It is not proposed that the Moderator be a single person, rather that the office could be performed by a number of persons with relevant expertise in the relevant legislation, contract law and some background in agriculture and/or water resources.

In order to lower resourcing costs, the Moderator could be co-located with the Land Court, the Magistrates Court or the Queensland Civil and Administrative Tribunal. This would allow the Moderator access to administrative and support services.

Access to the Office of the Moderator should be at no cost to the landholder. While a conduct and compensation agreement and a make good agreement are private contractual arrangements, it would be a mistake to categorise disputes arising from such agreements as purely commercial. These agreements are required by statute and the landholder is often not an entirely voluntary participant, therefore it is appropriate to provide landholders access to a free service to resolve these types of disputes.

Whilst it is understood from the submissions that there is a need for a body such as the Moderator, the lack of data and statistics on disputes under current conduct and compensation agreements and make good agreements means that the extent of that need is currently unknown. Therefore whilst the office of the Moderator could be established as a permanent office, the number of holders of the office could be adjusted as the need changes. It is not anticipated that a Moderator would operate on a full-time basis, but rather, would perform duties as and when required. This provides a flexible, low cost model. An estimate of the number of matters that may require the participation of the Moderator may be possible from data held by the CSG companies.

I do not recommend the name 'ombudsman' be used for this service as that office generally has a different role and history (see Part 7.1 for my discussion about the ombudsman).

Recommendation 10: That an Office of the Petroleum and Gas Moderator be established to assist parties to a dispute about alleged breaches of make good agreements and conduct and compensation agreements on the following basis:

- to maintain the perception of independence, the Moderator should not be located in a government department. It could be co-located with an existing court or tribunal for ease of access to administrative and support services so as to lower costs
- the Moderator's recommendations would not be binding on the parties, but, in the event the parties cannot come to an agreement and the dispute proceeds to a court of competent jurisdiction, the recommendations may be tendered to the court
- the Moderator's recommendations will otherwise remain confidential to the parties.

The relevant legislation does provide an avenue for landholders to ask for a conference to be called by an authorised officer if they have a concern about petroleum activities that are not authorised, or that a CSG company is not complying with the legislation or a condition of their petroleum authority. The conference can also be called for another reason, if the authorised officer considers it desirable.¹⁰⁰

The legislation allows an authorised officer to call a conference and ask the relevant parties to attend. While attendance is not compulsory, if a party does not attend the other party can ask the Land Court to order that their reasonable costs of attending the meeting are reimbursed.¹⁰¹ Lawyers are only able to be present by agreement of both parties.¹⁰² Nothing said at the conference is admissible in evidence in a proceeding without the person's consent.¹⁰³

What I am proposing though a Moderator differs from what is provided for by the department. The Moderator will be independent of government and have the status of a quasi-judicial office. It will also have powers, such as being able to conduct its own inquiries through the CSG Compliance Unit and provide an annual report to the minister.

During consultation I was asked why there is a need for a separate office of the Moderator as opposed to utilising ADR or arbitration again. Of course, the parties must use ADR in accordance with any obligations under the agreement and may continue to use ADR as long as they wish. Where ADR has failed and where the only current option to take the matter further is to proceed to court or arbitration the parties are confronted with an expensive, stressful and time consuming exercise which poses a real risk to the ongoing relationship. The only other current option is mutual frustration. Instead, the Office of the Moderator would provide:

- an opportunity to be heard and advise on a way forward
- a quasi-judicial body with the status attached thereto, including a requirement to report to the minister
- a low cost option
- limited bureaucracy
- power to obtain evidence from the parties and from the CSG Compliance Unit if the parties' evidence is found wanting.

The Office of the Moderator will act to enable a harmonious and balanced relationship between the parties which could otherwise unravel.

Figure 2 illustrates the role of the Moderator in the resolution of disputes arising out of a conduct and compensation agreement or make good agreement.

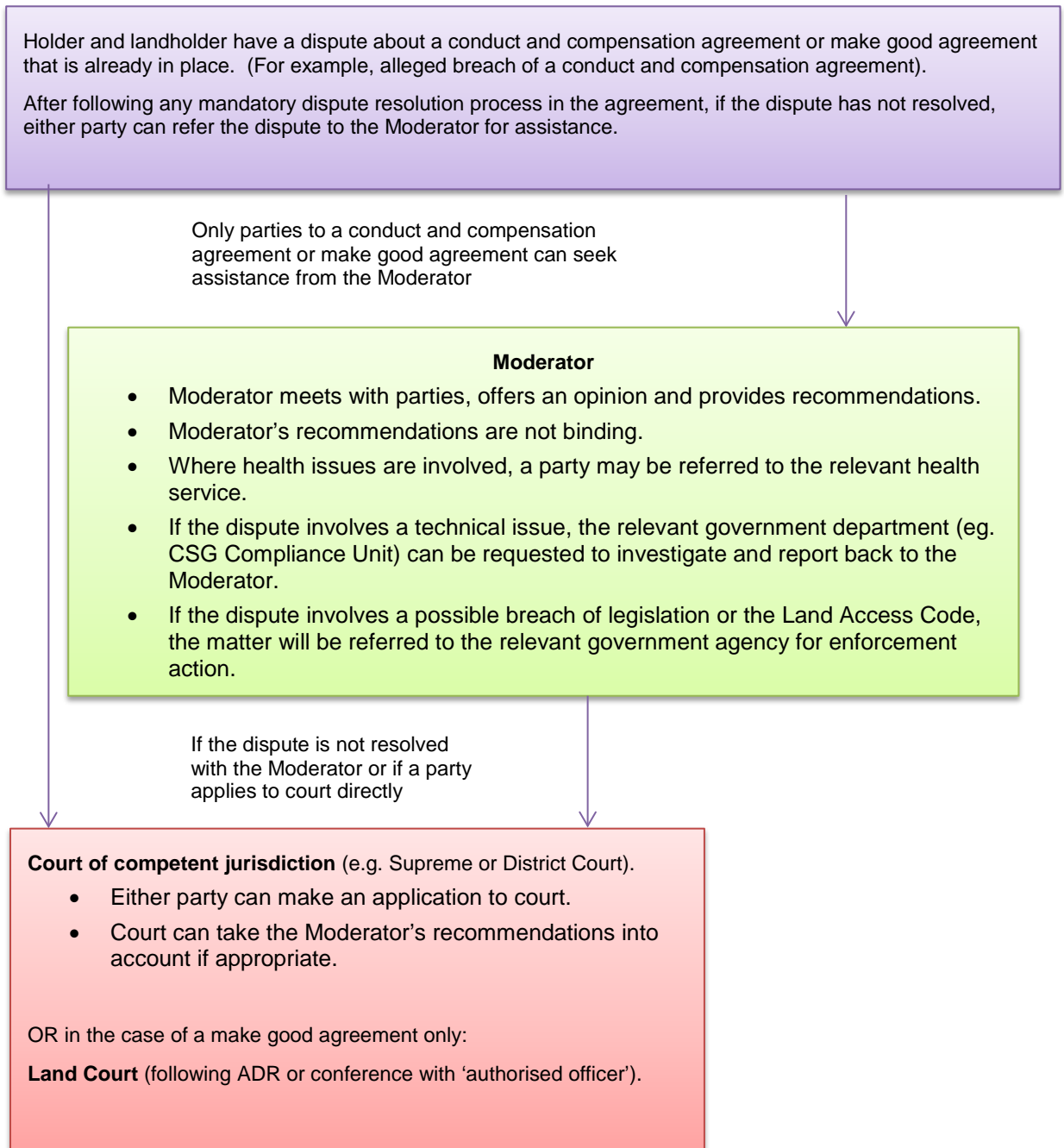
¹⁰⁰ Section 734B *Petroleum and Gas (Production and Safety) Act 2004* (Qld).

¹⁰¹ Section 734E *Petroleum and Gas (Production and Safety) Act 2004* (Qld).

¹⁰² Section 734D *Petroleum and Gas (Production and Safety) Act 2004* (Qld).

¹⁰³ Section 734G *Petroleum and Gas (Production and Safety) Act 2004* (Qld).

Figure 2 – Dispute arising out of an existing conduct and compensation agreement or make good agreement



7.6 Other initiatives

(a) Standard conduct and compensation agreements

DNRM provides a standard conduct and compensation agreement to assist landholders in negotiating with CSG companies.¹⁰⁴ According to the 2012 Land Access Review, feedback on the standard conduct and compensation agreement indicates that, while the concept is generally supported, the current version is too long, too legalistic and not tailored to accommodate different land uses and resource activities.¹⁰⁵ Other stakeholders have commented that the standard agreement is often a good starting point that resource companies in particular use to create their own precedent document.

The 2012 Land Access Review recommended government work with the resource and agricultural sectors to develop 'standard conduct and compensation agreements' by industry for coal, CSG and minerals. This recommendation was accepted by government; however it appears the expectation was that the peak resource and agricultural bodies would perform this work, perhaps with some involvement with the Gasfields Commission in the petroleum space.¹⁰⁶ APPEA is working with members and AgForce in developing a standard industry conduct and compensation agreement. The proposal is for the CSG companies and AgForce to 'sign off' on an agreement that can be promoted as the approved conduct and compensation agreement. The agreement would be voluntary and reflect lessons learnt from past negotiations.

Theoretically, there are many benefits to a standard conduct and compensation agreement when, for example, there is industry and landholder agreement on technical legal terms and conditions such as taxation, notices and indemnities leading to a saving on legal costs and increased certainty for all parties. Anecdotally I heard of some cases where 95 per cent of a solicitor's time was spent arguing about 5 per cent of clauses. Were a standard conduct and compensation agreement to be endorsed by the petroleum companies and peak agricultural bodies I believe this would give a lot of comfort to landholders, who would then be free to focus their negotiating time and effort on the aspects of conduct and compensation specific to their situation.

I agree completely with the sentiment expressed in the 2012 Land Access Review on this issue:

"It is critical that the agreements have the endorsement of the relevant agricultural and resource sector stakeholders. This will provide confidence to those using the document that it has been appropriately reviewed and endorsed. Common use will see less need for legal advice, and help minimise these costs in the process".¹⁰⁷

A number of interviewees, including APPEA, AgForce and a number of the CSG companies themselves, were supportive of standard conduct and compensation agreement terms as a way to decrease legal costs and reduce negotiating time.

Further, the standard conduct and compensation agreement could incorporate agreed 'right of way' rules for deciding when a landholder or resource company gives precedence to the rights of the other. As an example, the right of way rules could set out that during livestock mustering the petroleum company must give way to the landholder, unless its activities are limited to site assessment or site survey, in which case both activities can proceed. I heard from two CSG companies that make use of such a concept, at least in some circumstances. At least one landholder I spoke to was very supportive of the idea. When the right of way concept is depicted in a table format, as was shown to me, I thought it was a very simple and straightforward tool to communicate what could otherwise be complicated and unwieldy drafting.

I support the continued work by APPEA and AgForce to develop a standard conduct and compensation agreement for the petroleum and gas industry.

¹⁰⁴ Queensland Government Portal, Department of Natural Resources and Mines
http://www.dnrm.qld.gov.au/data/assets/word_doc/0006/193074/conduct-compensation-agreement.doc

¹⁰⁵ *Land Access Framework – 12 month review; Report of the Land Access Review Panel*, February 2012, Watson, Dr D, Dickie, Dr G, Cotter, J, Clark, A and Sansom, G, p17.

¹⁰⁶ *Queensland Government response to the report of the Land Access Review Panel, December 2012*, Department of Natural Resources and Mines, Queensland Government.

¹⁰⁷ *Land Access Framework – 12 month review; Report of the Land Access Review Panel*, February 2012, Watson, Dr D, Dickie, Dr G, Cotter, J, Clark, A and Sansom, G, p24.

(b) Details of compensation payments

Another potential barrier to equality of bargaining power between a resource company and a landholder I have encountered is that in most cases, conduct and compensation agreements contain a term requiring the agreement to be kept confidential. When it comes to negotiating an amount of compensation in particular, there can be a real information asymmetry between a landholder and a CSG company as a CSG company will have negotiated many such agreements. The companies often use formulas in determining their offers of compensation and these formulas are usually not publicly available (though I note in NSW Santos has published a fact sheet setting out how it will calculate compensation for its Narrabri Gas Project).¹⁰⁸

To empower landholders in their negotiations and increase self-reliance, landholders need access to greater factual information about the amount of compensation previously agreed to for a similar type of impact. Having meaningful figures would assist to build a body of practice about rates of compensation for impacts from CSG exploration and production.¹⁰⁹ There is potentially a role for AgForce and APPEA in progressing such an initiative and for the Gasfields Commission facilitating that initiative.

To be clear, I do not suggest that conduct an compensation agreements be made public in their entirety. Rather, consideration should be given to, for example, making available de-identified information about compensation amounts, area impacted, level of impact and underlying land use.

¹⁰⁸ Narrabri Gas Project Portal, <https://narrabrigasproject.com.au/ask-us/>, accessed 12 June 2016.

¹⁰⁹ *Landholder benchmark compensation rates – Final Report, November 2015*, Independent Pricing and Regulatory Tribunal, page 55.

Chapter 8 'Harmonisation' between the Gasfields Commission and the CSG Compliance Unit

8.1 Clarification of roles

On the question of harmonisation between the CSG Compliance Unit and the Gasfields Commission, stakeholders generally support the need for better dialogue and communication between the two entities, but emphasise a distinct separation of the facilitation role from regulatory responsibilities.

Review of literature, submissions and interviews reveals that there are widespread misperceptions about the roles of the government entities involved in the CSG industry. These perceptions have consequently led to different expectations of relevant agencies by different stakeholders. In view of this, I have extended this discussion on harmonisation to include DEHP and to a limited extent, OGIA. Brief mention is made below of Queensland Health, not because of any misperception about its role, but for the purpose of harmonisation.

Stakeholders' views on the CSG Compliance Unit in particular are also complicated by the multiple roles it plays. For example, on the one hand, the CSG Compliance Unit is highly regarded by a majority of stakeholders for its work on bore and water impact investigations and groundwater monitoring. At the same time there is widespread concern that the unit does not have adequate enforcement powers to improve compliance. These views are shared widely by landholders and industry as well as independent observers providing submissions to the review.

Clarity of roles of these respective agencies is an important element of building trust and relationships between stakeholders, leading to improved coexistence.

Recommendation 11: That the CSG Compliance Unit, the Office of Groundwater Impact Assessment and the Department of Environment and Heritage Protection provide clear and readily available information to stakeholders about their respective roles (including clarification of what they do not do).

In addition to clearly communicating their respective roles, it is also important that regulatory agencies are seen by stakeholders to be performing their roles effectively.

A large number of submissions from landholders, residents and producer and community groups have expressed a view that in addition to landholder feelings of disempowerment when negotiating to protect their rights, landholders feel powerless to have the mandatory conditions in the Land Access Code and in environmental authorities enforced.

Notwithstanding CSG Compliance Unit's Engagement and Compliance Plan, OGIA and DEHP regulatory functions and the published commitments and outcomes of regulatory activities (see Appendix 5), landholders have a strongly held view that enforcement and compliance actions are only taken after a complaint has been lodged. For example:

"it has been the experience of landowners that it is they who must remain vigilant in order for compliance to occur".

As current perceptions stand, landholders also have mixed confidence in the investigation process, stating that any complaints are referred back to the CSG companies who have an opportunity to modify a practice before monitoring, if any, takes place.

I am of the view that there is an opportunity to strengthen the regulatory approach of the CSG Compliance Unit to breaches of the Land Access Code and potentially other sections of the *Petroleum and Gas (Production and Safety) Act* to incentivise improved compliance by CSG companies and increase stakeholder confidence.

The discussion and recommendations that immediately follow aim to further address these concerns.

8.2 A strategic role for the Gasfields Commission

I have already made recommendations to ensure consistent collection, analysis, reporting and publication of disputes and enquiries, together with their handling and resolution.

It is important that both DEHP and the CSG Compliance Unit be accountable for their service delivery practices and that the Commission provide an independent oversight in this regard (section 7(b) *Gasfields Commission Act*).

Recommendation 12: That the Department of Environment and Heritage Protection and the CSG Compliance Unit publish service delivery benchmarks for their CSG related functions and report against these benchmarks. These reports should be evaluated by the Gasfields Commission in the exercise of its function of independently reviewing the effectiveness of government entities (section 7(b) *Gasfields Commission Act*).

8.3 Enquiry and complaint procedures

The compliance and regulatory arrangements in the CSG sector can be a cause of confusion and dissatisfaction amongst stakeholders.

The compliance arrangements in the CSG sector are complex, arising from obligations under a number of pieces of legislation which are administered by different agencies.

As put to the review:

*“There are multiple avenues for reporting complaints/disputes/issues – the gas companies, several departments and the Gasfields Commission.”*¹¹⁰

In my view this would make it difficult for people to know who to talk to. Further, concerns have also been raised about the reporting of compliance actions. Again the view expressed by the same submitter:

“Where information is publicly reported, it tends to be reported in different ways by the individual entities” and further “... while some information is made available in relation to compliance action undertaken by various agencies, the results are not published or analysed in a consolidated and comprehensive manner”.

There are multiple government agencies responsible for engagement, facilitation and regulation of the CSG industry, each with a different and valid area of interest. It is necessary therefore that landholders and other stakeholders have effective ways of obtaining information, lodging complaints, and escalating complaints if dissatisfied with outcomes.

Submissions also noted that information regarding the various complaint options available to landholders is addressed separately by different bodies and is not available in a consolidated form. I see this as being a particularly important point. The division of powers and responsibilities in government for the purpose of public administration is not something that a landholder should need to take into account in dealing with their issue.

Submissions further raised the issue of not having a full appreciation of the complaints handling and escalation process and of not receiving information on the status and outcomes of investigations and actions taken with respect to complaints.

Of the 30 respondents to the online survey set up for this review, half had made a complaint to the CSG Compliance Unit. These respondents stated that lack of follow up on complaints and lack of clarity on the complaints management process were negative features of the CSG Compliance Unit. Respondents thought there was a need to publicly release information on issues and complaints and actions taken to improve confidence and transparency.

The CSG Compliance Unit is promoted as the government's one-stop-shop for community and landholder enquiries, concerns and assistance relating to CSG issues¹¹¹. Inquiries and complaints can be made online or by telephone. In its one-stop-shop role, the CSG Compliance Unit is likely to

¹¹⁰ Based on interviews with, and submission by, the Centre for Coal Seam Gas, University of Queensland.

¹¹¹ See Department of Natural Resources and Mines Portal, Queensland Government, Brisbane, <https://www.dnrm.qld.gov.au/our-department/contact-us/coal-seam-gas> and The Queensland Cabinet and Ministerial Directory Portal, Queensland Government, Brisbane, <http://statements.qld.gov.au/Statement/2016/6/6/budget-backs-coal-seam-gas-specialist-team>

receive health related inquiries and complaints as well. The CSG Compliance Unit inquiry and complaints handling function and processes are discussed at Appendix 5. The CSG Compliance Unit has the skills base to understand most of the enquiries/complaints that come to it so can usually respond to individuals in an informative way. The CSG Compliance Unit can readily deal with most issues on its own account be they to do with compliance with the Land Access Code or a ground water issue. The CSG Compliance Unit and DEHP have a memorandum of understanding that is reported as functioning well, though the feedback mechanism to complainants/enquiries is found wanting.

The Commission is not best placed to function as a first point of call for two reasons. First, it does not have the same level of technical knowledge that resides in the CSG Compliance Unit. Second, issues that arise will usually be individual in nature – and I do not consider it appropriate that the Commission become involved in individual cases. The Commission is able to monitor the enquiry/complaint operation by its monitoring function and by its role in independently reviewing the effectiveness of government entities. That is as it should be: systemic and strategic.

Some useful suggestions have been made by stakeholders as to how the current complaints arrangements can be improved, including the Commission working with the CSG Compliance Unit and DEHP to:

- clarify the roles different agencies play in responding to inquiries and complaints
- publish a common document that clearly explains the options for lodging complaints about industry practices and government processes for dealing with these complaints, including expectations of timeframes for responses
- prepare documents and guidance to landholders on appropriate complaints escalation processes
- develop a single point for online and telephone for CSG related inquiry and complaints, noting that DEHP operates a separate Customer Response Team (until recently called the Pollution Hotline) where pollution incidents can be reported 24 hours a day, 7 days a week.

Recommendation 13:

That:

- a) the Gasfields Commission publish a document that refers to the CSG Compliance Unit as the preferred single point of contact for all landholder inquiries and complaints regarding the CSG industry and includes the Compliance Unit's contact information
- b) the Gasfields Commission, CSG Compliance Unit and Department of Environment and Heritage Protection publish a document explaining expectations of timeframes for responses to enquiries and complaints and how feedback to enquirers and complainants will be provided
- c) the Gasfields Commission, CSG Compliance Unit and Department of Environment and Heritage Protection provide guidance to landholders on the appropriate escalation steps and procedures if they are not satisfied with how their enquiry or complaint has been handled
- d) the CSG Compliance Unit be responsible for providing feedback to enquirers and complainants on the outcome of their enquiry or complaint and include information on how complaints can be escalated
- e) the Gasfields Commission develop a memorandum of understanding with the CSG Compliance Unit and the Department of Environment and Heritage Protection to formalise the Commission's dealings with these government agencies agreeing on arrangements for referral of enquiries and complaints and provision on strategic information
- f) the CSG Compliance Unit develop a memorandum of understanding with Queensland Health to formalise procedures for referral and investigation of health related inquiries and complaints.

8.4 Consistency in enforcement of legislation

Stakeholders pointed out that there are different approaches to the application of regulatory requirements under different pieces of legislations. DEHP authorised officers are able to issue Penalty Infringement Notices (PINs) (equivalent to on-the-spot fines) for breaches of the *Environmental Protection Act*. For example, release of untreated CSG produced water into waterways is a breach of an environmental authority. A corporation would incur a PIN of 100 penalty units (equivalent to a fine of \$11 780 in 2016) for this breach. DEHP's ability to issue PINs is a significant deterrent to CSG companies breaching environmental authority conditions.

Neither the CSG Compliance Unit, nor DNRM more generally, has the equivalent capacity to issue PINs for infringements of the Land Access Code or other sections of the *Petroleum and Gas (Production and Safety) Act*. Current compliance tools range from 'compliance directions' for low-level infringements to court action for high-level infringements or cancellation of tenure. The legislation does allow for the issuing of penalties of up to 2000 penalty units, however this power rests with the minister and has not been further delegated¹¹². The CSG Compliance Unit primarily uses warning letters and education as compliance measures for issues of adherence to the Land Access Code.

As compliance directions are most often sent by mail, this has led to the perception by landholders that the CSG Compliance Unit compliance activities have no 'teeth' and are limited to sending letters.

To quote from two submissions:

"Compliance and penalties are allowed for in the legislation at multiple levels but enforcement is visibly lacking".¹¹³

"Strengthening oversight roles and compliance powers is required if coexistence is truly to occur between competing land uses".¹¹⁴

Recommendation 14:

That:

- a) provision be made for issuing of penalty infringement notices for infringements of the mandatory provisions of the Land Access Code and other relevant provisions of the *Petroleum and Gas (Production and Safety) Act*
- b) in order to increase stakeholders' confidence in the regulation of the CSG industry, compliance and enforcement actions such as the issuing of penalty infringement notices by the CSG Compliance Unit and Department of Environment and Heritage Protection should also be published for the community's information. Any legal impediments to publishing penalty infringement notices, including naming of offenders, should be removed with changes to legislation.

For the purposes of clarity, I wish to emphasise the recommendation on the use of PINs is confined to breaches against statutory instruments. The use of PINs should not extend to contractual matters negotiated and covered under conduct and compensation agreements and make good agreements.

PINs would provide DNRM authorised officers some teeth to deal with CSG related infringements in a timely manner. PINs could be issued for minor infringements of the Land Access Code such as not leaving gates in their original position (unless advised otherwise) or not providing a record of weed wash-down when requested.

It is important that the relevant regulatory agencies have the necessary means and resources to perform the roles expected of them. The ability to issue PINs will go some way to addressing landholders' sense of powerlessness in the event of CSG companies not complying with their obligations. I have noted earlier the reduction in complaints to the CSG Compliance Unit over time, however, do not consider that evidence to detract from the proposition that compliance enforcement actions should be transparent and effective.

¹¹² Sections 790 and 789(2)(a) *Petroleum and Gas (Production and Safety) Act 2004* (Qld).

¹¹³ Submission by Property Rights Australia.

¹¹⁴ Submission by the Department of Agriculture and Fisheries.

In addition to publishing against service delivery benchmarks, it is important for the CSG Compliance Unit and DEHP to know whether they have the confidence of stakeholders to use their services or whether a lack of confidence in compliance action is leading to under-reporting of complaints. From my interviews with landholders, I formed the view that there is a high probability of under-reporting.

The Gasfields Commission should regularly enquire as to whether there is an under-reporting of complaints to the CSG Compliance Unit and DEHP by landholders, evidencing dissatisfaction with the enforcement system or service.

I recognise that implementation of this suggestion poses a challenge. However, a competent and committed adoption of extension feedback mechanisms would go some way towards addressing this issue. I refer here to the role of peak producer bodies referred to in Recommendation 1.

I have considered the issue raised by landholders that enforcement and compliance actions are taken only after a complaint has been lodged. Having regard to the approaches outlined in the CSG Engagement and Compliance Plan 2015-16; the nature of the relationship and matters likely covered under a conduct and compensation agreement between a landholder and tenure holder; and the current provisions for powers of entry and inspection in relevant pieces of legislation, I am not able to suggest any additional approach to inspections to ensure compliance with land access conditions and operational requirements.

It is my view that the adoption of recommendations proposed in this section are likely to contribute positively to landholders' confidence in CSG industry regulation.

The name of the CSG Compliance Unit does not accurately reflect its role, however, I am reticent to recommend a name change given its generally good reputation amongst its clients. I also note that it has already had a name change in its short history (established in 2011).

The combined recommendations in this section of the report are designed to make the complaints process transparent and efficient and to provide feedback to landholders. These aspects, together with the oversight roles provided by the Commission, should improve dispute resolution and compliance on an overall and ongoing basis.

Chapter 9 Coal and minerals

I should refer first of all to part 3.4 which sets out amongst other things ‘what this report does not cover’. In short, this was a review into the Gasfields Commission and its effectiveness and issues related to CSG development and production. As such, any issue of the extension of the Commission’s role into coal and minerals would be appropriate in the clearest case only. No such case was presented in submissions to the review.

Before I embark on a consideration of the submissions I should refer to section 7(ca) of the *Gasfields Commission Act*. One of the functions of the Commission is:

“in response to requests for advice from the chief executive under the Regional Planning Interests Act 2014 about assessment applications under that Act, advising that chief executive about the ability of landholders, regional communities and the resources industry to coexist within the area the subject of the application”.

The Commission said in its submission that there have been four such requests under the *Regional Planning Interests Act*.

Under section 46 of the *Regional Planning Interests Act*, the chief executive must ask the Gasfields Commission for advice about an assessment application if the application relates to an activity for which a resource authority is required and where the activity is proposed in a priority agricultural area, a strategic cropping area or a priority living area and either the application is notifiable or, in the chief executive’s opinion, the expected surface impacts of the resource activity are significant.

These applications are not confined to resource authorities under the *Petroleum and Gas (Production and Safety) Act*, but can include resource authorities under other resources legislation including the *Mineral Resources Act*. The Gasfields Commission could therefore be asked for advice on applications relating to resource authorities under any of the resources legislation including the *Mineral Resources Act*.

It follows that the Gasfields Commission potentially has a role with respect to mining tenements under the *Mineral Resources Act*, which includes rights associated with coal and minerals. This appears to be an expansion of the Commission into coal and minerals, though of limited compass. I will, however, treat this term of reference as being concerned with further expansions.

Some submissions proposed the extension of the Commission into coal and minerals, however, these submissions did not generally articulate a cohesive argument in support of such a proposal.

Generally, it is not the case that coexistence issues of the type encountered in the gasfields in the Surat Basin are to be found in coal and mineral mining areas. Mining leaseholders obtain exclusive rights to the surface of the land they occupy, meaning there will not be coexistence on the lease area. In addition, coal companies will often purchase a property whose surface is to be affected by proposed coal mining, thus reducing the prospect of a clash between mining and farming uses. Adjoining properties are frequently purchased for the same reason. Apart from that, the land uses one finds in most coal mining areas are usually less intensive than are found in the Surat region. Similarly, coexistence issues are often reduced for smaller mining ventures such as gold mining, as such small mining activities occupy a limited footprint on a parent property.

Having said that, I have been told of one instance (and there may be others) of a property being subject to 20 or more such small mining operations. In that situation issues of harmonious coexistence would undoubtedly arise. I do not have evidence as to whether circumstances such as this are so frequent that a strategic oversight role by a body such as the Commission is warranted. It may be that existing processes are sufficient to address concerns as they arise. Given this vacuum and the requirement of the terms of reference of this review, I make the following recommendation:

Recommendation 15: That Government carry out investigations to identify circumstances where multiple small mining operations are located on a single property, the scale of this phenomenon and issues of coexistence identified, and the manner in which coexistence issues should be dealt with.

Individual examples of impact on a local community by mining operations can be found, for example, in the lead issue in Mt Isa. The QRC submission to this review said that mining companies would prefer to work with the local community to resolve such issues, rather than be regulated under a state

wide framework. There is merit in that position, in my view, especially given that each mine raises its own set of management issues.

There may be one-off proposed infrastructure projects that involve or are associated with coal or mineral mining and which raise issues of engagement and coexistence. In such circumstances the experience and knowledge that resides in the Commission may assist. That does not, however, argue for a permanent intrusion by the Commission into the fields of coal and mineral mining and development. Such a one-off case may invite the appointment of an individual (with support as needed) to undertake the work required. I cannot see the merit of having such an individual lie dormant in the Commission awaiting germination.

The Commission has a narrow or specialised focus, though with a demanding remit. Issues of process, disputes, health issues, ground water and so on each require a degree of specialised knowledge and application. To expand the Commission's role to include coal and minerals would run the risk of diluting that skills base with an associated risk of increasing the bureaucratic load of the Commission. The Commission as I propose it, is small and light on its feet and should remain that way.

If expansion of the role of the Commission into coal and minerals were to take place, the question might be raised as to whether extension into other industries should also occur, whether that is to involve the Commission or some other similar body. For example, feedlots are heavily concentrated in the Western Downs and would probably provide examples of some difficult coexistence issues. Should a body like the Commission be created to serve that need? This is not to say that oversight by an equivalent body to the Commission is not warranted, however, such repercussions of an extension of the Commission role into coal and minerals would need to take this prospect into account.

I have formed the view that (based on the limited information available to the review and the absence of apparent benefits) the role of the Gasfields Commission not be expanded to include coal and minerals in addition to petroleum and gas resources.

My conclusion on this issue relies very much on the role of the Commission as I describe it in my earlier recommendations. A consequence of any decision to expand the role of the Commission further into coal and minerals would be that those recommendations would need to be revisited.

Chapter 10 Public health and community concerns

10.1 Introduction

The rapid expansion of the CSG industry in Queensland, particularly in the Surat Basin, over the last decade, has coincided with complaints alleging that CSG gas industry activities and gas emissions are causing detrimental impacts on the health of residents living in areas affected by the onshore gas industry.

Health related concerns of the Surat Basin residents, particularly in the Tara region, coincided with the peak construction period for the CSG industry in 2009-10.

A Queensland Health¹¹⁵ investigation, in response to these claims, reported that the most common symptoms reported by residents were:

- headache - varying types described (dull ache and pounding); often worse at night in association with sounds of compressors from CSG wells
- reversible eye irritation - sore, itchy eyes experienced mainly when outside the home with symptoms settling when indoors
- nosebleeds - predominantly reported in children; several presentations to the local general practitioner (GP) in the study period, however the GP did not report any findings on clinical examination
- skin rashes - more commonly reported in children.

The Queensland Health report states that all reported symptoms were common medical complaints. The report concludes that the prevalence of complaints for specific symptoms were low compared with prevalence of these symptoms in other studies. The report does not ascertain whether complaint data might be affected by under-reporting.

The report concludes that:

“Based on the clinical and environmental monitoring data available for this summary risk assessment, a clear link can not be drawn between the health complaints by some residents in the Tara region and impacts of the local CSG industry on air, water or soil within the community. The available evidence does not support the concern among some residents that excessive exposure to emissions from the CSG activities is the cause of the symptoms they have reported”.

The Queensland Health report makes a number of recommendations, including:

- The establishment of mechanisms to ensure a coordinated response to community and social aspects identified in this report. For example, a community reference group (my emphasis) drawn from CSG areas may assist in the identification of health, community and social concerns at a community level and in the development of appropriate responses.
- A strategic ambient air monitoring program be established by DEHP to monitor overall CSG emissions and the exposure of local communities to those emissions. This could be based on consolidation of existing air monitoring undertaken by DEHP and industry, with supplementation where insufficient data exists.

I make further comments about these matters later in this chapter.

10.2 Mental health and community well-being concerns

The Queensland Health report further raises the possibility of many potential causes for the reported symptoms in the absence of any clear link between CSG activities and reported symptoms. The Queensland Health investigations showed that potential health effects were not the only concern of residents. Residents also reported environmental concerns and distress about CSG companies establishing infrastructure on their land or on nearby land.

¹¹⁵ Coal seam gas in the Tara region: Summary risk assessment of health complaints and environmental data, Queensland Health, March 2013.

The report concludes that:

“Whilst no emissions from the CSG activities are apparent that can explain the reported symptoms, the DDPHU report identified the issue of solastalgia. This term describes the distress that is produced in people by environmental change in their home environment. Negative effects can be exacerbated by a sense of lack of control over the unfolding change process in a person’s normal environment”.

A submitter has also put to me that:

“Heath concerns both physical and mental, are often expressed in terms of reporting symptoms without a clear causal hypothesis within an environment in which causal ambiguity or multiple contributing causes could be present. Multiple socio-economic factors and sources are at play”¹¹⁶.

There have been reported cases of stressed residents in the region both during the peak of the industry growth in the region and on an ongoing basis.

From my discussions with stakeholders, there are many and very specific individual circumstances behind the reported cases of mental health concerns. Generally with respect to CSG related matters, landholders report there is frustration with protracted negotiations, inability to enforce conduct and compensation agreement breaches and an inability to resolve disputes. In short, there is a feeling of powerlessness.

Aside from landholders, a number of business owners have also reported being adversely affected during the rapid growth phase, such as when falling short of qualifying for CSG company contracts. Others who over-capitalised are now affected by the sudden decline of CSG construction activities in the region.

10.3 Dealing with high risk cases

I understand a ‘high risk’ case to be one where a dispute between parties has developed into a conflict, where there is a high risk of self-harm or of harm to others or to property by a stressed individual. Such stress can arise either where options to deal with a dispute are not sufficiently identified; or where the best (or only) available option is considered to be unacceptable. This feeling of a lack of acceptable options has, in the recent past, led to a most tragic outcome.

High risk cases can arise in the context of negotiating a conduct and compensation agreement or a make good agreement where, for example:

- the style of approach of the CSG company is unacceptable to the landholder
- where the landholder does not have sufficient information and knowledge to respond in a self-reliant way
- where time pressures are placed on the landholder by the procedures available and/or by the conduct of the CSG company representatives (with a consequence for management of the landholder’s farm business)
- by the landholder feeling that the CSG company has greatly superior power
- where legal and other costs mount up.

This report discusses the types of medical and social support services available that might be employed in these situations, however, the main focus has been in three areas.

First, this report recommends the development of a comprehensive extension and communication plan by the Gasfields Commission to inform landholders about the processes and content of negotiations and management of conduct and compensation agreements and make good agreements. It is intended by this initiative to arm landholders with sufficient information and knowledge that they will become and feel more self-reliant in their dealings with CSG companies.

Second, this report recommends the greater use of case appraisal to deal with cases of deadlock in the negotiation of a conduct and compensation agreement or make good agreement. This will allow the parties to ventilate their issues and receive guidance as to a way forward. If that fails, parties can seek arbitration of a dispute.

¹¹⁶ Submission from the Centre for Coal Seam Gas, University of Queensland.

Third, there are instances where landholders are displeased with the conduct of employees or contractors of a CSG company pursuant to a conduct and compensation agreement on their land; or even where a CSG company is displeased with the conduct of a landholder under a conduct and compensation agreement. The legal options open in such circumstances can be costly, complex and employ a lot of time and effort. In this regard, I recommend the creation of an Office of the Petroleum and Gas Moderator who can be approached to consider such a case, investigate it and advise the parties on a way forward.

It is intended that my recommendations will assist in the avoidance of conflict developing out of what should be a manageable dispute; hence the avoidance of 'high risk' cases.

The issue of time and timing are important for landholders. Time taken to investigate and negotiate a conduct and compensation agreement, including the negotiation of compensation, can be demanding for a landholder.¹¹⁷ Timing can also become an issue where a CSG company wants landholder participation at a time that is inconvenient to the landholder because of the demand of farm management or other private reasons. It is not practical for this review to investigate and report on these issues to the extent that firm recommendations can be made. It is hoped, however, that adoption of the recommendations made concerning dispute resolution would lead to improved negotiation between the parties (see Chapter 7).

10.4 Managing impacts on local health and social services

Queensland Health has indicated that the sudden influx of outside workers to a region characterised by small townships, small numbers of doctors, limited hospital capacity and limited services had a detrimental impact on health service delivery in host communities.

A number of CSG companies provided resources to fund additional health services during the peak construction phase of their projects. These services included making funding available to Queensland Health to employ extra doctors and funding Careflight out of Roma. Whilst these services were primarily targeted for use by company employees, they were also available to the whole community.

QGC also funded Lifeline Darling Downs to provide counselling services to its employees and locals over a period of 2.5 years. The last service under this arrangement ceased on 30 April 2016. A number of stakeholders interviewed also reported that there was widespread mistrust amongst locals of industry funded health services. As result, there was reluctance by local residents to use this service.

Residents were also adversely affected by an inability to meet rising house rents and in some cases, were displaced from their local community as a consequence. While projects were conditioned to provide adequate staff accommodation and/or affordable housing for local residents, delivery of these facilities generally lagged peak construction periods.

These lessons should be important considerations for designing future service delivery measures. I also observe that previous inquiries and investigations have provided a number of recommendations for dealing with planning, provision of health services, local content and community and employee well-being matters in resources communities¹¹⁸ and allocation of funding and empowering of local councils for provision of social/community infrastructure and services¹¹⁹.

For these reasons, I have restricted my recommendations on matters specific to the goal of realising coexistence of the onshore gas activities with other land uses. Specific recommendations follow below about early recognition of the signs of stress and mental health issues and referral, if needed.

10.5 Health services for local residents

Like any other part of Australia, primary health care in the Darling Downs is delivered by GPs and outpatient services in regional health facilities.

¹¹⁷ According to reasoning under *Xstrata Coal Queensland Pty Ltd and Ors v Keys and Anor* [2013] QLC 34, generally speaking, the scope of compensation payable does not include payment for a landholder's time spent reading agreements, meeting with advisers and meeting with resource companies. However, compensation may be payable where the landholder hires someone to work in their farming business while they spend time negotiating with the resource company.

¹¹⁸ *Inquiry into fly-in, fly-out and other long distance commuting work practices in regional Queensland*, Report No. 9, 55th Parliament Infrastructure, Planning and Natural Resources Committee October 2015.

¹¹⁹ *FIFO Review Report, An independent review of existing, predominantly fly-in-fly-out resource projects in Queensland*, Department of State Development, July 2015.

Residents are advised that if they have any medical concerns, they should consult their local GP or phone the Queensland Health contact centre on 13 HEALTH.

Whenever a local resident contacts the 13 HEALTH number, a screening questionnaire is completed and forwarded to the Physician and Director at the Darling Downs Public Health Unit (DDPHU) for follow up and appropriate action. All calls to the 13 HEALTH line are recorded for audit purposes.

In many cases, callers may be referred to their respective GP for any further investigation and referral to local secondary services in public hospitals or specialist services in major cities. Referring callers to their GPs is a standard health service practice as the GP is expected to hold the relevant caller's medical records and history which are essential for further assessment and diagnosis.

The DDPHU regularly (currently monthly) contacts local hospitals and GPs regarding people in the region seeking medical treatment/advice related to unconventional gas mining. The DDPHU reviews these notifications to determine if there are any trends and if further investigation or advice is required.¹²⁰

10.6 Other agencies involved in health service delivery

(a) Queensland Mental Health Commission

Established as a statutory body under the *Queensland Mental Health Commission Act 2013* (Qld), QMHC's purpose is to drive ongoing reform towards a more integrated, evidence-based, recovery-oriented mental health and substance misuse system.

In line with the legislation, QMHC's role is to:

- develop, facilitate and support a whole of government strategic plan by working together with consumers, families, carers, government and non-government stakeholders
- carry out, support and contribute to reviews, research and evaluation of mental health services
- facilitate and promote awareness, prevention and early intervention strategies
- establish and support mechanisms to improve governance, such as the Mental Health and Drug Advisory Council and promote consumer, family and carer engagement and leadership.

In its strategic role, QMHC monitors areas across Queensland that are experiencing lower levels of mental health and wellbeing and this may include the gasfields. However, QMHC has noted that standard data collection methods, such as that conducted by the Australian Bureau of Statistics, does not have the granularity to identify mental health and community wellbeing issues in small communities such as those found in the Surat Basin. QMHC is currently working to address this shortcoming.

In lieu of this methodology being developed, stakeholders could take a proactive approach for strategic engagement with QMHC.

Local public health service providers should communicate strategic information on emerging or ongoing mental health and community wellbeing needs and concerns to the Queensland Mental Health Commission.

(b) Lifeline, Beyond Blue (and others)

Both of these non-government organisations (NGOs) work in partnership with Queensland Health, GPs and other primary health care providers as well as on their own, to provide counselling services to residents and CSG industry employees. Lifeline Darling Downs was involved in the delivery of counselling services over a period of 2011 to 2016. Industry provided funding to Lifeline from 2010 to 2013.

QMHC pointed out that an alternative approach is used by AgForce, which has trained its staff who have interactions with landholders to identify people likely to be in a stressful situation and refer these people to service providers. In my view, this should continue.

I understand there is a number of other counselling and wellbeing support services that have a presence or a telephone service for residents impacted by CSG operations. Design and delivery of mental health awareness and counselling services in the future could draw on these capabilities.

¹²⁰ Based on information provided by Darling Downs Public Health Unit.

10.7 Is there a role for the Commission in public health services?

I was specifically required to assess the adequacy of the Gasfields Commission's powers and whether any improvement is needed to improve functions related to public health.

There is an overwhelming view expressed by stakeholders, across the whole spectrum - industry, landholders, community and professionals – that charging the Commission with managing a public health role is problematic. There were numerous reasons provided for this, including:

- the Commission does not have expertise to undertake such a role, and
- there are privacy and legislative implications for the Commission handling individual health complaints.

I accept these reasons and consider them sufficient to lead to the recommendations which follow.

I conclude that there should be no direct role by the Gasfields Commission in managing a specific response to public health issues in the gasfields region.

Having said that, I believe a future Commission could have a limited facilitation role (discussed below). Primary responsibility for public health would remain with Queensland Health.

10.8 Discussion - where to from here?

In addition to effectively managing 'high risk' situations, I believe that ongoing mental and physical well-being concerns from living in the vicinity of gasfields also need to be addressed.

Information collected by the review shows there is a perception amongst some residents and landholders that CSG activities are causing health problems for residents living in the gasfields. The review does not underestimate the complexity of the matter and is not qualified to make an assessment of these claims. Nonetheless, I observe that:

- a) the rapid expansion of the CSG activities and industry presence in the Surat Basin region has resulted in social disruption and a sense of disempowerment amongst many landholders and residents
- b) while there is no demonstrable clinical evidence on the causal relationship between CSG activities and reported physical health concerns by a small number of residents, concerns about health impacts from CSG activities persist
- c) given the complexity of the matter, I recommend that a holistic approach be taken to address public health and community well-being concerns raised by residents in the gasfields region. I have already discussed and made recommendations aimed at minimising or avoiding conflict, and in the case where conflict arises, mechanisms to resolve conflicts in a timely manner.

In addition to putting in place these measures to avoid stressful situations, there needs to be ongoing effort to identify and help individuals who are living with mental health concerns.

There is no obvious need for an expansion of services given the presence of publicly funded as well as non-government service providers in the region. Information provided to the review by mental health professionals clearly indicated that early engagement with individuals in a stressful situation is essential for addressing mental health issues and preventing individuals from self-harm.

Further, de-stigmatisation of mental health is also needed as evidenced by views expressed by a landholder:

"Mental health problems need to be delivered differently for country people. No farmer will turn out for a special seminar for mental health issue, but if included amongst other [topics], they will stay for it".

Or from another landholder:

"Information days for smaller groups is needed as health is a private and sensitive issue and country males will be the last to admit they are not coping".

Another affected landholder told me:

".. I wake up at 3 am since CSG [activities commenced on property]... It's on your mind the whole time. Not sought any help... don't look for information about how to manage stress... Can't not worry – it's your business and future... Don't know if health services are enough... Farmers are own worst enemy in that regard".

Landholders within the Surat Basin, particularly those with potential interaction with CSG companies are within the Gasfields Commission stakeholder group. The Gasfields Commission through its extension and communication program would be seen as a legitimate source of information concerning CSG matters including stress from dealing with CSG related legal matters as well as health issues perceived as connected with dealing with CSG operations.

The Gasfields Commission's extension role should provide it capacity to engage with those within the stakeholder group. It follows that the Gasfields Commission would be well-placed to facilitate the provision of information on health matters to this stakeholder group.

Recommendation 16:

That:

- a) Queensland Health in consultation with mental health specialists and service providers (including non-government organisations) develop material on mental health awareness and services available in the region
- b) the Gasfields Commission facilitates the provision of information on mental health awareness and services through its extension and communication initiative
- c) the Gasfields Commission facilitate the convening of training on mental health awareness for regional service providers (such as rural legal practitioners and AgForce), businesses and community/social groups in the region and CSG Compliance Unit staff.

Such training would equip individuals with skills to recognise signs of stress in residents and landholders they interact with, start a conversation and refer people to mental service providers. Required information could be made available to landholders and residents in need on a one-to-one and confidential basis.

Such training could be coordinated by Queensland Health in collaboration with other non-government mental health service providers.¹²¹

I note that candidates receiving this training would undertake this work on a voluntary basis and as an adjunct to their normal work, as is currently the case in the AgForce initiative.

This recommendation is calling for the expansion of the approach taken by AgForce to train its staff in mental health awareness (discussed above) and to target other groups that can reach a broader section of the population including non-farming residents and local business owners and operators.

I now turn to a broader issue of residents' concerns on public health safety from CSG activities.

I also discuss the matter of improving the trust and transparency of environmental monitoring work being undertaken by government and industry in the gas fields.

The Queensland Health report provided an assessment of reported health concerns and made a number of recommendations to government agencies, as referenced earlier. I have been provided with information on work undertaken by Queensland Health, DEHP, industry and others in response to the recommendations from the Queensland Health report.

I note that a community reference group, as recommended by the Queensland Health report, has not been set up to assist in the identification of health, community and social concerns and in the development of appropriate responses.

Recommendation 17: That the community reference group, as envisaged in the 2013 Queensland Health Report, be formed whereby:

- an appropriate agency at the discretion of Government, lead and support the convening of the reference group. Government could call on the Gasfields Commission to assist in the formation of the reference group, if required
- in consultation with the reference group, Queensland Health, together with the Department of Environment and Heritage Protection, Department of Natural Resources and Mines, and the Department of Science, Information Technology and Innovation, should undertake further work in the assessment of health risks and environmental monitoring as a follow-up to the 2013 Queensland Health Report.

¹²¹ This training would not be funded by the Commission which should not have a primary role in public health servicing.

The involvement of the reference group would be a mechanism to provide residents, landholders and independent parties an input into the design of air quality or other environmental monitoring activities. That is, the community group gains ownership of the issues, and confidence in their analysis and responses. There is already precedent for similar participatory initiatives in Queensland at the Narangba Industrial Estate¹²² and Gladstone.¹²³

The recommendation does not suggest a comprehensive clinical assessment of individuals with health concerns – such services are already available. Instead, the recommendation seeks to assess the adequacy of measures put in place to identify, monitor – through measuring and modelling – assess and manage health related risks associated with CSG activities.

Such an approach is essential to address any data gaps, as noted in the Queensland Health report and address prevailing questions about the thoroughness of current air quality monitoring work

The Queensland Health Report observed that:

“The air monitoring provided to the Department of Health was sufficient to assess whether the reported symptoms were related to CSG activities. However, the available data were insufficient to properly characterise any cumulative impacts on air quality in the region, particularly given the anticipated growth of the industry. It is necessary to assess those impacts according to health-based standards which are relevant to long-term exposure”.

Similar views have been expressed to me by residents living in gasfields region, community interest groups and stated publicly by health professionals.¹²⁴

I understand that DEHP has reviewed both the original air quality monitoring work referred in the Queensland Health report and the ongoing monitoring and modelling work being undertaken by the CSG companies as part of their environmental authority conditions.

While the DEHP review did not envisage an expansion from current levels of strategic monitoring, it does recommend some adjustments to air quality monitoring practice as part of the compliance requirements of CSG activities. I am advised that further air quality monitoring initiatives are also planned to be undertaken by CSG companies.

Whilst I acknowledge the above work with respect to air quality monitoring, it is not apparent whether this constitutes the strategic ambient air monitoring program envisaged in the Queensland Health report recommendation to adequately account for cumulative impacts from CSG activities.

It has also been put to me that, and as stated in the Queensland Health report, the reported symptoms can have many potential causes unrelated to CSG activities. Stakeholders have also pointed out to me that the Queensland Health report may be outdated, given significant expansion of CSG activities in the region since the report was commissioned.

These views have led me to a conclusion that a degree of uncertainty and lack of trust with respect to the adequacy and transparency of environmental monitoring work in the gasfields region still persists amongst stakeholders. These concerns need to be allayed through better information, and appropriate remedial actions where required, to build trust between stakeholders and help in achieving coexistence of CSG with other land uses.

In making my recommendations for further work to address public health safety concerns and perceptions, I make reference to the principles and guidelines contained in the National Harmonised Regulatory Framework for Natural Gas from Coal Seams 2013 (the Framework)¹²⁵. The Framework delivers on a commitment by Australian governments to put in place a suite of leading practices and principles, providing guidance to regulators in the management of natural gas from coal seams and ensuring regulatory regimes are robust, consistent and transparent across all Australian jurisdictions.

With coexistence as its core principle, the Framework provides guidelines for risk control measures and management approaches in situations where there are community concerns about potential risks.

¹²² *Health Impact Assessment – Narangba Industrial Estate*, Queensland Health, 2011.

¹²³ *Clean and Healthy Air for Gladstone*, Department of Environment and Resource Management, Queensland Health, 2011.

¹²⁴ See for example, Dr GERALYN MCCARRON – Submission: *Select Committee on Unconventional Gas Mining (Bender Inquiry)*, 31 January 2016, viewed on 1 June 2016.

¹²⁵ Council of Australian Governments Portal, *National Harmonised Regulatory Framework for Natural Gas from Coal Seams, 2013*, <http://scer.govspace.gov.au/files/2013/06/National-Harmonised-Regulatory-Framework-for-Natural-Gas-from-Coal-Seams.pdf>, accessed on 29 March 2016.

Given CSG projects have a long life (30 years plus), I am of the view that appropriate approaches be employed as outlined in the Framework in developing ongoing monitoring and management of risks.

Recommendation 18: That the Department of Environment and Heritage Protection in consultation with and input from the reference group and other stakeholders, develop and implement an environment (air quality, noise, dust) monitoring plan in CSG fields, particularly in areas with sensitive receptors, and that outcomes be published and communicated to stakeholders.

It is envisaged that any independent environmental monitoring could replace the current monitoring undertaken by CSG companies as per their environmental authority requirements and costs for this monitoring would continue to be met by the relevant company.

I do not see it as my role to recommend as to what needs to be monitored where. The scope of any monitoring program should be informed by professional input from public health specialists as well as input from local residents and community groups through a reference group, as suggested above.

To improve transparency and provide assurance to landholders and residents, any further updates to public health assessment and environmental monitoring work should be conducted in accordance with leading practices and peer reviewed by independent third parties such as the CSIRO, Gas Industry Social and Environmental Research Alliance or the Queensland Alliance for Environmental Science, which has now been established and funded.

Such an approach is consistent with the Framework cited above and is important to improve perceptions of independence and thoroughness of monitoring initiatives. It is envisaged that the Gasfields Commission could facilitate stakeholder involvement in such work in the future.

In the absence of any published data from monitoring and/or modelling work being undertaken in the gasfields, concerns about public health and well-being will continue to persist in the community.

There should be timely publication of results from any health environmental monitoring initiatives and better accessibility of information by stakeholders.¹²⁶

DEHP and Queensland Health should consult with the Gasfields Commission on the best approach for engagement and communicating findings to stakeholders, particularly to landholders.

In that regard it may be beneficial for a credible scientist (or scientists) independent of DEHP and Queensland Health to be utilised in the communication with stakeholders.

Finally, stakeholders have suggested that future greenfield CSG developments should be preceded by development of a baseline understanding of environmental conditions and health and community well-being issues.

In response to that I note that in Queensland a Social Impact Assessment Guideline was developed and published in 2013. While not mandatory, project proponents may be required to include social impact assessment in their environmental impact statements. The Social Impact Assessment Guideline requires project proponents to undertake a baseline assessment of social conditions, management and mitigation measures and a community and stakeholder engagement and development of monitoring program.¹²⁷ Where social impact assessment is required, the issues to be addressed will include community and stakeholder engagement strategy; workforce management; housing and accommodation, local industry and business content; and health and community wellbeing.

¹²⁶ The CSG Compliance Unit is currently coordinating a project to consolidate historical CSG-related environmental monitoring data. While the project is in an early phase, it is anticipated that an operational database for CSG monitoring data would be available by the end of 2016 (See discussion on 'Project Stocktake' at Appendix 5). Once developed, I assume, such a database would also become a repository for environmental monitoring data collected in the future.

¹²⁷ Department of State Development Portal, Queensland Government Brisbane, <http://www.statedevelopment.qld.gov.au/assessments-and-approvals/social-impact-assessment.html>, accessed on 6 June 2016.

Chapter 11 Other relevant matters

The review received some submissions that were broad-ranging and contained suggestions that were outside the Terms of Reference. However, some of these submissions contained ideas that are worthy of further consideration. I list these here as 'issues for consideration'.

11.1 Local government

In this report my focus has been on the landholders vis-a-vis CSG companies. In its submission to this review the Local Government Association of Queensland said:

“At a wider level, the LGAQ believes a more robust and comprehensive framework for negotiating conduct and compensation arrangements between resources companies and local councils is required. This could include, for example, a Code of Conduct for resource companies that, similar to the Land Access Code, stresses the importance of establishing good relations between parties, general principles for negotiations and guidelines for communication, as well as mandatory conditions that must be met by resources companies in undertaking activities affecting local council infrastructure and service delivery capabilities. Where there is a need for a conduct and compensation agreement (CCA), councils should also be compensated for the costs of negotiating with resources companies on the CCA (as is the case for landholders). Depending on how such a framework is constructed, these arrangements could replace existing legislative arrangements and standard project conditions. Such arrangements could also provide for independent conciliation and/or arbitration arrangements thereby decreasing the need for appeal to an Ombudsman and/or the Land Court. Depending on the outcomes of your review and a decision on the future role of the Commission, developing such a framework could be an important part of the Commission’s future work program”.

A local government may own freehold land (private land) or be the trustee of a reserve (public land) or manage local roads. For private land, the usual conduct and compensation agreement process applies to councils in a similar manner to its application to individual private landholders. In those circumstances legal costs would be paid in accordance with the compensation provisions of the *Petroleum and Gas (Production and Safety) Act*. For public land a CSG company can undertake activities after giving notice of those activities and the council can impose conditions on access.¹²⁸ Compensation is payable for the compensatable effects, though that compensation need not be paid before the activities of the company take place.¹²⁹ However, the LGAQ proposal goes beyond this.

On the face of it, the LGAQ’s proposal would appear to have merit; however it brings into play propositions that are beyond the Terms of Reference.

Issue for Consideration: That consideration be given to the proposal that a comprehensive framework for negotiating an agreement as proposed by the Local Government Association of Queensland between CSG companies and local councils be established to deal with any impact that the activities of CSG companies would have on local council infrastructure and service delivery activities.

11.2 Cumulative impacts

There is a wider agenda that warrants attention in the submission of the LGAQ:

“The cumulative impacts of multiple projects operating in the same area are particularly complex and poorly understood. Similarly, it is difficult for the state government to make decisions on project approvals and conditions – and properly regulate the sector – when the local and cumulative impacts of resources sector activities are unclear. The lack of comprehensive, trusted information on the actual and potential impacts of the resources sector is one of the reasons why community confidence in the sector has declined.

¹²⁸ Section 527 *Petroleum and Gas (Production and Safety) Act 2004* (Qld).

¹²⁹ Sections 526 and 532 *Petroleum and Gas (Production and Safety) Act 2004* (Qld).

At a practical level, it would entail the Commission monitoring the economic and social (and potentially environmental) impacts of the resources sector, identifying and analysing trends in performance and providing recommendations to government and other stakeholders on how to improve performance.

Because the impacts of resources projects can be so diverse, there is no natural 'home' within the existing departmental structure to undertake the policy work necessary to underpin an integrated and coherent assessment of the social, economic and environmental impacts of the resources sector at local, regional and state levels. This requires a multi-agency, multi-stakeholder approach that a departmental structure is unsuited to achieve, largely because each agency needs to be held to account for its own performance in assessing and managing the impacts of the resources sector".

The need identified in this submission and the suggestion that a multi-agency, multi-stakeholder body take on the task identified, is one that warrants the attention of government. I note a number of agencies in Queensland are involved in the assessment and monitoring of cumulative impacts (for example, the Coordinator-General (for coordinated projects), DEHP (for environmental impacts such as water quality, air-shed) and OGIA (for groundwater)). However, there is merit in the proposition that there needs to be a multi-stakeholder body able to provide holistic advice on the cumulative impacts, including health and socio economic issues, of multiple projects. Whilst I see no justification in my Terms of Reference for the inclusion of a recommendation in this regard, I include it as an additional issue for consideration.

Issue for consideration: That consideration be given to the establishment of a multi-agency, multi-stakeholder body charged with the role of monitoring, reporting on and advising on the cumulative impacts of multiple projects operating in the same area with respect to the social, economic and environmental impacts on local, regional and state levels.

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Appendix 1 – Terms of Reference

GASFIELDS COMMISSION INDEPENDENT REVIEW

TERMS OF REFERENCE

1.1 INTRODUCTION

The Gasfields Commission is an independent statutory body established under the *Gasfields Commission Act 2013* (the Act). Although the Commission has been in operation since 2012, the Act took effect on 1 July 2013. Under section 3 of the Act, the Commission's purpose is to manage and improve the sustainable coexistence of landholders, regional communities and the onshore gas industry in Queensland.

The Gasfields Commission's functions are set out in section 7 of the Act. A summary of these functions include:

- reviewing the effectiveness of legislation and regulation
- obtaining and publishing factual information
- identifying and advising on coexistence issues
- convening parties for the purpose of resolving issues
- promoting scientific research to address knowledge gaps
- making recommendations to government and industry.

The Commission currently comprises a Chairperson and six Commissioners as well as approximately 10 staff who support the work of the Commission.

1.2 REVIEW

It is important to ensure that Queensland's energy resources are developed in a safe, balanced and sustainable way. The petroleum and gas industry operates in a robust regulatory framework and must deal with issues including land access, tenure management, the protection of groundwater and monitoring and compliance. The government is committed to promoting coexistence between resource and agricultural activities in Queensland.

On 18 December 2015, the Queensland Government determined it would Commission an independent review of the Gasfields Commission. This review is an opportunity to investigate whether there are opportunities to improve the regulatory and administrative settings for petroleum and gas regulation, including dispute resolution and the consideration of public health to address community concerns.

1.3 PURPOSE

The purpose of this review is to:

- evaluate whether the Gasfields Commission is achieving its purpose
- evaluate whether the functions given to the Gasfields Commission are sufficient to allow it to effectively manage disputes about land access and other disputes between resource companies and landholders
- evaluate whether the functions given to the Gasfields Commission should include a role in managing or facilitating responses to public health and community concerns arising from onshore gas activities.
- investigate whether an alternative model, such as an independent Resources Ombudsman, is needed to provide a mechanism for dispute resolution between resource companies and landholders
- investigate whether harmonisation between the CSG Compliance Unit and the Gasfields Commission would provide efficiencies and improve dispute resolution between resource companies and landholders

- any other relevant matters the reviewer considers appropriate.

1.4 REQUIREMENTS

The reviewer will undertake consultation with key stakeholders including but not limited to:

- Rural landholders
- Gasfields Commission Queensland
- Queensland Mental Health Commission
- Australian Petroleum Production and Exploration Association (APPEA)
- Queensland Resources Council
- Association of Mining and Exploration Companies (AMEC)
- AgForce
- Queensland Farmers Federation
- Local Government Association of Queensland
- Lock the Gate Alliance Limited
- Queensland South Native Title Services (QSNTS)
- Basin Sustainability Alliance
- Property Rights Australia
- Save our Darling Downs
- Department of Natural Resources and Mines (including the CSG Compliance Unit and the Office of Groundwater Impact Assessment)
- Queensland Health
- Department of Environment and Heritage Protection
- Department of Agriculture and Fisheries
- Centre for Coal Seam Gas – University of Queensland

The independent reviewer will engage broadly across the Surat Basin and may invite written submissions as part of the stakeholder consultation process.

Review information sources

Information sources may include but not be limited to:

- Interviews with key stakeholders and information arising from the interview process
- Information on land access agreements finalised and the number disputed
- Information on complaints to the CSG Hotline and the number of complaints resolved
- Information available to landholders e.g.
<https://www.business.qld.gov.au/industry/csg-Ing-industry/csg-Ing-information-landholders>
- AgForce landholder CSG information sessions and support to help landholders negotiate with CSG companies.

Recommendations

Based on the interviews with key stakeholders and available information, the report will make recommendations to the Director-General, Department of State Development, in relation to:

- The current effectiveness of the Gasfields Commission and options to improve the functions related to public health, community engagement by the Commission and the management of disputes between resource companies and landholders if required.
- Whether there can be harmonisation between the CSG Compliance Unit and the Gasfields Commission to provide efficiencies and improved dispute management processes.

- Whether the community and industry would benefit from the role of the Gasfields Commission being expanded to all resources (coal and minerals as well as petroleum and gas).
- Whether existing regulatory functions in the *Gasfields Commission Act 2013* work effectively in avoiding and resolving conflict between resource companies and landholders or whether amendments to the Act are required.
- Whether an independent Resources Ombudsman (or other responses) is required, with consideration given to practices in other jurisdictions.
- If a Resources Ombudsman model is supported, outline broadly what powers and functions the ombudsman should have in relation to the management of disputes and other matters.
- Opportunities to improve access by (or the information available to), landholders in relation to land access and negotiation with resource companies.
- Opportunities to improve access by (or the information available to and processes in place for) landholders in relation to complaints against resource companies.
- Opportunities and mechanisms to improve access by (or the information and legal information available to) landholders in relation to public health and social services in the context of resources activities.
- Whether there are options to improve the effectiveness of procedures to respond to 'high risk' cases where there are disputes between landholders and resource companies.

1.5 DELIVERABLES

A report to the Director-General, Department of State Development, will be submitted by mid-2016 providing:

- Overview of the existing initiatives related to public health and community engagement (management of disputes between resource companies and landholders).
- Results of consultation with key stakeholders.
- Observations and recommendations as per '1.4 Requirements'.

It should be noted that the report is expected to be made public after consideration by government.

Appendix 2 – Consultation and submitters

List of stakeholders invited to participate in the review

Organisation	Position of Invitee
AgForce	Chief Executive Officer
AMPLA The Resources and Energy Law Association	President Qld Branch
Australia Pacific LNG	Chief Executive Officer
Australian Petroleum Production and Exploration Association	Chief Executive Officer
Arrow Energy	Chief Executive Officer
Association of Mining and Exploration Companies	Regional Manager, Eastern States and NT
Basin Sustainability Alliance	Chairman
Blue Energy	Managing Director
Central Downs Irrigators Limited	Chairman and Vic- Chairman
Central Petroleum	Managing Director and Chief Executive Officer
Chinchilla Community, Commerce and Industry Inc.	President
Commerce Roma	President
Creevey Russell Lawyers	Principal
Dalby Chamber of Commerce and Industry	President
David Hamilton Consulting	Consultant and Landholder
Department of Agriculture and Fisheries	Director-General
Department of Environment and Heritage Protection	Executive Director - Petroleum and Gas Compliance
Department of Natural Resources and Mines	Deputy Director-General, Policy and Program Support
Environmental Defenders Office	Chief Executive Officer
Fraser Valuers Pty Ltd	Director
Gasfields Commission	Chairperson
Hopeland Community Sustainability Group	Spokesperson
Local Government Association of Queensland	Principal Advisor - Resources and Regional Economic Development
Lock the Gate Alliance	National President
Maranoa Regional Council	Mayor and Chief Executive Officer
Miles and District Chamber of Commerce	President
Origin Energy	Chief Executive Officer LNG
Property Rights Australia	Chairman
Queensland Gas Company	Managing Director
Queensland Resources Council	Chief Executive Officer
Queensland Environmental Law Association	President

Queensland Farmers' Federation	Chief Executive Officer
Queensland Health	Executive Director
Queensland Health	Chief Health Officer
Queensland Law Society	Policy Solicitor
Queensland Mental Health Commission	Executive Director
Queensland South Native Title Services	Chief Executive Officer
RJH Consulting	Managing Director
Santos GLNG	Vice President Queensland
Save our Darling Downs	Organiser
Senex Energy Limited	Managing Director and Chief Executive Officer
Tara Futures Group	President
Toowoomba and Surat Basin Enterprise	Chief Executive Officer
Toowoomba Regional Council	Mayor and Chief Executive Officer
University of Queensland - Centre for Coal Seam Gas	Director
Wandoan Chamber of Commerce Inc.	President
Western Downs Regional Council	Chief Executive Officer
Woodside Petroleum	Chief Executive Officer and Managing Director

Letters of invitations were also sent directly to a number of private landholders inviting participation in the review.

List of submitters and interviewees

Organisation or Individual	Submission Received	Interview conducted
Gasfields Commission		
<ul style="list-style-type: none"> John Cotter, Chairperson Rick Wilkinson, Commissioner – Gas Industry Development Ian Hayllor, Commissioner – Water and Salt Management Ray Brown, Commissioner – Local Government and Infrastructure Shane Charles, Commissioner – Community and Business Steven Raine, Commissioner – Science and Research Don Stiller, Commissioner – Land Access Amanda Thomas, Chief Operating Officer 	<p>✓</p>	<p>✓</p> <p>✓</p> <p>✓</p> <p>✓</p> <p>✓</p> <p>✓</p> <p>✓</p>
Agriculture Peak Body		
AgForce <ul style="list-style-type: none"> Charles Burke, Chief Executive Officer 	<p>✓</p>	<p>✓</p>
Cotton Australia <ul style="list-style-type: none"> Michael Murray, Queensland General Manager Felicity Muller, Policy Officer 	<p>✓</p>	<p>✓</p> <p>✓</p>
Queensland Farmers Federation <ul style="list-style-type: none"> Ruth Wade, Chief Executive Officer 	<p>✓</p>	<p>✓</p>
Onshore Gas Industry		
Australian Petroleum Production and Exploration Association (APPEA) <ul style="list-style-type: none"> Matt Paul Chris Lamont 	<p>✓</p>	<p>✓</p> <p>✓</p>
The Association of Mining and Exploration Companies (AMEC) <ul style="list-style-type: none"> Bernie Hogan, Regional Manager, Eastern States and NT 	<p>✓</p> <p>✓</p>	<p>✓</p>

Organisation or Individual	Submission Received	Interview conducted
Queensland Resources Council • Andrew Barger	✓ ✓	✓
APLNG • Page Maxon	(APPEA Submission)	✓
Arrow Energy • Leisa Elder	(APPEA Submission)	✓
Origin Energy • Natasha Patterson • Susan Moore	✓	✓ ✓
Queensland Gas Company (QGC) • Tracey Winters • Tony Nunan, Managing Director	(APPEA Submission)	✓ ✓
Santos • Rob Simpson, General Manager, GLNG Development • Simon Jensen, General Manager Legal and Land Access	(APPEA Submission)	✓ ✓
Government Agencies (Local, State and Commonwealth)		
Department of Agriculture and Fisheries	✓	✓
Department of Environment and Heritage Protection • Anne Lenz, Executive Director, Petroleum and Gas Compliance		✓
Department of Health • Dr Jeanette Young, Chief Health Officer • Sophie Dwyer, Executive Director, Health Protection Branch, Preventative Division • Dr Suzanne Huxley, Senior Medical Officer, Health Protection Branch, Preventative Division • Dr Penney Hutchinson, Director and Physician, Darling Downs Public Health Unit • Peter Boland, Manager, Darling Downs Public Health Unit	✓	✓ ✓ ✓ ✓ ✓
Queensland Mental Health Commission • Carmel Ybarlucea – Executive Director		✓
Queensland Ombudsman • Phil Clarke		✓
Department of National Parks, Sport and Racing	✓	

Organisation or Individual	Submission Received	Interview conducted
Department of Natural Resources and Mines <ul style="list-style-type: none"> James Purtill, Director-General Bill Date, Executive Director, Coal Seam Gas Compliance Unit Randall Cox, General Manager, Office of Groundwater Impact Assessment Rachel Cronin, Deputy Director-General Mineral and Energy Resources 		<ul style="list-style-type: none"> ✓ ✓ ✓ ✓
Maranoa Regional Council <ul style="list-style-type: none"> Tyson Golder, Mayor Julie Reitano, CEO Rob Hayward Ryan Gittins Cameron O'Neill (Former Councillor) 	✓	<ul style="list-style-type: none"> ✓ ✓ ✓ ✓ ✓
Western Downs Regional Council <ul style="list-style-type: none"> Ross Musgrove, Chief Executive Officer 	✓	✓
Commonwealth Department of Innovation <ul style="list-style-type: none"> Ms Nicole Hinton (Department of Innovation) Dr Chris Lock (Department of Innovation) Dr Andrew Heap (Department of Innovation) 		<ul style="list-style-type: none"> ✓ ✓ ✓
Community and Environment Groups		
Basin Sustainability Alliance <ul style="list-style-type: none"> Lee McNicholl Chairman 	✓	✓
Central Downs Irrigators Ltd <ul style="list-style-type: none"> Graham Clapham 	✓	✓
Property Rights Australia <ul style="list-style-type: none"> Dale Stiller, President (Also a landholder) 	✓	✓
Tara Futures Group <ul style="list-style-type: none"> Gayle Porter 		✓
Wildlife Preservation Society of Queensland - Upper Dawson Branch	✓	
Regional Chamber of Commerce and Business Interest Groups		
Chamber of Commerce, Roma <ul style="list-style-type: none"> Carmen Roberts, President 		✓

Organisation or Individual	Submission Received	Interview conducted
Chinchilla Community, Commerce and Industry • Rob Hart, President		✓
Toowoomba Surat Basin Enterprise Pty Ltd • Dr Ben Lyons, Chief Executive Officer		✓
Wandoan Commerce • Kaylene Clarris, President		✓
Landholders and Regional Residents		
Ann Coward		
Ash Geldard		✓
Bender Family	✓	✓
Cecilia Donohoe	✓	✓
Cowan Keys		✓
Darryl Bishop	✓	
David Hamilton		✓
David Hubbard	✓	
Dennis Itzstein		✓
EA Turner	✓	
Elly Prendergast	✓	
Eric Rossteuscher	✓	
Gary and Kerry Ladbrook	✓	
Graham Clapham (Landholder and Deputy-Chairman, Central Downs Irrigators Ltd)	✓	✓
Jennie Hill	✓	
Jenny York	✓	
Jodie Sheehan	✓	
John Erbacher	✓	✓
John and Jo Jenkyn		✓
Julia desBrosses	✓	
Karis Muller	✓	
Keith Proud		✓
Kel Kelly	✓	
Kerry Ladbrook	✓	
Lee McNicholl (Landholder and Chairman, Basin Sustainability Alliance)	✓	✓
Lindsay Berry	✓	
Lynette Grabbe	✓	
Mark Driscoll	✓	

Organisation or Individual	Submission Received	Interview conducted
Maxwell Winders	✓	✓
Pam King	✓	
Paul Johnston	✓	
Peter Thompson		✓
Ray Howe	✓	
Ree Price		✓
Richard Golden		✓
Rhonda VanGrafhorst	✓	
Robert Loughnan (Landholder and former Mayor, Maranoa Regional Council)		✓
S Baldwin	✓	
Sandra Bamberry	✓	
Shay Dougall	✓	
Stuart Armitage (Landholder and Chairman, Queensland Farmers Federation)	✓	✓
Wesley Back	✓	
Confidential – At the request of the submitter	✓	
Professionals associated with CSG industry/activities		
Ashurst Lawyers, Brisbane <ul style="list-style-type: none"> Gavin Scott, Partner Libby McKillop, Senior Associate 		✓
Ben Deverson, Former General Manager, Gasfields Commission		✓
Centre for Coal Seam Gas, University of Queensland <ul style="list-style-type: none"> Professor Andrew Garnett, Director Helen Schultz, Project Officer (Research and Strategy) 	✓	✓ ✓
Creevey Russell Lawyers, Toowoomba <ul style="list-style-type: none"> Dan Creevey, Principal 		✓
HWL Ebsworth Lawyers <ul style="list-style-type: none"> Andrew Bruton, Partner 		✓
Fraser Valuers, Wandoan <ul style="list-style-type: none"> Malcolm Fraser, Director 		✓
Marland Law – Agribusiness and Advisory, Roma <ul style="list-style-type: none"> Tom Marland (Also a landholder) 	✓	
Shine Lawyers, Dalby		

Organisation or Individual	Submission Received	Interview conducted
<ul style="list-style-type: none"> Peter Shannon, Legal Partner 	✓	✓
Somers Law <ul style="list-style-type: none"> Anne Somers 	✓	✓
Others		
Lifeline – Darling Downs <ul style="list-style-type: none"> Derek Tuffield, Chief Executive Officer 		✓
Local Government Association of Queensland <ul style="list-style-type: none"> Kirsten Pietzner, Principal Advisor, Resources and Regional Development 	✓	✓
Queensland Law Society	✓	

Appendix 3 – Online survey questionnaire

Citizen Space Text

Title: Queensland Gasfields Commission Review

Overview:

This review will investigate the current effectiveness of the Gasfields Commission in relation to management of land access and other disputes between resource companies and landholders, or if an alternative model, such as an independent resources ombudsman is appropriate.

Why are we consulting?

This consultation will provide industry, community groups, agriculture peak bodies, landholders and any other interested parties with an opportunity to provide feedback (by way of submission) on the current model for the Gasfields Commission. It will also help gauge the effectiveness of the Gasfields Commission in achieving its objective to manage and improve sustainable coexistence between rural landholders, regional communities and the onshore gas industry.

Questions:

1. What is your name?
2. What is your email address? [*mandatory field to avoid multiple submissions from the same person*]
3. Town/Suburb:
4. Postcode:
5. Do you identify with any of these groups? (rural landholder, regional community resident, onshore gas industry, agriculture peak body, community/environmental group member, regional chamber of commerce, investor in regional Queensland)
6. What is the name of your organisation?
7. Have you had any direct experience dealing with gas companies? (Yes/No)
8. If you answered yes, please outline your experiences.
9. Have you ever used the Gasfields Commission to assist in your dealings with gas companies? (Yes/No)
10. If yes, please outline your experience in dealing with the Gasfields Commission?
11. Have you ever attended any of the community meetings run by the GasFields Commission? (Yes/No)
12. How aware are you of the powers and functions of the GasFields Commission, set out in the *Gasfields Commission Act 2013*?
13. Do you think the Gasfields Commission should have any additional functions and/or powers? (Yes/No)
14. If you answered yes, please state what you believe these additional functions and powers should be.

15. Thinking about the **quality** of information made available to rural landholders and regional communities by the Gasfields Commission, to what extent do you agree with each of the following statements:

Statement	Strongly Disagree	Disagree	Neither agree or disagree	Agree	Strongly Agree
Information is of a high quality					
There is sufficient, high quality information relating to land access and negotiating with gas companies					
There is sufficient, high quality information for regional communities, including public health					

16. Thinking about **accessibility** to information to what degree do you agree with each of the following statements:

Statement	Strongly Disagree	Disagree	Neither agree or disagree	Agree	Strongly Agree
Access to information for rural landholders and regional communities is readily available					
Information relating to land access and negotiating with gas companies is readily available					
Information for regional communities, including public health is readily available					

17. Does more need to be done to improve the awareness and access of rural landholders and regional communities to relevant information including public health and dispute resolution? (Yes/No)
18. If yes, in your opinion, what improvements can be made?
19. In your opinion has the GasFields Commission improved coexistence between rural landholders, regional communities and the onshore gas industry? (Yes/No)
20. Please state the reasons for your response to question 16.
21. Do you think more could be done to improve coexistence between rural landholders, regional communities and the onshore gas industry? (Yes/No)
22. If you answered yes, what do you think could be done to improve coexistence?
23. In your opinion, would another model such as an independent Resources Ombudsman deliver improved outcomes for rural landholders and regional communities? (Yes/No)
24. If such a model was supported, what purpose, powers and functions would you like to see this organisation have?
25. Have you ever made a complaint to the CSG Compliance Unit? (Yes/No)
26. If yes, how would you rate your experience in dealing with the CSG Compliance Unit? (Very Poor, Fair, Good, Excellent)
27. Is there anything else you would like to add?

- Please tick this box if you would be available should the reviewer wish to discuss your submission.

Thank you for taking the time to make a submission.

Appendix 4 – Legislative framework

Land access and compensation for petroleum exploration and production and mineral and coal exploration on private land

1 Overview

- 1.1 In 2010, the Queensland Government introduced new land access laws that provide uniform requirements and processes in relation to access to private land and compensation for development and exploration under certain resource authorities.¹
- 1.2 The processes apply to the following resource authorities:
- Mineral Resources Act 1989* (Qld) (**MRA**) – exploration permits and mineral development licences;
 - Petroleum and Gas (Production and Safety) Act 2004* (Qld) (**P&G Act**) – all authorities;
 - Petroleum Act 1923* (Qld) – all authorities;
 - Greenhouse Gas Storage Act 2009* (Qld) – all authorities;
 - Geothermal Energy Act 2010* (Qld) – all authorities.

2 Right of access – land outside of an authority area

- 2.1 As a preliminary point and in addition to the uniform access laws, the P&G Act also allows access to private land where a petroleum authority holder needs to cross land (access land)² in order to enter the petroleum authority area (authority land) and the owner and/or occupier of land and the petroleum authority holder have entered into a statutory agreement.

For example:

Road	<p>Access land</p> <p>(Access agreement required to allow a holder to cross the access land)</p>	<p>Authority Land</p> <p>(where authorised activities are to be carried out)</p> <p>Holder needs to either:</p> <ul style="list-style-type: none"> • enter into a conduct and compensation agreement; or • enter into a deferral agreement; or • make an application to the Land Court; or • enter into an opt out agreement (once legislation comes into force) <p>to enter the authority land.</p>
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- 2.2 Unless an exception applies, a petroleum authority holder must enter into an access agreement with the owner of the access land. There is no equivalent provision for exploration tenements under the MRA³.
- 2.3 An access agreement may include compensation and the agreement binds not only the parties to it but also their successors and assigns⁴.

¹ For example, see *tips for landowners negotiating agreements with resource companies*, Queensland Government, current from November 2010, pg 1.

² Section 502 of the P&G Act.

³ For example, where access to access land is required to preserve life or property because of a dangerous situation or emergency. Where the access rights are likely to have a permanent impact on the access land, the access agreement must be entered into with both the landowner and occupier. If exercising the access rights is unlikely to have a permanent impact on the land, an access agreement is only required to be entered into with the occupier of the land. See section 503 of the P&G Act.

⁴ See Sections 506(3) and Section 507 of the P&G Act. In this sense, an access agreement is similar to a conduct and compensation agreement.

2.4 A landowner or occupier (**landholder**), if asked by a petroleum authority holder, must not unreasonably refuse to make an access agreement⁵ and the P&G Act sets out what is to be taken into account in determining whether it is reasonably necessary for the petroleum authority holder to enter the access land.⁶

2.5 If a dispute arises between a landholder and the petroleum authority holder in relation to whether the access is reasonably required, either party may refer the matter to the Land Court.⁷

3 Right of access - authority land – distinguishing between preliminary and advanced activities

3.1 The process for entry onto private land under an exploration tenement or a petroleum authority depends on whether the activities to be carried out are ‘preliminary activities’ or ‘advanced activities.’⁸

3.2 This principle is the same under both the P&G Act and the MRA (but does not apply in the same way to mining leases for mineral and coal production).

3.3 Whether a resource activity is considered ‘preliminary’ or ‘advanced’ will impact a landowner’s rights.⁹

Preliminary activities

3.4 Preliminary activities are those activities that have no or only very minor impact on the landholder’s business or land use activities. Examples include: a representative walking over land, driving along an existing track, surveying that does not require site preparation, or taking soil or water samples.¹⁰

3.5 For preliminary activities, a resource company must give a landholder at least 10 business days’ notice of entry onto their land (**entry notice**), unless a shorter period has been agreed.¹¹ An agreement (such as a conduct and compensation agreement) is not required for a holder to access authority land to undertake preliminary activities.

3.6 The legislation specifies that the following activities are not preliminary activities:

- activities that occur on an area of land smaller than 100ha that is being used for intensive farming or broadacre agriculture (for example, a piggery or poultry farm);
- activities that are to be carried out within 600 metres of a school or occupied residence;¹² or
- activities that affect the lawful carrying out of an organic or bio-organic farming system.

A conduct and compensation agreement or a deferral agreement will need to be negotiated before these activities can occur.¹³

Advanced activities

3.7 An advanced activity is one that is likely to have a significant impact on the landholder’s use of the land. Advanced activities include all other activities (other than preliminary activities), such as drilling of wells or bores, constructing a track or access road, changing a fence line, bulk sampling or laying of pipelines.¹⁴

⁵ Section 504(1) of the P&G Act.

⁶ Section 505 of the P&G Act.

⁷ Sections 508 – 510 of the P&G Act set out the powers of the Land Court in deciding disputes relating to access land. This paper provides a short overview and not a comprehensive summary of these sections of the Act.

⁸ *Energy and Resources Law in Queensland*, Lexus Nexus online resource.

⁹ Bodenmann, J, Cameron, M, O’Hare, K, Soloman, E.R and Bell, Dr J, ‘*Research Note: A comparative study into the rights of landowners to prevent access to land by mining companies*’ (July 2012), T.C Beirne School of Law, University of Queensland, p 9.

¹⁰ Dictionary, Schedule 3 of the P&G Act and Schedule 1, section 2 of the MRA.

¹¹ Section 495 of the P&G Act and Schedule 1, section 5 of the MRA.

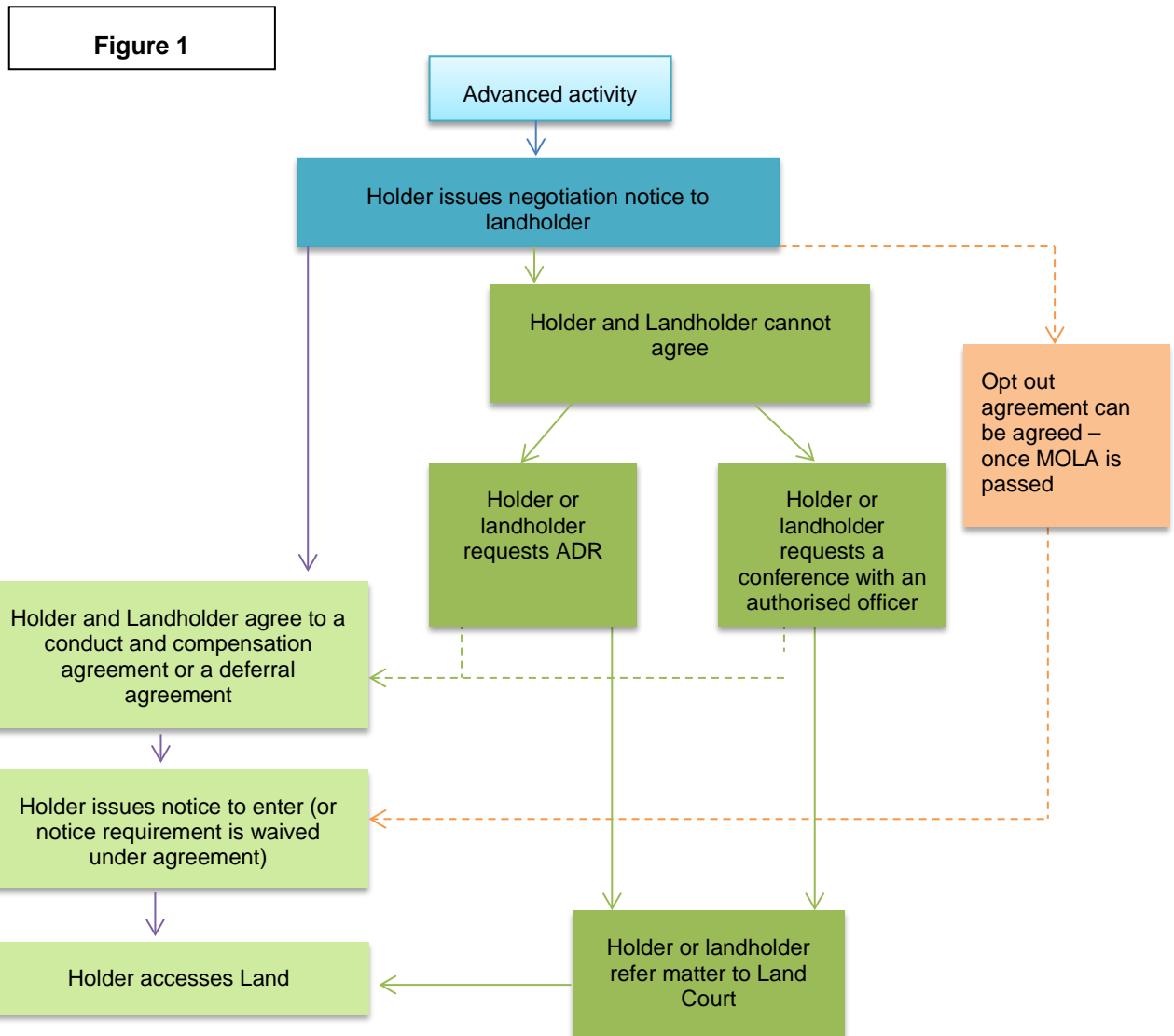
¹² Note, after commencement of the *Mineral and Other Legislation Amendment Bill 2016 (MOLA Bill 2016)* the 600 metre rule will be removed. Instead, landholders will have the right to say no to resource activities within 50 metres of agricultural infrastructure and within 200 metres of a house, school, childcare centre, church etc.

¹³ See definition of ‘preliminary activity’ in Schedule 2 of P&G Act and definition of ‘preliminary activity’ in section 2, Schedule 1 of the MRA.

¹⁴ Schedule 2 definitions of the P&G Act and Schedule 1, section 3 of the MRA.

- 3.8 Before a petroleum authority holder or an exploration tenement holder (referred to as **holders**) can undertake 'advanced' activities on private land, the holder needs to either:
- (a) enter into a deferral agreement with the landholder;¹⁵
 - (b) enter into a conduct and compensation agreement with the landholder;¹⁶ or
 - (c) refer the matter to the Land Court.

The process is summarised in the flow chart in Figure 1 and set out in more detail in the following sections.



¹⁵ Sections 500A and 500B of the P&G Act and Schedule 1, sections 11 and 12 of the MRA.

¹⁶ Section 500 of the P&G Act and Schedule 1, section 10 of the MRA.

4 Deferral agreements

- 4.1 Deferral agreements allow a landholder and a holder to defer the signing of a conduct and compensation agreement.¹⁷ The deferral agreement must be in writing and specify what activities will be carried out on the land and for what duration.¹⁸ The agreement also needs to state when the parties propose to enter into a conduct and compensation agreement.
- 4.2 A template deferral agreement is available from the Queensland Government.¹⁹ This standard deferral agreement sets out terms for inclusion in the agreement between the parties if the landholder agrees to 'hold off' entering into a conduct and compensation agreement with the holder until a later time. This option allows further information to be gathered to determine the possible impacts of the authorised activities.²⁰
- 4.3 To commence negotiations for a deferral agreement, a holder must give a landholder a notice that the holder wishes to negotiate a deferral agreement and include the reasons for it.²¹
- 4.4 The process for negotiating a deferral agreement under the legislation is the same as that for a conduct and compensation agreement,²² which is set out in the next part.

5 Conduct and compensation agreements

- 5.1 A conduct and compensation agreement must cover:²³
- (a) how and when the holder may enter the land;
 - (b) how authorised activities will be carried out on the land (to the extent they effect the landholder); and
 - (c) the holder's current or future compensation liability and how and when compensation will be addressed.²⁴
- 5.2 The conduct and compensation agreement must be in writing, must state whether it is for all or part of the compensation liability²⁵ and must be signed for or by the landholder.²⁶
- 5.3 The legislation does not expressly limit the matters that can be included; however its terms cannot be inconsistent with the mandatory conditions in the Land Access Code or the relevant legislation.²⁷

Compensation under a conduct and compensation agreement

- 5.4 The legislation imposes liability on a holder to compensate each landowner or occupier for any 'compensatable effect' the landholder suffers that is caused by the authorised activities.²⁸
- 5.5 These compensation arrangements are in place to ensure that landholders are not financially disadvantaged by activities carried out on the land.
- 5.6 Legislation defines a 'compensatable effect' to mean all or any of the following relating to the authority land:²⁹

¹⁷ Sections 500A and 500B of the P&G Act and Schedule 1, sections 11 and 12 of the MRA.

¹⁸ The requirements of a deferral agreement are set out in section 500B of the P&G Act and Schedule 1, section 12 of the MRA.

¹⁹ Department of Natural Resources and Mines Portal, Queensland Government, Brisbane http://www.dnrm.qld.gov.au/_data/assets/word_doc/0009/193077/deferral-agreement.doc

²⁰ *Guide to Queensland's new land access laws*, State of Queensland, Department of Employment, Economic Development and Innovation, 2010, p4.

²¹ The requirements for a negotiation notice are set out in section 535 of the P&G Act and Schedule 1, section 16 of the MRA.

²² Sections 535 and 536 of the P&G Act and Schedule 1, sections 16 and 17 of the MRA.

²³ Section 533(1) of the P&G Act and schedule 1, section 14 of the MRA.

²⁴ Section 533 of the P&G Act and Schedule 1, section 14 of the MRA.

²⁵ A conduct and compensation agreement can relate to all or part of the liability or future liability. See section 533(3) of the P&G Act and Schedule 1, section 14(3) of the MRA.

²⁶ Under clause 532 of the P&G Act and Schedule 1, clause 13 of the MRA, each owner or occupier of private or public land is an 'eligible claimant' for the purposes of any compensatable effect that is suffered because of the authorised activities being carried out on the land.

²⁷ Section 533(2) of the P&G Act and Schedule 1, section 14(2) of the MRA and S Christensen, P O'Connor, W D Duncan and A Phillips, 'Regulation of land access for resource development: A coal seam gas case study from Queensland' (2012) 21 Australian Property Law Journal, 119.

²⁸ Section 532 of the P&G Act and Schedule 1, section 13 of the MRA.

²⁹ Section 532 of the P&G Act and Schedule 1, section 13 of the MRA.

- (a) deprivation of possession of the land's surface;
 - (b) reduction in land value;
 - (c) reduction in land use including a reduction in the use of any improvements;
 - (d) severance of any land from other parts of the land owned by the landowners;
 - (e) any cost, damage or loss arising from activities carried out under the land surface;
 - (f) accounting, legal or valuation costs reasonably incurred by the landholder to negotiate or prepare a conduct and compensation agreement, other than the costs of a person facilitating an alternative dispute resolution; and
 - (g) damages incurred by the landholder as a consequence of matters mentioned above.
- 5.7 Compensation may be monetary and non-monetary.³⁰ Non-monetary compensation can include for example, the holder providing water to a landholder or building a road.
- 5.8 The Department of Natural Resources and Mines provides a standard conduct and compensation agreement template to assist landholders in negotiating with holders.³¹
- 5.9 If the petroleum authority is a pipeline licence or petroleum facility licence, a compensation agreement about the holder's compensation liability may be included in the easement relating to the licence.³²

6 Opt-out agreements

- 6.1 In the future, landholders will be able to elect to opt-out of entering into a conduct and compensation agreement or a deferral agreement with a holder.³³ There will be a 10 business day cooling off period for the opt-out agreement.
- 6.2 The opt-out agreement concept was developed out of a recommendation made under the twelve month review of the Land Access Framework in 2012.
- 6.3 The panel stated that "*In certain cases, the parties did not feel the formal CCA [conduct and compensation agreement] process was necessary after many years of continued cooperation and interaction*". Some stakeholders that had built relationships before the new land access arrangements felt that the formal conduct and compensation agreement process was unnecessary in those particular cases. In addition, it was felt that an 'opt-out process' would provide flexibility to those parties, however, with the continued protection of the Land Access Code.³⁴
- 6.4 The opt-out agreement will remain in force until the end date specified in the agreement or until the parties enter into a deferral agreement, conduct and compensation agreement, or another opt-out agreement.
- 6.5 Regulations that will prescribe requirements for the opt-out agreement have not yet been drafted.

7 Commencing negotiations

- 7.1 In order to start negotiating a conduct and compensation agreement a holder must give a landholder a negotiation notice.³⁵ The notice must be provided together with the Land Access Code.
- 7.2 The negotiation notice must state:
- (a) whether the holder wishes to negotiate all or part of the holder's compensation liability;

³⁰ Section 534(2)(b)(i) of the P&G Act and Schedule 1, section 15(2)(a)(i) of the MRA.

³¹ Department of Natural Resources and Mines Portal, Queensland Government, Brisbane, http://www.dnrm.qld.gov.au/_data/assets/word_doc/0006/193074/conduct-compensation-agreement.doc

³² Section 533(4) of the P&G Act.

³³ Section 45 *Mineral and Energy Resources (Common Provisions) Act 2014* (Qld) (**MERC**P).

³⁴ *Land Access Framework – 12 month review; Report of the Land Access Review Panel*, February 2012, Watson, Dr D, Dickie, Dr G, Cotter, J, Clark, A and Sansom, G, p 25.

³⁵ Section 535 of the P&G Act and Schedule 1, section 16 of MRA. The parties can start negotiating outside the framework. However, for a binding conduct and compensation agreement, the requisite notice and minimum negotiating period must be observed before the agreement can be entered into.

- (b) if the holder wishes to negotiate only part of the compensation liability, which part it wishes to negotiate;
 - (c) the land the holder proposes to enter;
 - (d) the activities proposed to be carried out on the land;
 - (e) when and where the activities are proposed to be carried out; and
 - (f) if the holder is a corporation – the contact details for the holder and the individual who is authorised to carry out negotiations.³⁶
- 7.3 The negotiation notice triggers the start of a ‘minimum negotiation period’ of 20 business days but the parties may continue to negotiate as long as they wish.³⁷ There is no maximum negotiation period under the legislation.
- 7.4 During the minimum negotiation period, the holder cannot access the land to carry out advanced activities, even if a conduct and compensation agreement has been signed. The ‘minimum negotiation period’ may be extended because of reasonable or unforeseen circumstances.³⁸

8 What happens if a deferral agreement or a conduct and compensation agreement cannot be agreed?

- 8.1 Where an agreement cannot be reached within the minimum negotiation period, the parties can continue to negotiate or either party may trigger the dispute resolution processes under the legislation.³⁹
- 8.2 Two dispute resolution avenues are available: a ‘conference’ held by authorised officers or an alternative dispute resolution process.
- 8.3 If the parties haven’t agreed on a conduct and compensation agreement at the end of the dispute resolution process, the matter may be referred to the Land Court for determination.
- 8.4 It is not possible for either of the parties to make an application to the Land Court if the parties have not first attempted alternative dispute resolution or a conference with an authorised officer and complied with the relevant sections of the legislation.⁴⁰ This process is in place to ensure that ‘matters are only referred to the Land Court as a last resort.’⁴¹

Conference with an authorised officer

- 8.5 If, at the end of the minimum negotiation period, the parties have not entered into a conduct and compensation agreement, either party can issue a notice to the other party and request that an authorised officer call a conference to negotiate a conduct and compensation agreement.⁴²
- 8.6 The officer must take all reasonable steps to hold the conference within 20 business days of it being requested.⁴³ The conferences are free of charge. The role of an authorised officer at the conference is to endeavour to help the parties reach an early and inexpensive settlement of the subject of the conference.⁴⁴

³⁶ Section 535 of the P&G Act and Schedule 1, section 16 of MRA.

³⁷ See section 536(2)(b) of the P&G Act and Schedule 1, section 17(2)(b) of the MRA.

³⁸ Section 536A of the P&G Act and Schedule 1, section 18 of the MRA.

³⁹ Section 537A of the P&G Act and Schedule 1, section 20 of the MRA.

⁴⁰ Section 537B of the P&G Act which deals with when an application can be made to the Land Court for a determination on compensation. The section states that an application can be made if:

- an election notice is given and a conference is called, but the conference is not concluded within the specified timeframe;
- alternative dispute resolution is called for and the facilitator does not finish the alternative dispute resolution within the specified timeframe;
- only one party attended the conference or alternative dispute resolution; or
- both parties attended a conference or alternative dispute resolution and no conduct and compensation agreement was reached between the parties.

A similar process is set out in the MRA at Schedule 1, section 22.

⁴¹ *Land Access Framework – 12 month review; Report of the Land Access Review Panel*, February 2012, Watson, Dr D, Dickie, Dr G, Cotter, J, Clark, A and Sansom, G, p 3.

⁴² Section 537A of the P&G Act and Schedule 1, section 20 of MRA.

⁴³ Section 537AB of the P&G Act and Schedule 1, section 21(2) of the MRA.

⁴⁴ Section 734F of the P&G Act and section 335J of the MRA.

- 8.7 The authorised officer may, by notice, ask the holder and the landholder to attend a conference. The notice must state what will be discussed at the conference and where and when the conference will be held.⁴⁵ A lawyer can only attend the conference if all parties agree and the authorised officer considers there will be no disadvantage to a party.⁴⁶
- 8.8 If an agreement is made at the conference, it must be in writing and signed by or for the parties.⁴⁷
- 8.9 If a party (that has been given a notice) does not attend the conference and does not have a reasonable excuse, the other party may apply to the Land Court for an order that the non-attending party pay the reasonable costs of attendance at the conference.⁴⁸ If the Land Court makes the order, it must decide the amount of the costs.⁴⁹ Statements made by either party at conference are not admissible in evidence in any proceedings without the party's consent.⁵⁰

Independent alternative dispute resolution

- 8.10 Instead of a conference, either party can, by notice, call upon the other party to agree to an alternative dispute resolution process to negotiate a conduct and compensation agreement.⁵¹
- 8.11 The party who requests alternative dispute resolution must pay for the cost of the facilitator and nominate which type of alternative dispute resolution they require, for example, mediation, arbitration, negotiation or conciliation.⁵²
- 8.12 The facilitator must be independent of both parties.⁵³
- 8.13 The parties must use reasonable endeavours to have the dispute resolution process completed within 20 business days of the giving of the notice.⁵⁴ If a party does not attend the conference and does not have a reasonable excuse, the Land Court may order that person to pay the other party's reasonable costs of attendance at the conference.⁵⁵

Land Court

- 8.14 If a conduct and compensation agreement has not been made and a dispute resolution process has not been successful, then an eligible party can refer the matter to the Land Court for a determination on compensation.⁵⁶ Currently, the Land Court has the jurisdiction to determine compensation issues under the legislation but not issues relating to conduct.⁵⁷ However, once legislative amendments are made, the Land Court will have jurisdiction to determine how and when the holder may enter the land.⁵⁸
- 8.15 Once a matter has been referred to the Land Court the holder is able to enter the landholder's land, as long as notice of entry has been provided.

9 Accessing land – notice requirements for advanced activities

- 9.1 If accessing land under an access agreement,⁵⁹ a deferral agreement⁶⁰ or a conduct and compensation agreement or if the matter has been referred to the Land Court, an entry notice must be given to the landholder at least 10 business days before the entry.⁶¹

⁴⁵ Section 734C of the P&G Act and section 335G of the MRA.

⁴⁶ Section 734D of the P&G Act and section 335H of the MRA.

⁴⁷ Section 734H of the P&G Act and section 335L of the MRA. The agreement may be a conduct and compensation agreement or an amendment to an existing conduct and compensation agreement.

⁴⁸ Section 734E of the P&G Act and section 335I of the MRA.

⁴⁹ Section 734E(5) of the P&G Act and section 335I(5) of the MRA.

⁵⁰ Section 734G of the P&G Act and section 335K of the MRA.

⁵¹ Section 537A of the P&G Act and Schedule 1, section 20 of the MRA.

⁵² Section 537A of the P&G Act and Schedule 1, section 20 of the MRA.

⁵³ Section 537A(5) of the P&G Act and Schedule 1, section 20(5) of the MRA.

⁵⁴ Section 537AB of the P&G Act and Schedule 1, section 21 of the MRA.

⁵⁵ Section 734E of the P&G Act and section 335I of the MRA.

⁵⁶ Section 537B of the P&G Act and Schedule 1, section 22 of the MRA. An eligible party under these sections means the party who attended the ADR or conference.

⁵⁷ Section 537B of the P&G Act and Schedule 1, section 22 of the MRA. Note that the Land Court can only decide the liability or future liability for compensation under these sections to the extent the compensation is not the subject of a conduct and compensation agreement.

⁵⁸ Section 96(2)(c) of MERCP.

⁵⁹ Sections 497 and 506(1) of the P&G Act. Note there is no in the MRA.

⁶⁰ Section 495(1)(b) and section 500A(e)(i) of the P&G Act and Schedule 1, sections 5 and 11 of the MRA.

- 9.2 However, an entry notice is not required where the holder owns the land, where the landholder has waived the requirement in writing (for example, in a conduct and compensation agreement),⁶² or the entry is to preserve life or property because of an emergency.⁶³
- 9.3 The holder will not need to provide notice to the landowner before entry onto the land if there is an opt-out agreement in place.⁶⁴ However, the opt-out agreement itself may provide for notice of entry to the landowner.
- 9.4 The notice of entry needs to specify the land which is proposed to be entered, the entry period, the activities that will be carried out, when and where the activities will occur and contact details for the holder.⁶⁵ The entry period differs depending on the type of tenure held and the legislation that regulates it.⁶⁶
- 9.5 A failure to properly notify under the legislation may end in an action against the holder. In 2009, the O'Connor's brought an action against Arrow Energy in the Supreme Court. The Court found that Arrow Energy had failed to disclose in its notice that it would be installing a 'treated water pipeline' on the O'Connor's property. The Court found the reference to 'water pipelines' in the notice meant untreated water pipelines only. The O'Connor's were entitled to declarations as to the unlawfulness of Arrow Energy's entry onto their land to construct the treated water pipeline and the O'Connor's received an award of damages.⁶⁷

Notice given after entry onto land

- 9.6 Within three months of a resource company having entered private land to carry out petroleum activities, the resource company must give each landholder a notice stating what activities were carried out and where.⁶⁸

10 Amending a conduct and compensation agreement

- 10.1 The circumstances in which a conduct and compensation agreement can be varied are limited; however, a conduct and compensation agreement itself may provide a process by which it can be amended.⁶⁹
- 10.2 Where a conduct and compensation agreement has already been agreed or the Land Court has previously made a decision on the compensation payable, a party may refer the matter to the Land Court. The referral in these circumstances is for the Land Court to review the original compensation amount if there has been a material change in circumstances since the agreement was made or the original compensation was decided upon.⁷⁰
- 10.3 It has been said that "*the phrase 'material change in circumstances' is difficult to define, although guidance can be taken from the limited judicial interpretation available*".⁷¹
- 10.4 An example of a material change in circumstances could be a change in the extent of activities required under a later development plan for a petroleum lease or a change in a mining program that is significant enough to require a change in the environmental authority.⁷²

⁶¹ Section 495 of the P&G Act and Schedule 1, sections 5, 6 and 7 of the MRA.

⁶² Unless the waiver is in a conduct and compensation agreement, it must be written and signed. The requirements for the waiver are set out in section 498 of the P&G Act and Schedule 1, section 8 of the MRA.

⁶³ Section 497 of the P&G Act and Schedule 1, section 7 of the MRA.

⁶⁴ Section 40(2)(c) of MERCP.

⁶⁵ Section 496 of the P&G Act and Schedule 1, section 6 of the MRA. A first entry notice must also include certain attachments such as a copy of the petroleum authority or exploration tenement (whichever is relevant), a copy of the land access code, etc.

⁶⁶ For example, an entry period for an authority to prospect is generally not longer than 6 months and not longer than a year for a petroleum authority under section 496(3) of the P&G Act. An entry period for an exploration tenement holder is generally not longer than 6 months under schedule 1, section 6(3) of the MRA.

⁶⁷ *O'Connor & O'Connor v Arrow (Daandine) Pty Ltd* [2009] QSC 432 and Dr. N Swayne, 'Regulating Coal Seam Gas in Qld: Lessons in an adaptive environmental management approach?' (2012) 29 EPLJ, 163 at 173.

⁶⁸ Section 513 of the P&G Act.

⁶⁹ Section 534(2)(b)(ii) of the P&G Act and Schedule 1, section 15(2)(a)(ii) of the MRA and S Christensen, P O'Connor, W D Duncan and A Phillips, 'Regulation of land access for resource development: A coal seam gas case study from Queensland' (2012) 21 Australian Property Law Journal, 120.

⁷⁰ Section 537C of the P&G Act and Schedule 1, section 23 of the MRA.

⁷¹ S Christensen, P O'Connor, W D Duncan and A Phillips, 'Regulation of land access for resource development: A coal seam gas case study from Queensland' (2012) 21 Australian Property Law Journal, 120.

⁷² *Slater v Appleton* [2012] QLC 7 (24 February 2012) at [35] – [36].

11 Enforcing a conduct and compensation agreement

- 11.1 The P&G Act does not make compliance with a conduct and compensation agreement a condition of the petroleum authority. Therefore, a failure to pay compensation or comply with other terms under the conduct and compensation agreement will not enliven the 'noncompliance action' provisions of the P&G Act.
- 11.2 A landholder's remedy for a breach of a conduct and compensation agreement is by way of a breach of contract.
- 11.3 Alternatively, a landholder may apply to the Land Court for certain orders in relation to the conduct and compensation agreement.
- 11.4 The Land Court may, in certain circumstances:⁷³
- (a) assess all or part of the relevant petroleum authority holder's compensation liability to another party;
 - (b) decide a matter related to the compensation liability;
 - (c) declare whether or not a proposed authorised activity for the relevant petroleum authority would, if carried out, interfere with the carrying out of lawful activities by a landholder.
- 11.5 Orders can then be made that require resource companies to modify or reduce their activities and conditions can be imposed or changed that will be binding on the parties as a conduct and compensation agreement.⁷⁴
- 11.6 Prior to going to the Land Court, either party may request either a conference with an authorised officer or independent alternative dispute resolution. However, the issues that an owner or occupier can request a conference or ADR about do not specifically relate to the enforcement of a conduct and compensation agreement. For example, a landowner can request a conference if they are concerned the tenure holder is not complying with a condition of their tenure or the legislation or generally concerned about the conduct or proposed conduct of someone acting under a mining tenement or petroleum authority.⁷⁵

12 Land Access Code

- 12.1 All petroleum explorers and producers and mineral and coal explorers undertaking activities on private land in Queensland must comply with the mandatory conditions of the Land Access Code.⁷⁶
- 12.2 The Code provides protection and security for landholders in relation to CSG exploration, development and production activities and coal and mineral exploration activities. The Code aims to ensure that resource companies minimise their impact on existing land and business operations.
- 12.3 The Code:
- (a) states best practice guidelines for communication between holders and owners and occupiers of private land; and
 - (b) imposes mandatory conditions on exploration permits and mineral development licences⁷⁷ and all petroleum authorities⁷⁸ concerning the conduct of authorised activities on private land.
- 12.4 The Code aims to ensure that holders operate safely and minimise their impact on existing operations, take steps to minimise the risk of spreading pests and weeds, ensure gates are left as they were found and that any waste created by the holder is removed from the property.
- 12.5 Briefly, the mandatory conditions of the Land Access Code cover:

⁷³ For example, if the holder has carried out a preliminary activity; if the parties cannot reach agreement about a conduct and compensation agreement or if there is a conduct and compensation agreement or deferral agreement between the parties. See section 537DB of the P&G Act.

⁷⁴ See sections 537DB and 537DC of the P&G Act. These sections differ from the equivalent sections in the MRA (that is, Schedule 1, Part 7 of the Act which only includes additional jurisdiction in relation to compensation liability).

⁷⁵ Section 734B of the P&G Act and section 335F of the MRA.

⁷⁶ Section 555 of the P&G Act and sections 141 and 194 of the MRA.

⁷⁷ Sections 141(1)(aa) and 194(1)(aa) respectively of the MRA.

⁷⁸ Section 555 of the P&G Act.

- (a) induction training;
- (b) access points, roads and tracks;
- (c) livestock and property;
- (d) preventing spread of declared pests;
- (e) camping;
- (f) items brought onto the land;
- (g) gates, grids and fences.

13 Breaches of the Land Access Code

Compliance action

- 13.1 Compliance action can be taken against a resource company that fails to comply with notification processes in legislation or breaches a mandatory condition of the Land Access Code. Compliance and enforcement of the resources legislation and Land Access Code is overseen by DNRM.
- 13.2 The CSG Compliance Unit in DNRM is responsible for ensuring that petroleum holders comply with their licensing requirements, current laws and policies. Enforcement of the Land Access Code for coal and mineral exploration is performed by DNRM field and land access officers.

Compliance directions

- 13.3 An inspector or an authorised officer is able to issue a compliance direction to a holder if an inspector or an authorised officer reasonably believes a person has contravened, or is involved in an activity that is likely to contravene, a mandatory provision of the Land Access Code.⁷⁹ The compliance direction is a written direction to take steps reasonably necessary to remedy the contravention or avoid the contravention.
- 13.4 A compliance direction must state the following—⁸⁰
- (a) that the authorised officer or inspector giving it believes the person given the direction—
 - (i) has contravened, or is contravening, the relevant legislation or a mandatory provision of the land access code; or
 - (ii) is involved in an activity that is likely to result in a contravention of the relevant legislation or a mandatory provision of the land access code;
 - (b) the provision the inspector or authorised officer believes is being, has been, or is likely to be, contravened;
 - (c) the reasons for the belief;
 - (d) that the person must take steps reasonably necessary to remedy the contravention, or avoid the likely contravention, within a stated reasonable period.
- 13.5 The direction may also state:
- (a) the steps the inspector or authorised officer reasonably believes are necessary to remedy the contravention or avoid the likely contravention; or
 - (b) that the person must notify the inspector or authorised officer when the person has complied with the compliance direction; or
 - (c) that an inspector or authorised officer proposes, at a stated time or at stated intervals, to enter premises of which the person is the owner or occupier to check compliance with the direction.⁸¹
- 13.6 Compliance directions are able to be given verbally in limited circumstances.⁸²

⁷⁹ Section 780 of the P&G Act and Section 335A of the MRA. A compliance direction may also be given for a contravention of the legislation.

⁸⁰ Section 781 of the P&G Act and Section 335B of the MRA.

⁸¹ Section 780(3) of the P&G Act and Section 335A of the MRA. Note that an inspector is not mentioned in the relevant sections of the MRA concerning compliance action and enforcement, only an authorised officer. The P&G Act sections include both inspectors and authorised officers.

13.7 The decision to issue the direction is reviewable via internal review.⁸³

14 Penalties for breaches of the Land Access Code

14.1 A failure to comply with a compliance direction without a reasonable excuse can lead to a penalty of up to 500 penalty units for an individual.⁸⁴

14.2 If a petroleum tenure holder has breached the Land Access Code or a direction given under the Act,⁸⁵ a broader range of compliance action is available⁸⁶ –

(a) amending the authority to reduce the term or area of a petroleum authority

(b) amending a condition or imposing a new condition

(c) cancelling the tenure immediately or on a stated day

(d) removing approval of work programs or development plans

(e) imposing a penalty of not more than 2000 penalty units.

14.3 Natural justice is required to be observed and the decision would be judicially reviewable.

⁸² Section 781 of the P&G Act and Section 335B of the MRA.

⁸³ Section 817 of the P&G Act and Section 335D of the MRA.

⁸⁴ Section 782 of the P&G Act and Section 335C of the MRA. Section 782 of the P&G Act states that if a corporation commits an offence against this provision, an executive officer of the corporation, may be taken under section 814A to have also committed the offence. Section 335C of the MRA includes a similar note.

⁸⁵ Section 791(2) of the P&G Act.

⁸⁶ Section 790 of the P&G Act.

Appendix 5 – Government agencies

1 CSG Compliance Unit

The CSG Compliance Unit is set up as a one-stop-shop for community and landholder enquiries, complaints and assistance relating to CSG issues. It is a front-line unit within DNRM and has been operating in its present form since 2012.⁸⁷

It is an important resource for landholders and rural communities in relation to CSG activities in and around their properties. The CSG Compliance Unit provides services throughout the State; however its focus has been the Surat and Bowen basins where most CSG activity is located. Staff are predominantly located in Roma and Toowoomba.

The unit consists of 23 staff with expertise in groundwater, bore drilling, land access, project management, environmental issues and compliance issues.

Role and functions of the CSG Compliance Unit

The CSG Compliance Unit has two main teams:-

- **Groundwater Investigation and Assessment Team** - undertakes groundwater investigations related to the CSG industry: in particular it investigates landholder complaints about water bore impacts, audits CSG company groundwater monitoring, and implements CSGNet (described below).
- **CSG Engagement and Compliance Team** - provides specialised services that respond to landholder, community and public enquiries regarding CSG. It also educates the CSG industry on compliance and undertakes inspections, audits and investigations relating to land access.

Key functions are:

- **Investigations** – the unit investigates and reports on potential impacts from CSG operations on landholder's existing bore water supplies. Landholder concerns or alleged breaches of the Land Access Code are also investigated.

A total of 140 bores have been investigated to date. Of these only five bores were determined to be impacted or impaired by CSG activities. Bore investigations are an expensive and technical exercise. They can involve the collection and analysis of groundwater samples, using downhole techniques to assess bore construction and casing integrity; and analysis of groundwater modelling, rainfall and bore use data to determine if CSG activity has impacted a bore. An investigation into a bore is only commenced if there is a possibility that CSG activities are the cause of any issues (e.g. there are CSG activities nearby).
- **CSGNet** – this is a groundwater monitoring initiative that involves landholders, the CSG Compliance Unit and CSG companies. Private landholders are provided with the skills to measure groundwater levels in their own bores. The groundwater information is then provided to DNRM and collated, and placed on the CSG Queensland Globe and Water Monitoring Portal where it is publicly accessible.
- **Audits** – the CSG Compliance Unit undertakes a proactive audit program with regards to industry compliance with the Land Access Code, identifying areas for company improvement.
- **Conferences** – the unit facilitates 'make good' dispute resolution under Chapter 3 of the *Water Act 2000* in relation to water bores. The CSG Compliance Unit also facilitates conferences conducted by 'authorised officers' between landholders and CSG companies related to negotiating conduct and compensation agreements and issues that arise post-agreement.
- **Landholder information and education** – the CSG Compliance Unit provides an information and education service to landholders through a variety of engagement opportunities at events such as agricultural industry days, and trade and regional agricultural

⁸⁷ The CSG Compliance Unit was formerly called the LNG Enforcement Unit, which was established in February 2011.

shows. Information provided predominantly relates to land access, environmental concerns and 'make good' obligations.

- **Industry information and education** – the unit provides compliance and regulatory education to CSG companies on their obligations under the Land Access Code, and through the proactive inspection and audit program.
- **Engagement** – the CSG Compliance Unit has an engagement program designed to liaise with stakeholders, including landholders, community groups (including activists), peak bodies, local government and industry on CSG related matters.
- **Referrals** – the CSG Compliance Unit interacts with DEHP, Queensland Health and the Gasfields Commission. A memorandum of understanding exists with DEHP while one is being developed for interaction with Queensland Health. The memorandum with DEHP relates to administration of the *Water Act* and *Environmental Protection Act* as they relate to CSG activities. The CSG Compliance Unit acts as a first point of call for landholder enquiries and complaints and refers these to DEHP as required. The CSG Compliance Unit has a role in dispute resolution and undertakes bore investigations to inform compliance responses for the make good framework in the *Water Act*.
- **Compliance** - The *DNRM Coal Seam Gas Engagement and Compliance Plan 2015/2016* broadly sets out the activities the unit will carry out in the areas of groundwater, engagement, safety and health, and systems and administrative processes. This publicly available plan guides the Department's efforts in relation to oversighting and regulating the CSG industry. The plan has targets and key performance indicators that guides the Unit's compliance and engagement focus. The plan articulates the Department's key areas for auditing and compliance activities on an annual basis.

Other activities undertaken by the CSG Compliance Unit include:-

- **Leadership/Strategic Coordination.** The CSG Compliance Unit takes a leadership and strategic coordination role on some multi-jurisdictional issues. For example, the CSG Compliance Unit is leading a whole-of-government project to consolidate historical CSG-related environmental monitoring data - 'Project Stocktake'.
- **Project Stocktake** aims to consolidate and map (using a geographic information system) historical and current environmental data (testing, sampling and monitoring records from government, industry and other sources). This data may be used in the identification of potential health impacts of CSG activity, adjustment of existing monitoring arrangements if necessary and responding to CSG health related concerns raised by the community. Project Stocktake is a key initiative to address environmental and health concerns.
- **Tara Wieambilla Estates.** In 2012-13, the CSG Compliance Unit led efforts to work with the former Tara Estates based Gasfields Community Support Group. The CSG Compliance Unit coordinated regular meetings with residents, gas industry, community groups and government in order to improve social licence and coexistence in this socially disadvantaged district.

CSG Compliance Unit enquiries and investigations

The CSG Compliance Unit receives both general requests for information and complaints that may require investigation. The majority of enquiries come from calls to the CSG Compliance Unit hotline⁸⁸ and the CSG enquiries email form on the DNRM website. The CSG Compliance Unit is the key DNRM liaison point with the Gasfields Commission.

Table 1 shows data, provided by the CSG Compliance Unit, concerning the number of enquiries received each financial year and the type of issue raised.

⁸⁸ (07) 4529 1500.

Table 1: CSG Compliance Unit - Enquiries 2012-13 financial year to 2014-15 financial year⁸⁹

Information requests	2012-13	2013-14	2014-15	2015-16	Total	% of total
Bores (e.g. bore impacts, make good agreements)	39	50	164	98	351	28%
CSG Operations (e.g. rehabilitation, dam management, safety)	45	55	53	52	205	17%
Environmental Services (e.g. environmental authorities – dust, noise, odour, pests)	44	26	22	10	102	8%
Field & Land Access (e.g. entry and access issues, land access code)	-	8	12	14	34	3%
Governance (e.g. legislation and policy, communications)	46	65	52	37	200	16%
Land (e.g. cultural heritage, erosion, mapping)	47	39	14	5	115	10%
Water (e.g. baseline monitoring, general water quality issues)	19	49	23	126	217	18%
Total information requests	240	292	340	52	1224	100%
Complaints and cases						
Bores	7	34	15	11	67	22%
CSG Operations	13	19	25	15	72	23%
Environmental Services	7	32	16	11	66	21%
Field & Land Access		8	6	9	23	7%
Governance	1	2	3	2	8	2%
Land	17	23	6	3	49	16%
Water	5	14	7	1	27	9%
Total complaints & cases	50	132	78	52	312	100%
Total all enquiries	290	424	418	404	1,536	
Total enquiries resolved	285	421	405	320	1,431	93%

⁸⁹ Source: CSG Compliance Unit 13 June 2016.

2 Office of Groundwater Impact Assessment

The Office of Groundwater Impact Assessment (OGIA) an independent statutory entity established under Chapter 3A of the *Water Act 2000* and housed within DNRM, which provides corporate and administrative support. OGIA is funded through an onshore gas industry levy.

CSG production requires the extraction of water from coal seams so the trapped gas can be released and utilised. This water is termed 'associated' water under legislation. The take of associated water is a necessary by-product of CSG production.

The extraction of underground water can result in a lowering of water levels in adjacent aquifers. This may impact water bores and natural springs in the surrounding area.⁹⁰

OGIA has been established to oversee the groundwater impacts of the petroleum and gas industry⁹¹. Due to the number of CSG companies and CSG projects operating in the Surat and southern Bowen areas, a cumulative management area has been declared under Chapter 3 of the *Water Act 2000*.

This means that OGIA is responsible for production of the Underground Water Impact Report (UWIR) for the Surat and southern Bowen cumulative management area. The UWIR models, makes predictions and is a tool to manage the impacts of underground water extraction by CSG companies. It also assigns responsibility to petroleum tenure holders and ensures measures and programs are in place to respond to impacts on underground water.⁹²

The *draft Surat Underground Water Impact Report 2016* was released in late March 2016.⁹³

3 Department of Environment and Heritage Protection

The DEHP is responsible for approving and regulating the environmental aspects of CSG projects. This is mainly done through an environmental authority, which sets out conditions with which an environmental authority holder must comply in order to minimise environmental harm. The environmental authority will generally contain conditions about waste management, water release, stimulation activities and impacts on environmentally sensitive areas. The environmental authority usually requires that any release of odour, dust, other airborne contaminants and light not cause environmental nuisance at any sensitive place and imposes noise limits at sensitive receptors.

DEHP administers the Coal Seam Gas Water Management Policy to guide CSG companies in managing water produced through CSG operations. The objective of the policy is to encourage the beneficial use of CSG water in a way that protects the environment and maximises its productive use as a valuable resource.⁹⁴

Compliance

To ensure environmental risks are being managed appropriately, DEHP monitors the activities of petroleum tenure holders through a compliance program. This comprises:

- A proactive approach - the department strategically targets compliance risks and undertakes a number of inspections, audits and monitoring programs to ensure adherence to legislation, environmental authority conditions and other regulatory requirements.
- A responsive approach – the department responds to reports and complaints regarding incidents or issues with the CSG and LNG industry that impact on the environment.

As part of its proactive approach, DEHP undertakes a Targeted Compliance Program (TCP). The scope of the TCP is determined by DEHP's intelligence function which enables it to continuously monitor new and emerging risks, issues and trends. For example, a recent focus of the TCP has been pre-wet season inspections to ensure that environmental authority holders of high risk mining operations made every effort to prepare for the 2015 -16 wet season and associated heavy rainfall events so as to prevent any breach of environmental authority conditions and to mitigate potential

⁹⁰ Department of Environment and Heritage Protection Portal, Queensland Government, Brisbane <https://www.ehp.qld.gov.au/management/non-mining/groundwater.html>, accessed 24 June 2016.

⁹¹ This extends to all types of petroleum and gas impacts, not just those from CSG

⁹² Department of Environment and Heritage Protection Portal, Queensland Government, Brisbane <https://www.ehp.qld.gov.au/management/coal-seam-gas/cumulative-management.html>, accessed 24 June 2016.

⁹³ Department of Environment and Heritage Protection Portal, Queensland Government, Brisbane <https://www.dnrm.qld.gov.au/ogia/surat-underground-water-impact-report>, accessed 24 June 2016.

⁹⁴ Department of Environment and Heritage Protection Portal, Queensland Government, Brisbane <https://www.ehp.qld.gov.au/management/non-mining/csg-water.html>, accessed 24 June 2016.

harm to the environment. The results from the TCP included identification of issues requiring enforcement actions at 16 sites.

Table 2 shows the data from DEHP's responsive (unplanned) compliance and enforcement events for the last five years.

Table 2: DEHP statistics CSG by complaint nature type⁹⁵

Type	2011	2012	2013	2014	2015	2016
Notifications	27	172	213	112	43	19
Complaints	2	29	13	7	14	3
Enforcement	0	0	2	2	6	0
Total	29	201	228	121	63	22

The data contained in this table displays complaint nature type and includes CSG/LNG: Dust, General, Groundwater, Land, Noise, Surface Water and Vegetation.

Water bores

DEHP is also responsible for administering Chapter 3 of the *Water Act 2000*, which outlines the requirements of CSG and petroleum companies to 'make-good' any impacts of their activities on water bores and springs.

All bores impaired by petroleum⁹⁶ activities must have the impairments 'made good' – regardless of whether they are in an affected area in the UWIR. Landholders who believe their bore impairment is due to the taking of underground water for CSG activities can contact the CSG Compliance Unit.

A CSG company must:

- undertake a bore assessment for bores identified in the 'immediately affected area' of the UWIR
- enter into a make good agreement, and if the bore is or is likely to be impaired, negotiate make good measures for the bore
- comply with the make good agreement
- negotiate to vary the make good agreement in certain circumstances
- develop an underground water impact report, which includes a spring impact management strategy and a water monitoring strategy
- prepare a baseline assessment plan and undertake a baseline assessment of bores located within priority areas on the tenure by the required timeframe in the approved plan. If bores off tenure are predicted to be impacted, undertake baseline assessments by the date specified in the underground water impact report water monitoring strategy
- undertake a bore assessment if directed by the Chief Executive of DEHP and then negotiate a make good agreement (i.e. direction notice triggers make good obligations)

A make good agreement is only required to include make good measures where a bore has, or is likely to have, an impaired capacity because of a petroleum and gas operation. Sometimes a bore assessment will show that a bore will not be impaired by a petroleum and gas operation. In these circumstances, the make good agreement is only required to state the outcome of the bore assessment and that the bore is not impaired and likely to be impaired.⁹⁷

⁹⁵ Information provided to Review by DEHP current at 31 March 2016.

⁹⁶ Petroleum in this context means all onshore petroleum and gas.

⁹⁷ *Quick guide to make good obligations, 2016*, Department of Environment and Heritage Protection Portal, Queensland Government, Brisbane, <https://www.ehp.qld.gov.au/management/pdf/good-obligations-guide.pdf>, accessed 24 June 2016.

Appendix 6 – Commission’s activities and publications

In 2013–14, the Commission reported it had –

1. convened 4 Community Leaders Council meetings in the following locations –
 - (i) Roma (July 2013)
 - (ii) Emerald (August 2013)
 - (iii) Moranbah (February 2014)
 - (iv) Chinchilla (March 2014).
2. convened two Sustainable Futures Workshops for the development of sustainable rural and regional communities that coexist with the onshore gas industry.
3. launched the Queensland Gasfields Commission website.
4. reviewed legislation, policy, guidelines and made recommendations to government.
5. received 111 enquiries from 54 landholders.
6. held a gas emissions workshop together with the Office of the Queensland Chief Scientist in November 2013.
7. published six monthly updates on employment figures, local business spend, roads and community investment from the three major coal seam gas liquefied natural gas export projects in Queensland.

In 2014–15, the Commission reported it had –

1. attended 65 stakeholder meetings across Roma, Chinchilla, Miles, Tara, Brisbane and Toowoomba.
2. hosted the following forums to share information on industry transition and opportunities for the production phase of operations -
 - (i) Community Leaders’ Council in Toowoomba (November 2014)
 - (ii) Local Business Forum in Chinchilla (December 2014)
 - (iii) Local Business Forum in Roma (February 2015).
3. managed a trade booth at the Surat Basin Energy and Mining and Energy Expo in June 2015 allowing more than 170 local suppliers to engage directly with gas company procurement teams and Tier 1 contractors.
4. met with rural landowners, regional communities, local governments and onshore gas operators across Queensland.
5. actioned 91 enquiries from 44 landholders.
6. commenced a stocktake of three major gas export pipeline easements between Surat Basin and Gladstone in relation to land rehabilitation and community engagement efforts.
7. convened a focus group of landholders in Dalby for consultation on the *Water Reform and Other Legislation Amendment Bill 2014*.

Further information on the Commission’s activities can be found on its website and in its annual report.

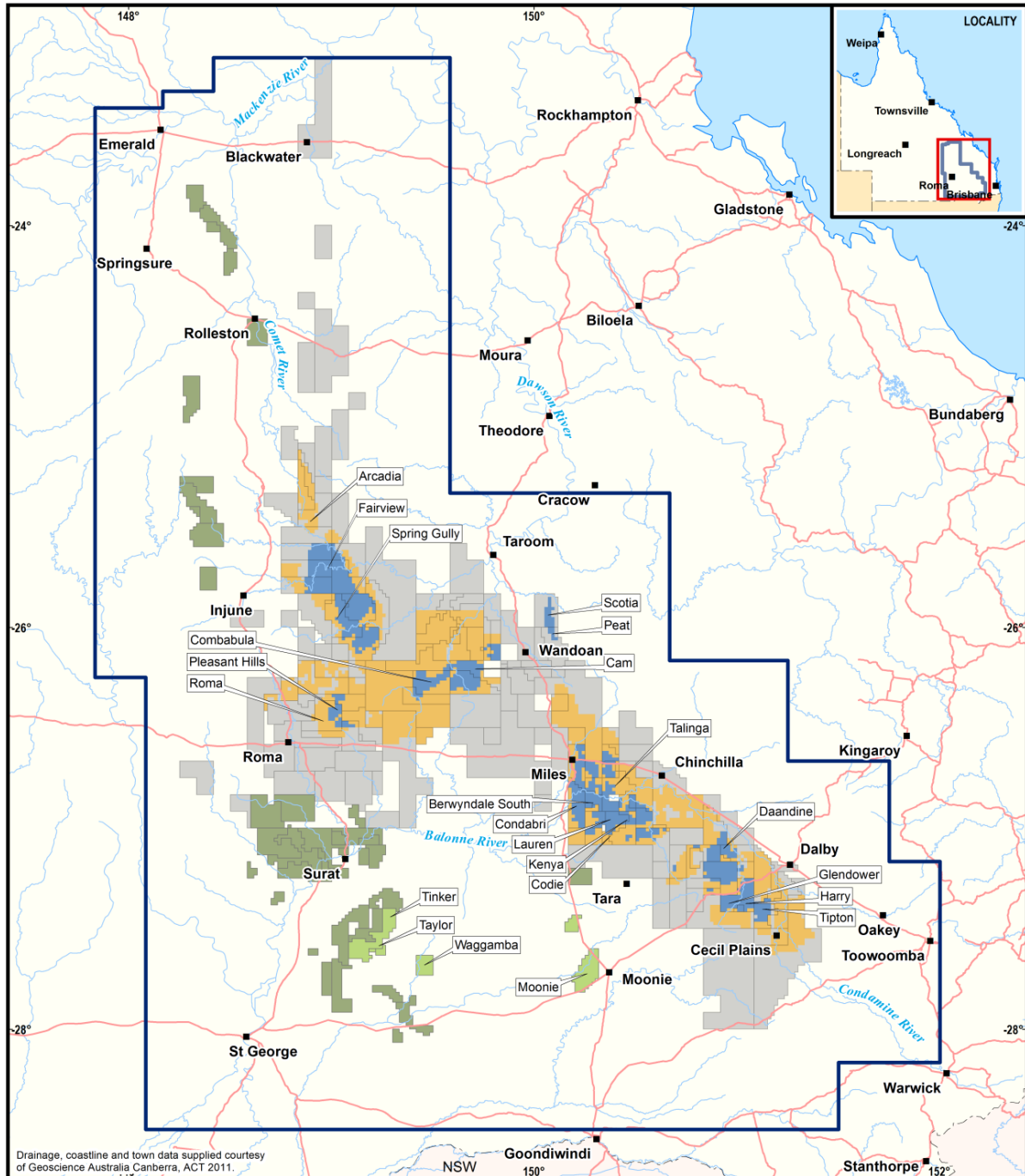
Commission’s Publications (Source: Submission by the Gasfields Commission, April 2016)

Publications	
Topic sheets (23)	<ol style="list-style-type: none"> 1. Investing in Regional Communities 2. Local Content Checklist for Business 3. Local Government Checklist 4. Social Impacts in Regional Communities 5. Road Impacts and Regional Communities 6. Land Access Code 7. Land Access Negotiation Tips 8. Land Access Checklist for Landholders 9. CSG Globe 10. Onshore Gas Well Flaring 11. Compliance and Regulation 12. Overview of Legislation Governing the Onshore Gas Industry in Queensland 13. Personal Resilience in Regional Communities 14. Groundwater Research in Queensland 15. CSG Water Research in Queensland 16. Groundwater systems in Cooper Basin 17. Groundwater systems in Surat Basin 18. Groundwater systems in Bowen Basin 19. Groundwater systems in Galilee Basin 20. Understanding Treated CSG Water Quality in Queensland 21. Landholder Guide to Weed Baseline Assessments 22. Protecting Groundwater Quality with Gas Well Integrity 23. Groundwater aquifer connectivity
Technical Papers (4)	<ol style="list-style-type: none"> 1. Groundwater Aquifer Connectivity in Queensland 2. CSG Water Treatment and Beneficial Use in Queensland 3. Groundwater Systems of Gas Producing Regions in Queensland 4. Onshore Gas Well Integrity in Queensland
Reports (9)	<ol style="list-style-type: none"> 1. Water research collation 2. CSG Water Management Policy review submission 3. Historic Gas Seeps 4. Online Spatial Information Needs of Landholders 5. Legislation, standards and codes governing the onshore gas industry 6. Weed baseline assessment 7. Pipeline stocktake 8. CSG industry snapshot (2010-2015) 9. Science communication stocktake

Frequently Asked Questions (3)	<ol style="list-style-type: none"> 1. What are the different types of gas in Queensland and where are they found? 2. What is hydraulic fracturing and what chemicals are used in hydraulic fracturing? 3. What is the effect of CSG extraction on the availability of groundwater in aquifers used by farmers and other users?
Corporate governance	<ol style="list-style-type: none"> 1. Annual reports (2013-14, 2014-15) 2. Strategic plan (2015-16) 3. Portfolio plan (2013-14)

Appendix 7 – Current, planned and potential petroleum and gas production areas

(Image reproduced from: *Underground Water Impact Report for the Surat Cumulative Management Area, Consultation Draft March 2016, page 12*)



Drainage, coastline and town data supplied courtesy of Geoscience Australia, Canberra, ACT 2011.

Disclaimer: While every care is taken to ensure the accuracy of this product, the Office of Groundwater Impact Assessment makes no representations or warranties of any kind, express or implied about its accuracy, reliability, completeness or suitability for any purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for any loss or damage (including indirect or consequential loss or damage) which you might incur arising out of, or in connection with, the use of this product.

	<h2>Figure 2-5</h2>	<h3>Current, planned and potential petroleum and gas production areas</h3>	
		<i>Surat Underground Water Impact Report 2016</i>	
	<ul style="list-style-type: none"> Current CSG Production Area Planned CSG Production Area Potential CSG Production Area 	<ul style="list-style-type: none"> Active Conventional P&G Production Area Inactive Conventional P&G Production Area 	<ul style="list-style-type: none"> Surat CMA
<small> Datum: Geocentric Datum of Australia 1994 Original Plan Size: A4 07/03/2016 Produced by: Office of Groundwater Impact Assessment Department of Natural Resources and Mines Copyright: The State of Queensland 2016 </small>			
<small>G:\QWC\CoalSeamGas\H_PoTUWIR_Maps_2016\MXD\Int_UWIR16_Fig2_5_Current_Planned_and_PotentialPetroleum_and_GasProductionAreas.mxd</small>			

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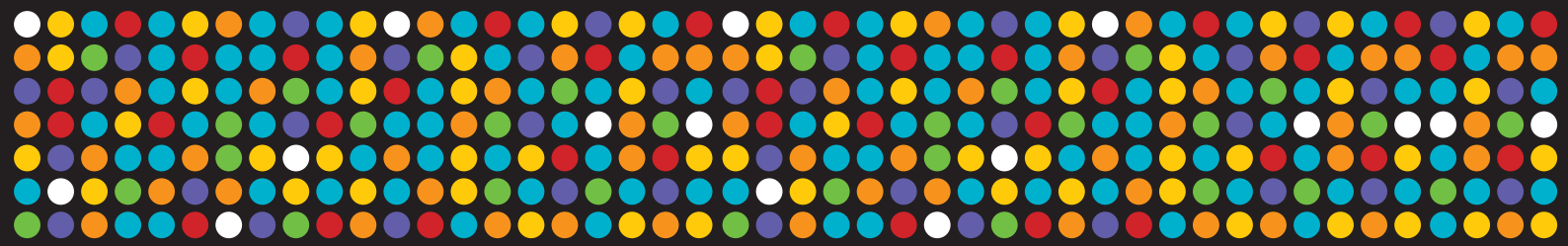
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