



# **Protection of Prime Agricultural Land and Other Land from Coal Seam Gas Mining Bill 2013**

**Report No. 32**  
**Agriculture, Resources and Environment  
Committee**  
**December 2013**



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## **Agriculture, Resources and Environment Committee**

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<b>Deputy Chair</b>	Ms Jackie Trad MP, Member for South Brisbane
<b>Members</b>	Mr Jason Costigan MP, Member for Whitsunday Mr Sam Cox MP, Member for Thuringowa Mr Shane Knuth MP, Member for Dalrymple Mrs Anne Maddern MP, Member for Maryborough Mr Michael Trout MP, Member for Barron River
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### **Acknowledgements**

The committee thanks the member for Condamine, Mr Ray Hopper MP, and departmental officers who provided briefings. The committee also thanks the groups and individuals who provided submissions to the inquiry and participated in the public hearing.

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## Abbreviations and definitions

CCU	CSG Compliance Unit
COAG	Council of Australian Governments
CSG	Coal Seam Gas
DNRM	Department of Natural Resources and Mines
DSDIP	Department of State Development, Infrastructure and Planning
EPBC	<i>Environmental Protection and Biodiversity Act 1999</i>
EIS	Environmental Impact Statement
GCQ	GasFields Commission Queensland
LNG	Liquid Natural Gas
PAA	Priority Agricultural Areas
PALU	Priority Agricultural Land Uses
PJ	Petajoules
OGIA	Office of Groundwater Impact Assessment
QCA	Queensland Competition Authority
SCLA	<i>Strategic Cropping Land Act 2011</i>

## Chair's foreword

It is my pleasure to present this report on behalf of the Agriculture, Resources and Environment Committee from our examination of the Protection of Prime Agricultural Land and Other Land from Coal Seam Gas Mining Bill 2013. This is a Private Members' Bill introduced by the Katter's Australia Party Leader in the Parliament and Member for Condamine, Mr Ray Hopper MP. It is the third Private Members' Bill from KAP that the committee has examined.

Private Members' Bills are a vital part of our work. In a recent report, the House of Commons Procedures Committee commented that the initiation, scrutiny and passage of Private Members' Bills goes to the heart of the function of the House of Commons as a legislative assembly. That committee further noted:

*...the ability of any Member to bring forward a legislative proposition, and to have it debated, is the clearest indication that so far as legislation is concerned the House is not a mere sausage machine, churning out endless Bills introduced, timetabled, amended and whipped through by the Executive.*

I couldn't agree more or express it better. In our unicameral legislative Assembly, Private Members' Bills are particularly important for individual Members to put forward fresh ideas and as a platform for genuine legislative reform, or at least they should be. I for one would welcome the opportunity to work on a Private Members' Bill that fulfils these worthy functions.

Sadly, as with the previous KAP Bills we have examined, the Member for Condamine's Bill is a piece of sophistry. It is, quite simply, a pantomime with no fresh ideas or genuine legislative reforms. It appears instead to be aimed at helping KAP win support from a group of people in the community who are feeling vulnerable and threatened. This time it is people affected by the rapidly expanding coal seam gas industry.

Again, like previous KAP Bills, the Member for Condamine's Bill has more errors than detail, is ill-conceived, and short on substance. Frankly, I'm not sure that the honourable Member understands fully what he has proposed in this Bill. Furthermore, the member showed very little interest in responding to issues and questions raised by the committee or submitters in our consideration of the Bill.

Again, like previous KAP Bills, the Member for Condamine's Bill pretends that logic, science and economics do not exist. In this case, it ignores the significant investment by this government in world-class frameworks, based on science and logic, to properly manage the social, environmental and economic impacts of the coal seam gas industry, one of our most important industries, and to deliver the best economic outcomes for the **whole of the State**.

This Bill is also quite dangerous with its nonsensical proposal to scrap legally granted coal seam gas exploration and mining rights across vast areas of the State, and to prevent affected companies, operating within the law, from seeking compensation. This would raise sovereign risk issues of mammoth proportions for the State of Queensland. Queensland's reputation and economy as a reliable investment opportunity would be severely diminished.

What the Member for Condamine is proposing in this Bill is sheer economic suicide. It would come at great cost to the 30,000 plus workers in the coal seam gas industry and their families, and the thousands of other businesses and their workers whose fortunes are tied one way or another to the industry. It would hurt regional communities across much of the State – the very same communities the Member for Condamine purports to be trying to help.

I encourage all Members to read this report and to support our recommendation that the Protection of Prime Agricultural Land and Other Land from Coal Seam Gas Mining Bill 2013 not be passed.

I commend the report to the House.

A handwritten signature in blue ink, appearing to read 'Ian Rickuss'.

Ian Rickuss MP  
**Chair**

December 2013



## **Recommendations**

### **Recommendation 1**

**21**

The committee recommends that the Protection of Prime Agricultural Land and Other Land from Coal Seam Gas Bill 2013 not be passed.



## 1. Introduction

### Role of the committee

The Agriculture, Resources and Environment Committee (the committee) is a portfolio committee established by a resolution of the Legislative Assembly on 18 May 2012. The committee's primary areas of responsibility are agriculture, fisheries and forestry, environment and heritage protection, and natural resources and mines.<sup>1</sup>

In its work on Bills referred to it by the Legislative Assembly, the committee is responsible for considering the policy to be given effect and the application of fundamental legislative principles.<sup>2</sup>

In relation to the policy aspects of Bills, the committee considers the policy intent, whether stakeholders have been consulted and the effectiveness of that consultation. The committee may also examine how provisions in Bills would be implemented.

Fundamental legislative principles are defined in Section 4 of the [Legislative Standards Act 1992](#) as the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to the rights and liberties of individuals and the institution of Parliament.

### The referral

On 7 June 2013, Mr Ray Hopper MP, Member for Condamine, introduced the Protection of Prime Agricultural Land and Other Land from Coal Seam Gas Bill 2013. The Legislative Assembly referred the Bill to the Agriculture, Resources and Environment Committee for examination. In accordance with SO 136(1), the committee was required to report to the House on the Bill by 9 December 2013.

### The committee's processes

In its examination of the Bill, the committee:

- identified and consulted likely stakeholders
- invited public submissions
- sought advice from the Department of State Development, Infrastructure and Planning and the Department of Natural Resources and Mines
- convened a public briefing on 16 October 2013 by departmental officers and the Member for Condamine
- convened a public hearing and further briefings on 20 November 2013, and
- sought expert advice on possible fundamental legislative principle issues with the Bill.

A list of submitters is at **Appendix A**. The people who provided briefings and the hearing witnesses are listed at **Appendix B**. A summary of the submissions to the inquiry, together with a written response dated 28 November 2013 provided by the Department of State Development, Infrastructure and Planning, is at **Appendix C**.

The committee's correspondence with the Member for Condamine in relation to fundamental legislative principles issues is at **Appendix D**.

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<sup>1</sup> Schedule 6 of the Standing Rules and Orders of the Legislative Assembly of Queensland as at 1 January 2013.

<sup>2</sup> Section 93 of the *Parliament of Queensland Act 2001*.



## 2. Coal seam gas in Queensland

The following sections provide background information about the coal seam gas (CSG) industry, its contribution to the Queensland economy and the Government's framework for management the industry.

### Queensland's CSG Industry

The CSG industry has been operating in Queensland for approximately 30 years and has grown rapidly in the last 15 years. Almost all of Australia's substantial CSG deposits are in Queensland. Queensland's reserves are mostly located in the Surat and Bowen Basins, and account for approximately 98 per cent of Australia's proven CSG reserves<sup>3 4</sup>.

At present, Queensland's proven and probable reserves comprise 28,000 petajoules (PJ) - sufficient to meet Queensland's existing electricity needs for approximately 50 years.<sup>5</sup> It is estimated that possible reserves may be as high as 300,000 petajoules (PJ) which would meet Queensland's electricity needs for 500 years.<sup>6</sup>

At present, 25 per cent of Queensland's electricity and 90 per cent of the State's domestic gas supply is produced from CSG. Queensland's CSG has also become an important export commodity and it is estimated that 80 per cent will be exported to be used by countries to generate electricity.<sup>7</sup>

The growth in demand has seen CSG become an integral part of Queensland's economy. It is estimated that the CSG industry currently employs 30,000<sup>8</sup> people and will create a further 18,000 jobs over the next four years.<sup>9</sup> In the Darling Downs and south-west region of Queensland, the CSG-LNG industry has delivered an estimated 8,000 direct and indirect jobs.<sup>10</sup>

At the committee's public briefing on 16 October 2013, the Department of State Development, Infrastructure and Planning (DSDIP) discussed the CSG projects currently under development in Queensland and the benefits these projects will bring to the Queensland economy:

*Bechtel, the engineering procurement and construction contractor for all three LNG projects in Gladstone, reports that of the 10,000 people working there at the moment 88 per cent are Queenslanders and nearly 50 per cent are local workers.*

*There are currently three CSG-LNG<sup>11</sup> projects under construction. They are worth \$63.2 billion and will produce 25.3 million tonnes of LNG ready for export from mid-2014 through to 2016. These are the biggest projects that Queensland has ever seen. As of May 2013, the three projects have spent \$30.9 billion, of which \$20.5 billion has been spent on local Queensland based firms.*

<sup>3</sup> Queensland Government, Coal seam gas liquefied natural gas – what it means for you, p.2 <http://www.industry.qld.gov.au/lng/documents/CSG-Householder-DERM-web.pdf> accessed 2.12.13

<sup>4</sup> Production reserves are the amount of gas that can be economically recovered. The reserves are classified as 1P (proven) – 90 per cent confidence that can be economically recovered; 2P (proven plus probable) – 50 per cent probability that the gas can be economically recovered; 3P (proven plus probable plus possible) – 10 per cent probability that the gas can be economically recovered accessed <http://www.dsdip.qld.gov.au/fact-sheets/lng-reserves-and-resources-fact-sheet.html> 9.12.13

<sup>5</sup> Gas Industry Social & Environmental Research Alliance (GISERA), General coal seam gas frequently asked questions, December 2011, p. 2.

<sup>6</sup> Gas Industry Social & Environmental Research Alliance (GISERA), General coal seam gas frequently asked questions, December 2011, p. 2.

<sup>7</sup> Gas Industry Social & Environmental Research Alliance (GISERA), General coal seam gas frequently asked questions, December 2011, p. 2.

<sup>8</sup> Bird, D. 2013, *Draft public hearing transcript*, 16 October 2013, p. 9.

<sup>9</sup> Queensland Government, Coal seam gas liquefied natural gas – what it means for you, p.3, <http://www.industry.qld.gov.au/lng/documents/CSG-Householder-DERM-web.pdf> accessed 2.12.13

<sup>10</sup> Bird, D. 2013, *Draft public hearing transcript*, 16 October 2013, p. 9.

<sup>11</sup> 'LNG' – liquified natural gas.

*A Queensland Resources Council report on the Queensland economy for 2011-12 identifies that the CSG-LNG industry has brought to the Darling Downs and south-west region in total \$646 million in direct spending and about \$1.17 billion in indirect spending.<sup>12</sup>*

According to DSDIP, future royalties from the CSG-LNG industry would total an estimated \$850 million<sup>13</sup> annually. To ensure these monies benefit regional communities, the Government has introduced the 'Royalties for the Regions' initiative. This initiative will invest \$495 million over four-years in new and improved community infrastructure, roads and flood plains security projects that benefit those who live, work and invest in resource-rich regional areas.<sup>14</sup>

## **Queensland's framework for Coal Seam Gas**

The Government has a comprehensive framework in place to monitor coal seam gas exploration in Queensland, and plays a key role in monitoring the implementation of laws that govern the industry as well as considering issues of community concern such as:

- supporting conditions that encourage the growth of the industry
- imposing, monitoring and enforcing conditions of approval for CSG projects
- enforcing CSG operators to support local businesses, provide job opportunities to locals and treat communities respectfully
- introducing new laws and amending laws related to the industry
- introducing code of practices, and
- applying penalties for environmental incidents and compliance breaches.<sup>15</sup>

In October 2013, DSDIP released regional plans for the Darling Downs and for Central Queensland to address competing state interests relating to the resource and agricultural sectors. A key component of these regional plans is the identification of Priority Agricultural Areas (PAA) which comprise strategic areas containing highly productive agricultural land.<sup>16</sup> Resource companies will also have to meet co-existence criteria that will ensure that any proposed resource activity cannot materially impact or threaten land for Priority Agricultural Land Uses (PALU).<sup>17</sup> The regional plans also identify Priority Living Areas (PLA) in order to preserve areas for expansion for those towns likely to experience growth over the next 20 years.

At the committee's public briefing, DSDIP explained the regional plan framework and the PAA co-existence criteria:

*The basis for these plans is to provide policy responses to resolve the region's most important issues affecting its economy and liveability of its towns. The plan specifically provides direction to resolve competing state interests relating to the agriculture and resource sectors and to enable the growth potential of the region's towns. The regional plan policies aim to protect priority agricultural land uses while supporting co-existence opportunities for the resource sector. It does this by using priority agricultural areas which are identified in a plan and comprise the region's strategic areas containing highly productive agricultural land uses. Within these areas, the priority agricultural land uses are the priority land use for the area.*

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<sup>12</sup> Bird, D. 2013, *Draft public briefing transcript*, 16 October, p.9.

<sup>13</sup> Bird, D. 2013, *Draft public briefing transcript*, 16 October 2013, p. 9.

<sup>14</sup> Bird, D. 2013, *Draft public briefing transcript*, 16 October 2013, p. 9.

<sup>15</sup> Queensland Government, 'Government's role in the CSG-LNG industry' <http://www.industry.qld.gov.au/lng/government-role.html> accessed 27.11.13

<sup>16</sup> Department of State Development, Infrastructure and Planning, Darling Downs Regional Plan, October 2013, p. 3.

<sup>17</sup> Department of State Development, Infrastructure and Planning, Darling Downs Regional Plan, October 2013, p. 8.

*Priority agricultural land uses within a PAA (priority agricultural areas) are recognised as the primary land use and are given priority over other proposed land uses. What we call PAA co-existence criteria are being developed and they will enable compatible resource activities to co-exist with these high-value agricultural land uses within a priority agricultural area. This will enable opportunities for economic growth to ensure that the Darling Downs remains resilient, diversified and a prosperous region. The PAA co-existence criteria specifically address no material loss of land, no material impact on the continuation of a priority agricultural land use within a priority agricultural area, no material impact on overland flow that is essential for the operation of those PAAs and no material impact on the irrigation aquifers also recognised as being critical to the ongoing operation of those priority agricultural land uses.*<sup>18</sup>

### **GasFields Commission Queensland**

In conjunction with regional plans, the Government has established a number of authorities to ensure that CSG is mined safely and meets environmental and community standards.

In April 2012 the Government announced that it would meet its election commitment, as outlined in its Resources and Energy Strategy, by establishing the GasFields Commission Queensland (GCQ) to manage co-existence between rural landholders, regional communities and the CSG industry. The *GasFields Commission Act 2013* was subsequently introduced, setting out the Commission's functions as an independent statutory body. These functions include:

- reviewing legislation and regulation
- obtaining and publishing factual information
- identifying and advising on coexistence issues
- facilitating better relationships and resolving issues
- promoting scientific research to address knowledge gaps, and
- making recommendations to government and industry.<sup>19</sup>

At the committee's public briefing, DSDIP commented further on the important role played by GCQ in facilitating co-existence between parties affected by CSG activities:

*Improved co-existence between regional landholders, regional communities and the onshore gas industry in Queensland is a high priority for the government, as demonstrated by the establishment of the GasFields Commission. Collectively, the GasFields Commission represents the diversity that exists in Queensland resources and agricultural sectors, and brings together vital knowledge and experience to help continue the Queensland government's ongoing commitment to regional communities. The GasFields Commission is now well established, with status in the broader community and an independent broker of information to regional communities, and is addressing many community issues in relation to the onshore gas industry.*<sup>20</sup>

In July 2013, GCQ released its *Portfolio Plan 2013-14 – Improving coexistence* which identified its key actions for 2013-14 including:

- convening six-monthly meetings of the GasFields Community Leaders Councils (South and North) to ensure community input to the GasFields Commission and to assist in identifying emerging community concerns and opportunities
- actively engaging with regions across the State that are experiencing, or likely to experience, an increase in onshore gas related activity (such as new exploration areas) in an effort to

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<sup>18</sup> Williams, K. 2013. *Draft public hearing transcript*, 16 October 2013, p. 10.

<sup>19</sup> GasFields Commission Queensland, *Portfolio Plan 2013-14 – Improving co-existence*, 1 July 2013, p. 2.

<sup>20</sup> Bird, D. 2013, *Draft public briefing transcript*, 16 October 2013, p. 10.

ensure that landholders and communities benefit from the experience and learnings of those further developed areas in other parts of the State

- actively engaging and attending relevant stakeholder meetings to maintain open lines of communication between the Commission, community, industry and landholders at a local and regional level
- coordinating community input on specific topics, identifying common key issues and concerns across regional Queensland which can then inform policy and legislation development by relevant government departments, and
- establishing the Commission website as a source of credible information providing links to information, research and relevant sites to enable the community to make informed decisions.

### Office of Groundwater Impact Assessment

The Office of Groundwater Impact Assessment (OGIA) was established pursuant to the *Water Act 2000* within the Department of Natural Resources and Mines (DNRM). The Act also provides that petroleum tenure holders pay an annual levy to fund the office's functions.<sup>21</sup>

The OGIA's primary function is to monitor the development of the petroleum and gas industry in relation to the potential impacts on underground water. The OGIA prepares underground water impact reports for the Surat Basin and maintains a database which stores monitoring data.

At the committee's public hearing, the director of the OGIA explained the role of the office in relation to CSG:

*Our role is in relation to the cumulative impact of CSG operations on groundwater resources in the CMA. That is our core role. It is not to do with fracking or the use of water after that event. That is a key matter that has been mentioned by speakers today. We are an independent group within the Department of Natural Resources and Mines. That is important to stakeholders. There has been mention this morning of the voices that government listens to.*

*Our office is an independent office. We are funded by industry, but that is not a voluntary thing on the part of industry. A levy is raised. We set our budget. We consult with industry and non-industry members in doing that. The minister approves the budget and then it is raised from industry. We carry out our work independently.*<sup>22</sup>

The OGIA also advised the committee that the effect of CSG on water levels in the Condamine area would be minimal:

*The Condamine was a particular focus of discussion. That is because of the land values in the Condamine and the fact that it relies on the alluvium as a water source. Our predictions are that there will be a relatively small impact on the Condamine alluvium—about 100 megalitres per annum leakage into the underlying Walloon coal measures. That is relatively small compared with the agricultural usage of about 55,000 from that resource. But because it is a stressed aquifer and levels have fallen and people are reducing their entitlements, it is still a significant number. Our focus in the coming period is to reduce the uncertainty associated with that number so that when we remodel the next time we will have even greater confidence in the amount of water that is leaking.*

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<sup>21</sup> *Water Act 2000* section 479.

<sup>22</sup> Cox, R. 2013, *Draft public hearing transcript*, 20 November 2013, p. 20.

*We do not believe the water levels in the Condamine will fall because of CSG operations by more than two metres. It will be less than that. As I said, that is still a significant matter for landholders.*<sup>23</sup>

### **CSG Compliance Unit**

The CSG Compliance Unit (CCU) within DNRM, assists the OGIA to monitor bore levels while also ensuring that CSG operators comply with current laws and policies. The CCU also provides an integrated whole-of-government approach to managing complaints in relation to CSG matters.<sup>24</sup>

The CCU's staff include environmental and groundwater experts, petroleum and gas safety specialists and specialists in land access issues. The CCU also works closely with other key government agencies such as the Department of Environment and Heritage Protection (DEHP) and GCQ to regulate the CSG industry and develop community confidence in its management. The CCU places a high level of importance on making itself visible in regional Queensland and has built strong relationships in regional communities. The CCU is responsible for the following activities:

- responding to safety, land access and environmental concerns
- informing, educating and listening to landholder and community concerns
- monitoring compliance relating to CSG activities
- managing and investigating complaints
- inspecting sites where CSG activities are conducted, and
- sampling 300 groundwater bores per year to monitor the impacts of groundwater quality from CSG activity and to verify the monitoring data supplied by CSG companies.<sup>25</sup>

### **Strategic Cropping Land Act 2011**

The *Strategic Cropping Land Act 2011* (SCLA) provides a framework which recognises the value of cropping land as an important pillar of the Queensland economy while ensuring that land is managed for Queensland's long term interests. At the committee's public hearing, DSDIP explained how the SCLA protects Queensland's cropping land in conjunction with regional plans:

*In addition to that we have acknowledged that there is the SCL protection which actually protects the soil. So what we are doing with the regional plan is not trying to duplicate the SCL Act and the protection of the soil. So should that land actually be soil—that is, strategic cropping land soil—it would retain the protection through the Strategic Cropping Land Act.*

*These are two different layers protecting two different aspects. One is protecting the soil. The other one is recognising that in some cases you may not have the soil but you do have priority agricultural land uses. What we are doing is actually protecting the land use. So we will have these two layers working in combination in these areas in the future.*<sup>26</sup>

The Government, through DNRM, commenced a review of the strategic cropping laws in January 2012 to protect priority agricultural land and streamline the regulatory framework to provide certainty to stakeholders. The review took into account the concept of co-existence between the

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<sup>23</sup> Cox, R. 2013, *Draft public hearing transcript*, 20 November 2013, p. 20-21.

<sup>24</sup> Queensland Government, *Enforcement and management of the industry*, February 2013, <http://www.industry.qld.gov.au/lnq/enforcement.html> accessed 29.11.13

<sup>25</sup> Queensland Government, *Enforcement and management of the industry*, February 2013, <http://www.industry.qld.gov.au/lnq/enforcement.html> accessed 29.11.13

<sup>26</sup> Williams, K. 2013, *Draft public hearing transcript*, 20 November 2013, p. 21.

resource and agricultural sectors, as developed in the regional plans for Central Queensland and the Darling Downs.

The Government is considering the report from this review, *Review of the Strategic Cropping Land Framework Report*<sup>27</sup>, which made twelve recommendations.

### **Environmental Approval for CSG projects**

Applications for major CSG production and pipelines are the subject of rigorous assessment through the environmental impact statement (EIS) process. A project may be the subject of an EIS through the Coordinator-General if it:

- requires complex approval requirements involving local, state and federal governments
- has potential environmental impacts
- involves large capital investment
- provides substantial job opportunities, and
- is strategically important to the locality, region or state.<sup>28</sup>

If the Coordinator-General evaluates a project as meeting this criteria, an Environmental Impact Statement Evaluation Report will be produced which recommends:

- (1) a project be approved subject to conditions and recommendations which will ensure environmental impacts will be properly managed, or
- (2) a project be refused on the grounds that the environmental impacts have not been adequately addressed.

If a project is not declared a significant project, an EIS may still be required pursuant to the *Environmental Protection Act 1994* or the *Sustainable Planning Act 2009*. Further, small-scale CSG operations or exploration activities may not require an EIS, however, an assessment by a qualified person and public notification processes are still required as part of the environmental assessment process before a project can commence.<sup>29</sup>

Applications related to CSG may also be referred to the Federal Government for assessment under the *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC). In accordance with the EPBC Act, projects may be conditioned to protect matters that are deemed to be of national environmental significance.<sup>30</sup>

### **Review of Coal Seam Gas by the Queensland Competition Authority**

In July 2013 the Government directed the Queensland Competition Authority (QCA) to investigate and report on the regulation of the CSG industry in Queensland. In its direction to the QCA, the Government noted that four state departments, as well as the GCQ, are involved in regulating the CSG industry under six separate pieces of legislation and associated regulations.

The QCA released its draft report on 22 November 2013, with the final report due on 31 January 2014. The draft report identified several areas where the regulatory framework can be improved

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<sup>27</sup> Department of Natural Resources and Mines, *Review of the Strategic Cropping Land Framework Report*, 2013, <http://www.nrm.qld.gov.au/land/planning/pdf/strategic-cropping/scl-review-report.pdf> accessed 29.11.13

<sup>28</sup> Queensland Government, Project approvals and conditions, February 2013, <http://www.industry.qld.gov.au/Ing/project-approvals-conditions.html> accessed 29.11.13

<sup>29</sup> Queensland Government, Project approvals and conditions, February 2013, <http://www.industry.qld.gov.au/Ing/project-approvals-conditions.html> accessed 29.11.13

<sup>30</sup> Queensland Government, Project approvals and conditions, February 2013, <http://www.industry.qld.gov.au/Ing/project-approvals-conditions.html> accessed 29.11.13

through the streamlining and rationalisation of processes where the government and the resource industry interact on CSG projects.<sup>31</sup>

### **Committee Comment**

The committee notes the importance of the CSG industry to the State's economy and in generating employment opportunities in regional communities.

The committee also notes the substantial royalties that the CSG industry is expected to yield. The committee commends the Government for introducing the *Royalties for the Regions* initiative which recognises the important role played by regional communities in the CSG framework.

The committee is of the view that the framework in place to monitor CSG activity is wide-ranging and comprehensive and takes into account environmental, community and social concerns, and that it seeks to strike a balance between the interests of Queensland's agricultural and resource sectors.

The Government, through the Department of State Development, Infrastructure and Planning has a framework in place that recognises the importance of both sectors to the Queensland economy, and has institutions and plans in place which emphasise the concept of co-existence.

The committee notes that the Department of State Development, Infrastructure and Planning is striving to improve the CSG framework through the introduction of regional plans for Central Queensland and the Darling Downs, and that the legislative framework which underpins the CSG industry will benefit from a review being conducted by the Queensland Competition Authority.

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<sup>31</sup> Queensland Competition Authority, Draft Report – Coal Seam Gas Review, 22 November 2013, p. 2-3.



### 3. Examination of the Protection of Prime Agricultural Land and Other Land from Coal Seam Gas Bill 2013

#### Policy objectives

According to the Explanatory Notes, the primary objectives of the Protection of Prime Agricultural Land and Other Land from Coal Seam Gas Mining Bill 2013 are to:

1. Prohibit all coal seam gas and exploration mining activities east of the Condamine River from Chinchilla to the New South Wales Border and from the Longitudinal line running directly through the Chinchilla Post Office east to the coast, and
2. Protect any land under the *Strategic Cropping Land Act 2011*.

Member for Condamine, Mr Ray Hopper MP, further explained to the committee the policy position of the Katter's Australia Party that CSG cannot coexist with prime agricultural land. According to the Member for Condamine:

*Why would you sacrifice 30 years of wealth for 2,000 years of food production? This country is going to produce billions of dollars worth of agriculture. If there is a world food shortage, you could nearly feed the world with this country if you grew small crops. If you had crops that turned over every six or eight weeks, which we may well see in the future, why would you dare sacrifice it for this? The sovereign risk should be focused on the risk to our agricultural production as far as I am concerned.*<sup>32</sup>

In brief, the Bill, seeks to prohibit a wide range of direct and incidental 'CSG activity' on areas of Queensland that are proposed to be designated as 'protected land' and which include areas of the state where CSG exploration and mining is occurring. Protected land includes potential strategic cropping land irrespective of its cropping history. Existing leases and tenures in relation to CSG on protected lands are nullified without compensation, and the Bill provides that individuals who undertake CSG activity on protected land commit an offence. Executive officers of offending corporations would be personally liable for offences in addition to their corporations.

According to the Explanatory Notes<sup>33</sup>:

*Alternative ways of achieving policy objectives*

*There are no alternative ways of achieving the reform to protect prime agricultural land.*

*Estimates Cost for Government Implementation*

*Any costs in relation to the amendments will be met from existing agency resources.*

And:

*Consistency with Fundamental Legislative Principles*

*This protects the agricultural industry and citizens whose rights and liberties would otherwise be significantly and unjustifiably restricted or impacted because of environmental harm to prime agricultural land.*

#### General comments in support of the Bill

Submitters to the inquiry were polarised in their views on the Bill.

Many expressed general support for the Bill, or general support for the intent of the Bill. Submitters who supported the Bill noted the following key grounds for their support:

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<sup>32</sup> Hopper, R. 2013, *Draft public hearing transcript*, 20 November 2013, p. 25.

<sup>33</sup> Explanatory Notes, Protection of Prime Agricultural Land and Other Land from Coal Seam Gas Bill 2013, p.2.

- As a means to protect prime agricultural land on and around the Darling Downs, in particular farming land in the Condamine Electorate, and the water quality of aquifers affecting strategic cropping land
- To prevent any harmful effects from CSG activities from occurring ('the precautionary principle')
- As a means to put in place a CSG exclusion area or moratorium to help provide for the sustainability of the agricultural industry and food security

Submitters also proposed that the Bill should be extended to cover coal mining as well as CSG mining.

## **General comments against the Bill**

Submitters who opposed the Bill noted the following concerns about the Bill:

- it proposes to extinguish existing CSG exploration and mining rights for CSG companies and other businesses with connected operations without compensation or consideration of the consequences and, by doing so, would threaten investor confidence in Queensland and expose the State to significant compensation claims
- the Bill would undermine the substantial investment in CSG infrastructure that is already in place, and the operations and employment that is linked to these investments
- it proposes to exclude CSG activities from one part of the state whilst ignoring other areas such as the central Highlands where there is prime agricultural land and CSG activity, without any logical basis for doing so
- it proposes to exclude CSG activities whilst ignoring other forms of mining such as coal mining with more tangible impacts
- it is premised on the flawed assumption that CSG activities and prime agricultural land are incompatible and mutually exclusive
- for areas where prime agricultural land has been verified as not being strategic cropping land, CSG activity would still be excluded, and
- Similar and better outcomes could be achieved, if necessary, by amending existing legislation rather than introducing further legislation

The Bill has fourteen clauses. The table below discuss the key clauses (7, 8, 9, 10, 11 & 13) and their purported affects.

## **Prohibited 'CSG activity'**

**Clause 7** of the Bill defines 'CSG activity' to be prohibited on all protected lands. The definition is wider than the Explanatory Notes suggest, and includes:

- exploring for CSG
- evaluating the feasibility of producing CSG
- testing for the production of CSG
- extracting CSG
- mining for or producing incidental CSG
- investigating or surveying the potential suitability of land for the construction and operation of a pipeline or petroleum facility exclusively or principally for transporting CSG
- constructing or operating a pipeline for CSG, and
- anything necessary for, or incidental to, these activities.

Activities and existing infrastructure likely to be caught by this definition for CSG activities, and therefore prohibited, include:

- CSG wells and pump facilities
- CSG water treatment plants
- CSG water and treated water pipelines and holding dams
- CSG de-watering and refining facilities, pumping stations and pipelines
- brine storage dams
- all access roads constructed in connection with CSG operations
- cropping and other farming that is irrigated using treated CSG water, and
- administration, production and maintenance work by individuals and companies whose activities are necessary for, or incidental to, any of the listed CSG activities.

The descriptor in the definition ‘necessary for, or incidental to’ captures a wide range of activities that support CSG activities. These may include:

- company offices
- research and development
- water and gas analysis
- mapping and surveying
- road building and maintenance
- community support and development
- fencing
- air and road transport
- bore drilling
- earthmoving
- pipeline construction
- building construction
- equipment repairs and maintenance, and
- work camps and supplies.

It may also capture activities by federal, state and local government agencies connected with workplace health and safety, environmental monitoring, administration, and other compliance activities in connection with CSG activities.

## ‘Protected land’

The Bill proposes to prohibit CSG activities, as discussed above, in areas that are to be designated as ‘protected land’. The Bill further defines ‘protected land’ to include two categories of land; ‘excluded land’ and ‘prime agricultural land’.

‘Excluded land’ is defined by **clause 8** of the Bill as:

*...all land east of the Condamine River between—*

*(a) a line running lengthwise, directly through the Chinchilla Post Office, to the east coast of Queensland; and*

*(b) the border between Queensland and New South Wales.*

As defined in the Bill, ‘excluded land’ comprises a large area of the State including areas of the: Southern Downs, Toowoomba, South Burnett, Western Downs, Goondiwindi, Somerset, Moreton Bay, Scenic Rim, Sunshine Coast and Lockyer Valley regional councils; and the Ipswich City, Logan, Gold Coast, Redland and Brisbane city areas. It would include the entire greater Brisbane area.

The parameters used for defining ‘excluded land’ are problematic. Firstly, the Condamine River which forms the western boundary does not pass through the town of Chinchilla, and merges with the Balonne River at a location south west of Chinchilla. This is significant as a line running from the

Chinchilla Post Office 'lengthwise' to the east coast forms the northern boundary of the 'excluded land'. This means that the northern and western boundaries of the 'excluded land' area do not meet. From this description it is debateable whether land immediately south of Chinchilla but north of the Condamine River would be covered by the 'excluded land' definition and the protections that the Bill proposes to create.

The committee raised this issue with the Member for Condamine for advice. The Member for Condamine in reply told the committee:

*Charlies Creek runs from Chinchilla a very short distance. I will be moving an amendment to include this in the parameters.*

**'Prime agricultural land'** is defined by section 8(3) to mean:

*...land, other than excluded land, that is in an area shown, immediately before this section commences, on the trigger map<sup>34</sup> as being potential SCL.*

Section 8(4) further states:

*To remove any doubt, it is declared that it does not matter for subsections (2) and (3) whether the land—*

*(a) has a required cropping history; or*

*(b) is, immediately before this section commences, SCL or decided non-SCL.*

The effect of sections 8 (3) & (4) is that CSG activities would be prohibited on all land in Queensland outside the 'excluded land' area that is marked on the trigger maps for the *Strategic Cropping Land Act 2011* as 'potential SCL'. The Bill would therefore define the land as 'prime agricultural land' irrespective of the land's cropping history or whether the land has previously been decided as SCL or non-SCL.

## Offence provisions

**Clause 9** provides that it is an offence to carry out, or attempt to carry out, CSG activity on protected land. The clause proposes a maximum penalty for contraventions by individuals of 10,000 penalty units (\$1.1 million<sup>35</sup>) or five years imprisonment.

## Personal liability of executive officers of corporations for offences

**Clause 10** of the Bill would make the executive officers of a corporation personally liable for offences committed by the corporation in certain circumstances. Under s. 10, an executive officer commits an offence if the officer's corporation commits an offence against s.9, and the officer did not take all reasonable steps to ensure the corporation did not engage in the conduct constituting an offence against s.9. The offence provided for in s.9 is that a person must not carry out, or attempt to carry out, a CSG activity on protected land, the maximum penalty being 10,000 penalty units or five years imprisonment.

Imposing extended liability could result in a person being found liable for the actions of another person, with the potential to adversely impact on their rights and liberties. As explained by the Office of the Queensland Parliamentary Counsel:

*Legislation should not ordinarily make a person responsible for actions or omissions over which the person may have no control. Unilateral imposition of responsibility on a person for a matter is an interference with the rights and liberties of the person and requires sufficient justification... Legislation should not make executive officers of a*

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<sup>34</sup> Trigger maps for the *Strategic Cropping Land Act 2011* are available from the Department of Natural Resources and Mines website at <http://www.nrm.qld.gov.au/land/planning/strategic-cropping/mapping.html>.

<sup>35</sup> Under the *Penalties and Sentences Act 1992* provides the value of a penalty unit is \$110.

*corporation vicariously liable for alleged offences of a corporation unless it is a practical necessity and unless appropriate safeguards are provided...*<sup>36</sup>

One of the reasons why corporations were developed was to provide a means of carrying on business through an entity with its own legal personality and limiting the liability of directors and shareholders. Making an executive officer liable for offences by a corporation would contradict this. This principle is also reflected in the Council of Australian Governments' (COAG's) *Personal Liability for Corporate Fault – Guidelines for applying the COAG Principles*. These guidelines, approved by COAG on 25 July 2012 as part of the implementation of the National Partnership Agreement to Deliver a Seamless National Economy, include:

1. Where a corporation contravenes a statutory requirement, the corporation (emphasis added) should be held liable in the first instance.

2. Directors should not be liable for corporate fault as a matter of course or by blanket imposition of liability across an entire Act.

...

4. The imposition of personal criminal liability on a director for the misconduct of a corporation should be confined to situations where:

(a) (a) there are compelling public policy reasons for doing so (for example, in terms of the potential for significant public harm that might be caused by the particular corporate offending);

(b) (b) liability of the corporation is not likely on its own to sufficiently promote compliance; and

(c) (c) it is reasonable in all the circumstances for the director to be liable having regard to factors including:

(d) i. the obligation on the corporation, and in turn the director, is clear;

(e) ii. the director has the capacity to influence the conduct of the corporation in relation to the offending; and

(f) iii. there are steps that a reasonable director might take to ensure a corporation's compliance with the legislative obligation.

At the committee's briefing on the Bill, the Member for Condamine gave his reasons for including the provision in the Bill:

*In terms of liability, how do you make a company liable? Someone has to be held accountable. So what I have done is make the executive officer of the corporation the person who has to be held accountable. People come and go in companies and companies fold up. But if you put that penalty in place for someone who is right there and then at that stage, that is the deterrent. So the person running that company is the one that would be charged with an offence. That is the reason I have made the CEOs liable under this legislation.*<sup>37</sup>

The explanatory notes to the Bill do not explain the justification for making executive officers liable for offences committed by corporations to promote compliance.

The committee invited the Member for Condamine to explain the justification for seeking to impose liability on executive officers, in addition to corporations, for s.9 offences. The Member for

<sup>36</sup> Office of the Queensland Parliamentary Counsel, 2008, *Fundamental Legislative Principles: The OQPC Notebook*, p. 117.

<sup>37</sup> Hopper, R. 2013, *Draft public briefing transcript*, 16 October 2013, p. 3.

Condamine, in his reply to the committee, did not provide any justification for the clause, but advised:

*Yes the bill is in line with the governments Directors liability Amendment Act 2013. The justification can be linked in further detail to the Directors Liability Amendment Act 2013 and if needed can be adjusted to meet required compliance.*<sup>38</sup>

The committee is puzzled by the Member for Condamine's advice. Clause 10 would significantly increase the personal liability of executive officers. This is in direct conflict with the objectives of the Government's Directors Liability Amendment Bill 2013 passed in November 2013 to:

- reduce the number of provisions which impose personal and criminal liability on executive officers for corporate fault and only provide for this liability where there is adequate justification
- reduce red tape and the regulatory burden placed upon Queensland business, and
- achieve greater consistency of approach to the liability of executive officers of corporations with other Australian jurisdictions.

This is contrary to the advice the Member for Condamine provided to the committee.

## No compensation

**Clause 11** of the Bill provides that, with one exception, no amount of compensation, reimbursement or otherwise would be payable by the State to any person for or in connection with the enactment of the Act. The exception is set out in clause 14.

The committee raised the risk of compensation with the Department of State Development, Infrastructure and Planning during their briefing on the Bill. The department's Executive Director told the committee:

*There is no doubt there could be a constitutional challenge if you did not provide compensation to the companies if you took away their rights, particularly if they had done nothing wrong. I think that would have to be explored, but no doubt there would be a legal challenge and I think it would be quite costly for the state in the end.*<sup>39</sup>

The department further advised at its second briefing on 20 November:

*As soon as you make rules that are going to exclude them or remove any of their property rights, whether they have drilled wells or whether they have merely had some sort of tenure in that area, you are going to create uncertainty in the investment climate and that creates sovereign risk. If we have to take away their rights without compensation, that is probably even a worse situation. Right at the moment, the problem we have is that the investment climate is not terribly attractive across business and industry more generally. I think anything that you do to decrease that certainty is not going to make that any better.*<sup>40</sup>

Dr Tina Hunter, Director for the Centre for International Minerals and Energy Law at the University of Queensland's TC Beirne School of Law commented on this provision in her evidence at the committee's public hearing:

*The first thing is the issue of sovereign risk. Sovereign risk has been defined in many ways. It can also be defined in terms of fiscal risk. What I particularly want to outline is the issue in terms of investment—investment in a sense of just projects within the region but also in a broader sense. In order for security of investment to occur within any country or within any state, you need to be able to assure your investor that there is some sort of stability. One of*

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<sup>38</sup> Hopper, R. *Correspondence*, 21 November 2013.

<sup>39</sup> Bird, D. 2013, *Draft public briefing transcript*, 16 October, p. 10.

<sup>40</sup> Hunter, T. 2013, *Draft public hearing transcript*, 20 November, p. 22.

*the things that makes Australia an incredibly attractive regime for investing is political stability. Part of that political stability is stability of our laws within that political framework. So when you have a bill that appears before the parliament that says we are going to effectively stop an activity—cut it down in its tracks—it can create some nervousness within those who are wanting to invest.*

*This concept of what you would call sovereign risk is not new, and it is not an issue that has been only raised with this bill. In fact, there have been multiple—over 300—amendments to the Petroleum and Gas (Production and Safety) Act since its inception in 2004. As a result, there have been a lot of issues with nervousness with investment. In fact, many investors now—overseas investors in particular but also within Queensland and Australia—have come to the conclusion that at present Queensland is not a target-rich place for investment, simply because of the moving ball in relation to the framework for the legislation.*

*I speak to a lot of lawyers at the coalface—part of the role of the centre is working with the profession—and there has been a noted distrust of the Queensland regulatory framework for a whole range of reasons but primarily because of two things. First is the constant amendments to the PGPSA and the new MQRA program. That is a whole other story. So that is the first legal issue. It is not so much legal but it is an issue. So a government that is purporting to want to create job security and those sorts of things: the very notion of sovereign risk overlaid on top of that creates a major concern.*

And:

*It is not about compensating the landowner; it is about compensating the company that has the tenements. That is a whole new issue, because those can become bookable assets. So if you have a petroleum lease over X area with X amount of coal seam gas likely to be extracted, that then becomes a value. So the question is, 'Does compensation extend to the value of the gas underneath that is possibly being extracted?'*<sup>41</sup>

The committee questioned the Member for Condamine on the no-compensation clause at the public briefing. The Member for Condamine stated:

*I have said no compensation is allowed under this legislation. They have to pack up and go.*<sup>42</sup>

In response to further questioning from the committee, the Member for Condamine conceded that he had not sought legal advice as to the no compensation issue.<sup>43</sup>

The committee asked the Member for Condamine further about the possibility that companies may seek compensation for the work they have already done and that the people of Queensland would end up having to pay, the Member for Condamine advised:

*Maybe that is a possibility but what are we going to do? Are we going to allow this to keep going and lose our prime agricultural land? Someone has to make a start somewhere and that is what this legislation does. If we are faced with that in the future, we have to face it. Sometimes government has to take steps as a protection mechanism for the people of Queensland.*<sup>44</sup>

## **Abrogation of existing petroleum tenures and authorities**

**Clause 13** would provide that: a petroleum tenure or authority, coal or oil shale mining lease; or coordination arrangement; that provides for the carrying out of CSG activities on protected land,

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<sup>41</sup> Hunter, T. 2013, *Draft public hearing transcript*, 20 November, p. 16.

<sup>42</sup> Hopper, R. 2013, *Draft public briefing transcript*, 16 October 2013, p. 4.

<sup>43</sup> Hopper, R. 2013, *Draft public briefing transcript*, 16 October 2013, p. 4.

<sup>44</sup> Hopper, R. 2013, *Draft public briefing transcript*, 16 October 2013, p. 5.

would on commencement of the Act cease to be valid and of no effect , and would require persons carrying out CSG activities under these invalidated authorities to take all reasonable steps to restore, the land, to the extent possible, to the condition it was in before the CSG activity started, and would be responsible for the costs of this restoration work.

Clause 13 invalidates particular authorities to the extent that they authorise carrying out a CSG activity on excluded land. These authorities include tenures, leases or coordination arrangements and are collectively described as ‘authorities’ below for ease of reference.

The authorities covered by clause 13 include:

- (g) A **1923 Act petroleum tenure** – defined in *Petroleum and Gas (Production and Safety) Act 2004*, schedule 2 as either a 1923 Act authority to prospect (‘ATP’) or 1923 Act lease
- (h) A **petroleum authority** – defined by *Petroleum and Gas (Production and Safety) Act 2004*, s 18 and includes
  - a. an authority to prospect (granted under section 41, continued in force under section 83 or 119, or renewed under section 84);
  - b. a petroleum lease granted under section 120, 132, 340, 356 or chapter 15, continued in force under section 163 or renewed under section 164;
  - c. a data acquisition authority granted under section 178;
  - d. a water monitoring authority granted under section 192;
  - e. a survey licence granted under section 396;
  - f. a pipeline licence granted under section 410, continued in force under section 481 or renewed under section 482;
  - g. a petroleum facility licence granted under section 446, continued in force under section 481, or renewed under section 482; or
  - h. a coal mining lease as defined in *Mineral Resources Act 1989*, section 318AE(2), that is,
    - i. a mining lease for coal; or
    - ii. a mining lease or special coal mining lease granted under any of the following Acts, an agreement provided for under any of the Acts or any amendment of an agreement provided for under any of the Acts—
      - (i) the *Central Queensland Coal Associates Agreement Act 1968*;
      - (ii) the *Thiess Peabody Mitsui Coal Pty. Ltd. Agreements Acts 1962 to 1965*; or
    - iii. a specific purpose mining lease for a purpose associated with, arising from or promoting the activity of coal mining, whether or not it is also granted for a purpose other than coal mining.
- (i) **Oil shale mining lease** – as defined in *Mineral Resources Act 1989*, section 318AF(2), that is:
  - a. a mining lease for oil shale; or
  - b. a specific purpose mining lease for a purpose associated with, arising from or promoting the activity of oil shale mining, whether or not it is also granted for a purpose other than oil shale mining.
- (j) A **coordination arrangement** - *Petroleum and Gas (Production and Safety) Act 2004* sections 234 and 236 provide for an arrangement about
  - a. the orderly
    - i. production of petroleum from a natural underground reservoir under more than 1 of a 1923 Act lease, petroleum lease or mining lease (‘the leases’); or
    - ii. carrying out of an authorised activity for any of the leases by any party to the arrangement; and
  - b. petroleum production from more than 1 natural underground reservoir under more than 1 of the leases.

A coordination arrangement may be for any term but does not have effect unless approved by the Minister under section 236 – if the Minister is satisfied of various factors, including that the proposed arrangement is in the public interest.

Dr Tina Hunter, Director for the Centre for International Minerals and Energy Law at the University of Queensland's TC Beirne School of Law commented on this provision in her evidence at the committee's public hearing:

*The second issue then becomes the actual legal consequences of taking back the petroleum leases. Most of you will have seen the movie The Castle. Section 51(xxxi) of the Constitution of Australia provides that there is the right to acquire property on just terms. In fact, a lease is a form of property and therefore there would be an expectation that if these leases are then taken back there would be some sort of compensation. Under state legislation there is no provision for 'on just terms'. So there is a provision for acquisition of property under our legal framework but not 'on just terms'. Again, that creates a whole range of legal issues. The first is: what do you do with these tenements, or the licence areas, in terms of taking them back? That creates a whole range of issues. Secondly, is there compensation payable? Thirdly, how much is that compensation payable? Fourthly, how do you even implement that and roll that out? So those are the legal issues that come with this bill in particular.<sup>45</sup>*

The committee sought advice from the DNRM to better understand the likely impact of the abrogation of petroleum tenures and authorities that is proposed in the Bill. The committee sought advice on the number of exploration and production wells for CSG located in areas defined as 'excluded land' and 'prime agricultural land' at clause 8 of the Bill. In its advice, DNRM explained that a search by the Geographical Survey of Queensland within the department examined the number of wells drilled in both 'excluded land' and 'prime agricultural land' as defined in the Bill. DNRM advised that there are 57 exploration wells, nine appraisal wells and no development wells in areas defined as 'excluded land'. In relation to 'prime agricultural land', DNRM advised that 282 exploration wells, 357 appraisal wells and 653 development wells have been drilled.

In his briefing for the committee, the Member for Condamine presented different information as to the number of CSG wells in areas to be affected by his Bill.

The committee asked the Member for Condamine to provide justification for partially abrogating existing tenures, authorities, leases or other arrangements on excluded land. The Member for Condamine did not provide a justification and, instead, advised:

*The lock out area which is similar to the implementation of the Steve Erwin environmental park announced on the 20-11-2011 by the Premier. This set a precedent for the implementation of this bill.<sup>46</sup>*

## **The Explanatory Notes to the Bill**

S.23 of the *Legislative Standards Act 1992* sets out the requirements for Explanatory Notes that are to accompany Bills presented to the House. In the committee's view the Explanatory Notes presented for the Bill do not meet these requirements. Specifically, the deficiencies include:

- the absence of any discussion of using existing legislative frameworks to address the concerns on which the Bill is premised - namely impacts on the agricultural industry and food security
- the lack of credible assessments of the administrative costs to government of implementing the Bill, including staffing and program costs

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<sup>45</sup> Hunter, T. 2013, *Draft public hearing transcript*, 20 November, p. 15.

<sup>46</sup> Hopper, R. *Correspondence*, 21 November 2013.

- the failure to address the significant fundamental legislative principles issues raised by the Bill, and
- the absence of an reasons for not including this information.

### **Committee comment**

The committee believes it is evident that the Member for Condamine has not considered the Government's substantial framework for managing the CSG industry when he presented the Protection of Prime Agricultural Land and Other Land from Coal Seam Gas Mining Bill 2013 to the Legislative Assembly.

Clause 7 of the Bill defines 'CSG activity' to be prohibited on all protected lands. The definition of 'CSG activity' is wider than is implied in the Explanatory Notes and covers a field of activities in connection with CSG. This field is further widened by including in the definition activities that are 'incidental' to CSG activities. In the committee's view, these activities could include activities by government, and the consequences of the wording have not been properly considered during the scoping of the Bill.

Clause 8 proposes to prohibit CSG activities in areas that are to be designated as 'protected land'. The Bill further defines 'protected land' to include 'excluded land' and 'prime agricultural land'. The committee notes problems with the way 'excluded land' is defined in the Bill. The committee also notes advice from the Member for Condamine that he proposes to move an amendment to the Bill.

The definition in the Bill for 'prime agricultural land' includes land that is listed as potential strategic cropping land irrespective of its cropping history and whether it has been decided as SCL or non-SCL. This provision would exclude CSG activities from vast areas of the state on the grounds that it is 'prime agricultural land' when its cropping value could be below the threshold for protection as strategic cropping land. This would unduly impinge on the State's ability to exploit CSG resources.

Clause 10 of the Bill would make the executive offices of a corporation personally liable for offences committed by the corporation in certain circumstances.

In our view, the imposition of extended personal liability could result in a person being found guilty for the actions of another person, with the potential to impact adversely on their rights and liberties. The Member for Condamine has failed to explain the justification for this infringement of rights and liberties. He has in fact, misunderstood the objectives of the Government's current reforms to directors' liabilities. Clause 10 is a concern given the absence of any justification, and the apparent conflict it would create with other legislation to limit the liabilities of executive officers in Queensland and in other jurisdictions.

Clause 11 of the Bill provides that, with one exception, no amount of compensation, reimbursement or otherwise would be payable by the State to any person for or in connection with the enactment of the Act. The exception is set out in clause 14.

The committee accepts that Clause 11 which seeks to deny affected parties the right to compensation, would, if enacted, be unsound and likely to be challenged in the Courts.

Clause 13 would provide that a petroleum tenure or authority, coal or oil shale mining lease or coordination arrangement that provides for the carrying out of CSG activities on protected land, would on commencement of the Act cease to be valid and of no effect. It would also require persons carrying out CSG activities under these invalidated authorities to take all reasonable steps to restore, the land, to the extent possible, to the condition it was in before the CSG activity started, and would be responsible for the costs of this restoration work.

Based on the numbers of wells located in areas where the Bill proposes to prohibit CSG activity, the committee notes the enormous adverse impacts on CSG companies and other entities that would be caused by this provision of the Bill.

The committee notes that withdrawing resource rights, as proposed in this Bill, would be foolish, and could seriously jeopardise Queensland's reputation for future resource investments.

Finally, the committee has noted a number of deficiencies in the Explanatory Notes for the Bill. We suspect that many of the deficiencies in the Bill would have been highlighted had the Explanatory Notes been prepared properly.

### **Should the Bill be Passed?**

Standing Order 132(1) requires the committee to recommend whether the Bill should be passed. After examining the form and policy intent of the Bill, the committee determined that the Bill should not be passed for the reasons cited above.

#### **Recommendation 1**

The committee recommends that the Protection of Prime Agricultural Land and Other Land from Coal Seam Gas Bill 2013 not be passed.



## **Appendix A – List of submitters**

- 1 - Logan City Council
- 2 - Queensland Murray-Darling Committee Inc.
- 3 - Mr Michael Moore
- 4 - Sunshine Coast Regional Council
- 5 - Ms Marilyn Plant
- 6 - Condamine Catchment Management Association
- 7 - Queensland Resources Council
- 8 – Australian Society of Soil Science Inc.
- 9 - Arrow Energy Pty Ltd
- 10 - Southern Downs Protection Group Inc.
- 11 - Oakey Coal Action Alliance

## **Appendix B – Hearing witnesses and people who provided briefings**

### **Public Briefing – 16 October 2013**

Mr Dennis Bird, Executive Director, Industry Development, Department of State Development, Infrastructure and Planning

Mr David Harmer, Policy Manager, Organisational Support and Reform, Department of State Development, Infrastructure and Planning

Mr Ray Hopper MP, Member for Condamine

Ms Jane Thomas, Senior Project Officer, Department of State Development, Infrastructure and Planning

Ms Kylie Williams, Executive Director, Regional Planning, Department of State Development, Infrastructure and Planning

### **Public Hearing witnesses – 20 November 2013**

Mr Andrew Barger, Director, Resources Policy, Queensland Resources Council

Mr Howard Briggs, Member, Soil Science Australia

Mr Daniel Brough, President, Soil Science Australia

Dr Tina Hunter, Senior Lecturer, TC Beirne School of Law, University of Queensland

Dr Nicki Laws, Executive Member, Oakey Coal Action Alliance

Mr Bernie Powell, Member, Soil Science Australia

Dr John Standley, Vice Chairman, Condamine Catchment Management Association

### **Public Briefing – 20 November 2013**

Mr Dennis Bird, Executive Director, Industry Development, Department of State Development, Infrastructure and Planning

Mr Randall Cox, General Manager, Office of Groundwater Impact Assessment, Department of Natural Resources and Mines

Mr Ray Hopper MP, Member for Condamine

Ms Kylie Williams, Executive Director—Planning, Department of State Development, Infrastructure and Planning

## Appendix C – Summary of submissions

Cl.	Sub No. and Submitter	Section/[Issue]	Key Points
	1. Logan City Council	General Comments in support of the Bill	Council supports: the general intent of the Bill to protect prime agricultural land from coal seam gas exploration and mining; the protection of water quality of the aquifers affecting strategic cropping land through the management of impacts from mining activities; and the protection of water supplies, as providing access to an affordable and reliable water supply is important for strategic cropping land. (Sub 1, p.1)
	3. Michael David Moore	General Comments in support of the Bill	<p>Mr Moore supports the Bill and makes the following points to support his argument;</p> <ul style="list-style-type: none"> <li>- This bill would protect the Condamine electorate from CSG operations allowing the land to continue to be the most fertile in Queensland</li> <li>- CSG operations cannot be deduced as ecologically sustainable development and are therefore not in harmony with the objects of the EPBCA, whereas the bill introduced by Hopper is parallel with these principles. Moreover, in their 2012 report, the International Energy Agency concluded that CSG operations 'should be avoided in areas of water scarcity, in close proximity to densely populated areas, and/or in areas where it can impact on agricultural production.'<sup>17</sup> Along with competition for water increasing with the potential introduction of CSG operations, water contamination is also a realistic threat</li> <li>- This bill would reinforce the precautionary principle by disallowing CSG mining and exploration until further research is undertaken to prevent water contamination. Although water pollution is major concern it must not be forgotten the ongoing potential pollutants being released into the atmosphere.</li> <li>- Due to the exorbitant amount of greenhouse gas being emitted due to CSG operations, the principles in section 3A and the precautionary principle in section 391 of the EPBCA must be considered. The enactment of this bill will reinforce these principles and significantly decrease the amount of greenhouse gases being negligently released into the atmosphere. Additionally, the atmosphere is not the only thing to suffer from the noxious gases released in the CSG process, the greater public is also at risk.</li> <li>- This bill will prohibit CSG operations from putting the residents of Condamine at risk of potentially deadly effluvioms. Once again, the precautionary principle must be considered. Even if there is no documented risk of harm, the potential of harm placed on the public must initiate the precautionary principle.</li> </ul>
	10. Southern Downs Protection Group	General Comments in support of the Bill	<p>The SDPG Inc. wishes to support the current Bill put forward by MP Ray Hopper who has given an undertaking that the farmlands of the Darling Downs will not be impacted by coal mining industries.</p> <p>Recently Qld Member for Southern Downs, Lawrence Springborg committed to no coal mining in prime agricultural land in the Southern Downs.</p> <p>Federal Member for Maranoa also noted in his recent Newsletter that the prime agricultural areas in the Southern Downs would not be impacted by coal mining industries. SDPG Inc wishes to emphasise the feeling of this advocate group that coal mining in the Southern Downs would not be welcome.</p>
	4. Sunshine Coast Regional Council	General Comments in support of the Bill	The Council is generally supportive of the Bill and its proposal to put in place an exclusion area to help provide for the sustainability of the agricultural industry and food security.
	4. Sunshine Coast Regional Council	General Comments in support of the Bill	Until a complete assessment can be made at a strategic level as how best to resolve the coexistence of and conflicts between agricultural land (and other rural values) and resource extraction, Council sees it as appropriate that a moratorium be put in place on CSG exploration and mining and that this apply across the whole of the Sunshine Coast.

Cl.	Sub No. and Submitter	Section/[Issue]	Key Points
	5. Sid and Marilyn Plant	General Comments in support of the Bill	Support for the Bill.
	5. Sid and Marilyn Plant	General Comments in support of the Bill	Mr and Mrs Plant argue that the Bill should apply to coal mining as well as CSG, and assert that the impact of CSG mining on the land is greater than indicated by the mining companies.
	6. Condamine Catchment Management Association	General Comments in support of the Bill	The CCMA supports the Bill.
	2. Queensland Murray – Darling Committee Inc.	General Comments in support of the Bill	"QMDC supports the purposes of the Protection of Prime Agricultural Land and Other and from Coal Seam gas Mining Bill 2013." (Sub 2, p.1)
	7. Queensland Resources Council	General comments against the Bill	Since the beginning of the debate over strategic cropping land (SCL), QRC has consistently advocated a direct assessment of the cropping potential of the land as a standard part of the existing environmental impact statement (EIS) process. In the absence of this approach, this Bill and the SCL framework (along with potential unintended consequences of the statutory regional planning process), can have the perverse outcome of protecting inputs for no productive outcome.
	7. Queensland Resources Council	General comments against the Bill	QRC is also confused why the Bill seeks to extend the coverage of the Strategic Cropping Land Act to CSG in the Darling Downs, but not extend similarly sweeping new protections from CSG in Central Queensland. The Bill seems to adopt a deliberately myopic view of "Prime Agricultural Land", setting the scene for further policy confusion in relation to other areas of the state co-existing with CSG activity
	9. Arrow Energy	General comments against the Bill	Find the Bill extremely concerning, as they believe that it would remove, without compensation, Arrow's business foundations, including ongoing supply obligations to Queensland gas producers. It would result in the immediate loss of employment for a large portion of Arrow's 1300 staff.
	8. Soil Science Australia	General comments against the Bill	<ul style="list-style-type: none"> <li>- The Bill does not adequately justify the need to protect land from CSG activities while ignoring other land uses. The reasons why CSG activities should be excluded from some lands should be adequately justified.</li> <li>- This objective should be refined to explicitly state land on the Strategic Cropping Land (SCL) Trigger Map or decided SCL, as it currently reads this objective could be interpreted to mean all lands within the Management and Protection Zones of the SCL Act</li> </ul>
	7. Queensland Resources Council	General comments against the Bill	The Bill seems to be founded on the assumption that CSG activities and "Prime Agricultural Land" are incompatible and mutually exclusive. This assumption does not stand up to scrutiny, with many good examples of coal seam gas activities not only working around an existing family agri-business, but also making a positive contribution towards ongoing viability of that business.
	7. Queensland Resources Council	General comments against the Bill	The major innovation proposed in this Bill would be to circumvent the need for any assessment or inconvenient ground-truthing of the productivity or soil properties of "Prime Agricultural Land", by enforcing an absolute exclusion of any CSG activities from the potential strategic cropping land (SCL) on the SCL trigger maps. This exclusion would also require any existing tenures to be relinquished (section 13 (2)) and the land promptly restored to the condition before the activity started (section 13(3)(a)).
	7. Queensland Resources Council	General comments against the Bill Section 7 (e)	The Bill's very narrow sectoral focus on excluding coal seam gas is not explained. It seems odd that the Bill would apparently allow an open cut tin mine or an underground uranium mine on "Prime Agricultural Land", but not even a hint of coal seam gas activity. Indeed, the definition of coal seam gas activity goes as far as to prohibit the production of incidental coal seam gas from coal mining activities, (section 7 (e)) but is silent on the merits or otherwise of the coal mining activity.
	7. Queensland Resources Council	General comments against the Bill Section 7(g)	For example an existing gas pipeline which has been transporting gas from the Cooper Basin to Brisbane is able to move natural gas, shale gas, syn-gas and a host of other fuel sources, but if coal seam gas was to be introduced to the pipeline, then section 7(g) could be triggered and the Bill could arguably define that as CSG activity and require that the pipeline be immediately decommissioned and the land restored

Cl.	Sub No. and Submitter	Section/[Issue]	Key Points
	7. Queensland Resources Council	General comments against the Bill Section 7, Section 13(2)	The very broad definition of CSG activity in section seven and the retrospective application of the Bill (section 13 (2)), would mean that the Bill could have dramatic implications for existing activities, infrastructure and operations.
	7. Queensland Resources Council	General comments against the Bill Section 8(4) (b)	Finally, the Bill proposes that even where "Prime Agricultural Land" has been verified as not being SCL, CSG activity is still excluded (section 8(4)(b)).
	11. Oakey Coal Action Alliance	General comments	The Alliance set out several recommendations in their submission; - That the Bill be informed by data obtained from the mapping of relevant natural and agricultural resources and associated technical reports, land management manuals and local knowledge. - That a simplified Strategic Cropping Land assessment methodology be adopted to help inform the purposes of the Bill. - That the existing approvals clause be revisited and redrafted to ensure it is adequate
	4. Sunshine Coast Regional Council	General comments	Further research and information relevant to South East Queensland is required to assist with understanding whether potential impacts from CSG activities on agricultural land and landscape values can be appropriately and reliably mitigated.
	7. Queensland Resources Council	General comments	QRC doesn't understand why it seems to adopt a deliberately myopic view of "Prime Agricultural Land" by focussing only on the South East corner of Queensland.
	1. Logan City Council	General comments Objectives of the Bill	"Council recommends that the primary objectives of the Bill can be achieved through an amendment to the <i>Strategic Cropping Land Act 2011</i> and/or the <i>Petroleum and Gas (Production and Safety) Act 2004</i> rather than adding new legislation." (Sub 1, p.1)
	4. Sunshine Coast Regional Council	General comments Part 7	The Bill does not define the term 'prime agricultural land' but makes reference to Strategic Cropping Land under the Strategic Cropping Act.
	8. Soil Science Australia	General comments Reasons for the Bill	If the Bill is to protect the richest agricultural areas, why are the Central Highlands and other high quality areas of Queensland excluded?
2	8. Soil Science Australia		The clause has merit, however the scope of application is questioned
3	11. Oakey Coal Action Alliance		Clause 3 (a) needs to be informed by the most accurate NRM information and land research to ensure land that should be protected is protected. Subsequent Legislation must clearly identify with maps those areas of land where prohibition is to occur.
3	2. Queensland Murray – Darling Committee Inc		"Clause 3 (a) needs to be informed by the most up to date NRM information and land research to ensure land that should be protected is protected. QMDC asserts that in order for Clause 3 (b) to be able to prohibit mining and associated activities in areas where no pre-existing approvals exist, the Bill in order to achieve its purposes must clearly identify with maps those areas of land where prohibition is to occur." (Sub 2, p.2)
3 & 8	6. Condamine Catchment Management Association		The CCMA argue that earlier sources of information for mapping purposes should be used, and they cite examples of old reports and surveys. They also ask why this information is not used today. They also suggest that; - Land Management Manuals, recently compiled by DPI should also be used to emphasise the locations of the most productive agricultural land, a combination of fertile soils, rainfall and availability of high quality water for irrigation - The Bill encompasses a catchment scale approach so that not only is the cropping land retained but also the intake areas for aquifers and important areas of environmental biodiversity are rescued. - Presently there is no protection of the most productive agricultural land ("strategic cropping land") from urban and infrastructure development, mining and coal seam gas projects. - Depletion of high quality aquifers is a real possibility in areas such as Cecil Plains where these aquifers may be connected to those drained when coal seam gas is extracted
8	11. Oakey Coal Action Alliance		Landholders on the Darling Downs have stated consistently that the most productive land in the region needs to be separated

Cl.	Sub No. and Submitter	Section/[Issue]	Key Points
			from the marginal land and CSG activities should be banned on that productive land... Determining and protecting priority agricultural land requires simplifying the current Strategic Cropping Land assessment methodology. With less rigid criteria, and clearer maps, the assessment process can be streamlined and result in better agricultural outcomes... Clause 8 could then be informed by mapping which includes the above reports and more current scientific data and NRM technical information.
8	2. Queensland Murray – Darling Committee Inc		Clause 8 could then be informed by mapping which includes the above reports and more current scientific data and NRM technical information. Utilising soils maps, land management manuals, technical reports and local knowledge will effectively facilitate regional intelligence on, for example, the most productive areas for crops, horticulture, and pastures for dairying and cattle fattening.
8	2. Queensland Murray – Darling Committee Inc		QMDC believes issues related to pre-existing approvals and the provisions to safeguard protected land should be better legislated. In order to avoid potential court actions by CSG companies against the State, QMDC recommends allowing a period of time, similar to provisions available for water licences during which if companies have either not exercised their EA or began their development they revoke their development approval.
8	4. Sunshine Coast Regional Council		The exclusion area set out in the Bill bisects the Sunshine Coast – applying generally to the area south of Landsborough – with no identifiable rationale. The characteristics, qualities and opportunities set out above continue north beyond the Chinchilla Line. Hence, extending the exclusion area to take in all of the Sunshine Coast would be more comprehensive, consistent and equitable and provide greater certainty for rural landholders and business investors on the Sunshine Coast
8	8. Soil Science Australia		The Excluded Land will include areas considered to be marginal lands; a more balanced approach would be to separate marginal lands from those of better quality using soil and land resource mapping available to the Queensland Government. Confusion is likely to be caused between separate definitions of Prime Agricultural Land and SCL that rely on the same base-map
13	11. Oakey Coal Action Alliance		It is necessary for issues related to pre-existing approvals and the provisions to safeguard protected land to be better legislated. In order to avoid potential court actions by CSG companies against the State, there should be an allowed period of time, similar to provisions available for water licences during which if companies have either not exercised their EA or began their development they revoke their development approval
13	8. Soil Science Australia		Question whether Clause 13(3) is reasonable for the company who have undertaken 'legal' activities fostered and authorised by the Old Government
13(3)	6. Condamine Catchment Management Association		It should be shown, on the basis of previous research, that the land can be rehabilitated to its original activity after the activities have been terminated.

Our ref: DGC13/1271

Your ref: 11.1

28 November 2013

Mr Ian Rickuss MP  
Chair  
Agriculture, Resources and Environment Committee  
Parliament House  
George Street  
BRISBANE QLD 4000



Department of  
**State Development,  
Infrastructure and Planning**

Dear Mr Rickuss

Thank you for your letter of 15 November 2013 about the Committee's inquiry into the *Protection of Prime Agricultural Land and Other Land from Coal Seam Gas Mining Bill 2013* (the Bill). I welcome the opportunity to provide further feedback on the submissions made in response to the Bill and respond to some of Mr Ray Hopper MP's comments made during the public hearing on 20 November 2013.

### **Protecting Queensland's agriculture**

The Deputy Premier has, on behalf of the government, given a clear direction to the department to ensure that portfolio legislation and planning for economic development supports the four pillars of our economy, including agriculture. A key policy objective of existing and proposed legislation is to ensure that the productive capacity of high value agricultural land is protected.

The *Strategic Cropping Land Act 2011* (SCLA) already provides a science-based framework which recognises that high value cropping land is an important resource, and ensures it is managed in the long term interests of Queensland.

On 20 November 2013, in recognition of the fact that regional communities want a stronger voice in regional development, the government introduced the *Regional Planning Interests Bill 2013*. If enacted, the Bill will integrate the policy objectives of the SCLA and give landholders a stronger say in planning for growth in all of Queensland's regions. Regional plans provide a framework for successful co-existence between the agricultural and resources sectors. With these plans, the government is giving greater power to landholders and creating an incentive for resource companies to arrive at an acceptable outcome with landholders. This work will help maintain the long-term viability of our agricultural industries, and support economic growth and opportunities for regional communities.

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### **Building community confidence**

At a community level, the government is determined to manage the impacts of Coal Seam Gas (CSG) operations and provide confidence that the industry can continue to develop sustainably. To build community confidence, the government established the GasFields Commission, the Office of Groundwater Impact Assessment and the CSG Compliance Unit.

The GasFields Commission was established as an independent statutory body that acts as a voice for community concerns and improves coexistence between landholders, communities and the gas industry. The GasFields Commission has gained respect in regional communities and has proven that CSG projects and agricultural activities can coexist to their mutual benefit.

The Office of Groundwater Impact Assessment adds to this confidence by monitoring the development of the petroleum and gas industry in relation to the potential impacts of water extraction. It prepares underground water impact reports for the Surat Basin and maintains a database which stores baseline and monitoring data. While it is funded by industry, this unit has strong community support due to the demonstrated independence and the quality of reports it publishes.

Finally, the CSG Compliance Unit performs the functions that stem from the regulatory responsibilities of enforcement and compliance. It has a high level of visibility in regional Queensland and the officers have established strong relationships in the community over a number of years.

### **Wells impacted by the Bill**

At the public hearing on 20 November 2013, Mr Hopper questioned the reliability of information provided by Mr Dennis Bird, Executive Director, Industry Development, to the Committee on the number of wells in the excluded area at the public hearing of 16 October 2013. Mr Hopper advised that based on his mapping, that there were 30–40 wells and probably only 4 or 5 producing wells impacted by his Bill.

The transcript of 16 October 2013 of the Public briefing reports the statement of Mr Bird as:

*“With the mapping, in terms of what we have seen in the Bill so far we have estimated there are about 496 exploration and production wells in that area”.*

In response to a question from the committee, Mr Bird stated that:

*“Well, not all of them are production wells but there are 496 wells. As I say, that is an estimate. I cannot put my hand on heart and say that is desperately accurate because we have had to take the Bill, we have had to map it the way it is described in the Bill, and we think we have come up with a reasonable position on that and mapped strategic cropping land and tried to identify those wells that would be specifically impacted by this particular Bill”.*

For the benefit of the Committee, I wish to advise that the estimate of the number of wells provided by the Department of State Development, Infrastructure and Planning (DSDIP) was made based on publicly available information obtained through the Department of Natural Resources and Mines Interactive Tenure and Resource Map <<https://webgis.dme.qld.gov.au/webgis/webqmin/viewer.htm>>. The CSG Wells dataset includes exploration, appraisal, development and gas injection wells.

In interpreting the area which was defined as Excluded Land, DSDIP interpreted the boundary of the Excluded Land to be the land east of the Condamine River downstream of Chinchilla. It also based its estimate on the assumption that Protected Land would capture exploration, appraisal and development wells that were located on the strategic cropping land trigger area and in the Excluded Land area only.

At the public hearing on 20 November 2013, Mr Hopper tabled a map which shows his intention was for Excluded Land to be defined relative to the Condamine River upstream of Chinchilla not downstream. Mr Hopper also clarified that 'Protected Land' included both 'Excluded Land' (all land east of the Condamine River) as well as 'Prime Agricultural Land' which is the trigger map for Strategic Cropping Land.

Reasonable interpretation of section 8 of the Bill was used to make an estimate of the number of wells for the Committee on 16 October 2013. The information provided was accurate based on this interpretation and any implication by Mr Hopper that the information provided was misleading is rejected.

However, based on the clarifying statements made by Mr Hopper, a recalculation of the number of CSG wells on Protected Land was undertaken by the Department of Natural Resources and Mines. DSDIP's original estimates did not include all SCL on the trigger map, which encompasses approximately four per cent of the State. When applying this broader definition of 'Protected Land', the Department of Natural Resources and Mines estimated there would be 1358 wells comprising 339 Exploration, 366 Appraisal and 653 development wells that would be captured. This represents approximately 18 per cent of the 7472 exploration, appraisal or development CSG wells in the state.

The potential economic impacts and sovereign risk from the enactment of the Bill were therefore substantially under-estimated in our earlier submission. While there is no guarantee that all wells will progress to the production stage, the threat of permanently sterilising land already under tenure presents a significant risk to the state's reputation as an investment destination. This Bill would affect all of the major CSG companies and potentially cripple the industry, causing extensive job losses in an industry currently employing approximately 30,000 employees. Due to the retrospective application of the Bill to existing tenures, the damage to the Queensland economy and Queensland's reputation as a secure and stable investment regime is inestimable. If enacted, the Bill would also jeopardise the LNG projects which have invested over \$60 billion and have contractual obligations to export gas from mid-2014 onwards.

The maps requested as per your letter were provided at the public hearing in hard copy and via the Committee mailbox on 20 November 2013.

If you require any further information please contact Mr Dennis Bird, Executive Director, Industry Development on 3405 6778.

Yours sincerely

**David Edwards**  
Director-General

## **Appendix D – Correspondence with the Member for Condamine regarding issues with fundamental legislative principles**

2 October 2013

Mr Ray Hopper MP  
Member for Condamine  
14A Cunningham Street  
DALBY QLD 4405

By email – [Condamine@parliament.qld.gov.au](mailto:Condamine@parliament.qld.gov.au)

Dear Mr Hopper

### **Protection of Prime Agricultural Land and Other Land from Coal Seam Gas Mining Bill 2013**

Further to my letter of 28 August 2013, I write on behalf of the committee to seek your advice on possible fundamental legislative principles (FLP) issues and other issues with your Bill. It would be helpful to the committee if you could provide a written response on the following points:

#### **Clear and precise – Section 4(3)(k) *Legislative Standards Act 1992***

**Is the Bill unambiguous and drafted in a sufficiently clear and precise way?**

##### ***‘Excluded land’ clause 8***

Clause 8 defines ‘excluded land’ to mean all land east of the Condamine River between -

- (a) a line running lengthwise, directly through the Chinchilla Post Office, to the east coast of Queensland; and
- (b) the border between Queensland and New South Wales.

#### **Request for Advice:**

In relation to clause 8(2)(a) we would appreciate if you could clarify if by ‘lengthwise’ you mean ‘longitudinally’.

We are unclear as to the land that is ‘excluded land’ for the purposes of the Bill. It would be helpful if you could provide a map showing the areas you intend to be excluded lands or otherwise clarify the provisions of the Bill.

We note that the Condamine River does not pass through Chinchilla, however, the river and a line running through the Chinchilla Post Office are key parameters for defining what is ‘excluded land’. We further note that at some location south west of Chinchilla, the Condamine River merges with the Balonne River.

We would appreciate if you could clarify whether land between the reaches of the Condamine River that is south west of Chinchilla and the reaches that are south east of Chinchilla will be considered ‘excluded land’ for the purposes of the Bill.

We would also appreciate if you could advise precisely (latitude and longitude) where the Condamine River ends and the Balonne River begins for the purposes of the Bill?

#### ***Right and liberties of individuals - Section 4(2)(a) Legislative Standards Act 1992***

***Does the Bill have sufficient regard to the rights and liberties of individuals?*****Clause 10 - Liability of executive officers**

Clause 10 of the Bill would make the executive officer of a corporation personally liable for offences committed by the corporation in certain circumstances. Under s. 10, an executive officer commits an offence if the officer's corporation commits an offence against s.9, and the officer did not take all reasonable steps to ensure the corporation did not engage in the conduct constituting an offence against s.9. The offence provided for in s.9 is that a person must not carry out, or attempt to carry out, a CSG activity on protected land, the maximum penalty being 10,000 penalty units or five years imprisonment.

Imposing extended liability could result in a person being found liable for the actions of another person, with the potential to adversely impact on their rights and liberties. As explained by the Office of the Queensland Parliamentary Counsel:

*Legislation should not ordinarily make a person responsible for actions or omissions over which the person may have no control. Unilateral imposition of responsibility on a person for a matter is an interference with the rights and liberties of the person and requires sufficient justification... Legislation should not make executive officers of a corporation vicariously liable for alleged offences of a corporation unless it is a practical necessity and unless appropriate safeguards are provided...*<sup>47</sup>

We also note that one of the reasons why corporations were developed was to provide a means of carrying on business through an entity with its own legal personality and limiting the liability of directors and shareholders. Making an executive officer liable for offences by a corporation would contradict this. This principle is also reflected in the Council of Australian Governments' (COAG's) [Personal Liability for Corporate Fault – Guidelines for applying the COAG Principles](#). These guidelines, approved by COAG on 25 July 2012 as part of the implementation of the *National Partnership Agreement to Deliver a Seamless National Economy*, include:

1. Where a corporation contravenes a statutory requirement, the corporation (emphasis added) should be held liable in the first instance.
2. Directors should not be liable for corporate fault as a matter of course or by blanket imposition of liability across an entire Act.
- ...
4. The imposition of personal criminal liability on a director for the misconduct of a corporation should be confined to situations where:
  - (a) there are compelling public policy reasons for doing so (for example, in terms of the potential for significant public harm that might be caused by the particular corporate offending);
  - (b) liability of the corporation is not likely on its own to sufficiently promote compliance; and
  - (c) it is reasonable in all the circumstances for the director to be liable having regard to factors including:
    - i. the obligation on the corporation, and in turn the director, is clear;
    - ii. the director has the capacity to influence the conduct of the corporation in relation to the offending; and
    - iii. there are steps that a reasonable director might take to ensure a corporation's compliance with the legislative obligation.

The explanatory notes to the Bill do not explain the justification for making executive officers liable for offences committed by corporations to promote compliance.

<sup>47</sup> Office of the Queensland Parliamentary Counsel, 2008, *Fundamental Legislative Principles: The OQPC Notebook*, p. 117.

**Request for Advice:**

The committee invites you to explain the justification for seeking to impose liability on executive officers, in addition to corporations, for s.9 offences.

The committee also seeks your advice on the penalty for contravening s.9 that would apply to individuals.

***Right and liberties of individuals - Section 4(2)(a) Legislative Standards Act 1992***

***Does the bill have sufficient regard to the rights and liberties of individuals?***

**Clause 13 - existing petroleum tenures etc invalidated**

Clause 13 invalidates particular authorities to the extent that they authorise carrying out a CSG activity on excluded land. These include tenures, authorities, leases or coordination arrangements and are collectively described as ‘authorities’ below for ease of reference.

The authorities covered by clause 13 include:

- (k) A **1923 Act petroleum tenure** – defined in *Petroleum and Gas (Production and Safety) Act 2004*, schedule 2 as either a 1923 Act authority to prospect (‘ATP’) or 1923 Act lease
- (l) A **petroleum authority** – defined by *Petroleum and Gas (Production and Safety) Act 2004*, s 18 and includes
  - a. an authority to prospect (granted under section 41, continued in force under section 83 or 119, or renewed under section 84);
  - b. a petroleum lease granted under section 120, 132, 340, 356 or chapter 15, continued in force under section 163 or renewed under section 164;
  - c. a data acquisition authority granted under section 178;
  - d. a water monitoring authority granted under section 192;
  - e. a survey licence granted under section 396;
  - f. a pipeline licence granted under section 410, continued in force under section 481 or renewed under section 482;
  - g. a petroleum facility licence granted under section 446, continued in force under section 481, or renewed under section 482; or
  - h. a coal mining lease as defined in *Mineral Resources Act 1989*, section 318AE(2), that is,
    - i. a mining lease for coal; or
    - ii. a mining lease or special coal mining lease granted under any of the following Acts, an agreement provided for under any of the Acts or any amendment of an agreement provided for under any of the Acts—
      - (iii) the *Central Queensland Coal Associates Agreement Act 1968*;
      - (iv) the *Thiess Peabody Mitsui Coal Pty. Ltd. Agreements Acts 1962 to 1965*; or
    - iii. a specific purpose mining lease for a purpose associated with, arising from or promoting the activity of coal mining, whether or not it is also granted for a purpose other than coal mining.
- (m) **Oil shale mining lease** – as defined in *Mineral Resources Act 1989*, section 318AF(2), that is:
  - a. a mining lease for oil shale; or
  - b. a specific purpose mining lease for a purpose associated with, arising from or promoting the activity of oil shale mining, whether or not it is also granted for a purpose other than oil shale mining.
- (n) A **coordination arrangement** - *Petroleum and Gas (Production and Safety) Act 2004* sections 234 and 236 provide for an arrangement about
  - a. the orderly
    - i. production of petroleum from a natural underground reservoir under more than 1 of a 1923 Act lease, petroleum lease or mining lease (‘the leases’); or

- ii. carrying out of an authorised activity for any of the leases by any party to the arrangement; and
- b. petroleum production from more than 1 natural underground reservoir under more than 1 of the leases.

A coordination arrangement may be for any term but does not have effect unless approved by the Minister under section 236 – if the Minister is satisfied of various factors, including that the proposed arrangement is in the public interest - see section 236(1)(a) for full list.

Clause 13 purports to abrogate the various authorities listed above to the extent they authorise CSG activity on excluded land. For these authorities, clause 13 has the effect that the provisions of the authority cease to be valid and, to the extent they authorise CSG activity, are of no effect.

As a matter of fundamental legislative principle, it is important to establish the justification for this partial abrogation.

**Request for Advice:**

The committee is endeavouring to understand whether clause 13 has sufficient regard for the rights and liberties of individuals. We therefore seek your advice as to the justifications for partially abrogating existing tenures, authorities, leases or other arrangements on excluded land.

We would appreciate if you could provide your written comments on the specific points raised in this letter by close of business (5.00pm) on Friday 1 November 2013.

Regards



Ian Rickuss MP  
**Chair**

## Response from the Member for Condamine

**Question 1** In relation to clause 8(2)(a) we would appreciate if you could clarify if by 'lengthwise' you mean 'longitudinally'.

**Answer** – Yes

**Questioning 2** We note that the Condamine River does not pass through Chinchilla, however, the river and a line running through the Chinchilla Post Office are key parameters for defining what is 'excluded land'. We further note that at some location south west of Chinchilla, the Condamine River merges with the Balonne River.

**Answer** – Charlies Creek runs from Chinchilla a very short distance. I will be moving an amendment to include this in the parameters.

**Question 3** *Right and liberties of individuals - Section 4(2)(a) Legislative Standards Act 1992. Does the Bill have sufficient regard to the rights and liberties of individuals?* Clause 10 - Liability of executive officers

**Answer** – Yes the bill is in line with the governments Directors liability Amendment Act 2013. The justification can be linked in further detail to the Directors Liability Amendment Act 2013 and if needed can be adjusted to meet required compliance.

**Question 4** the committee is endeavouring to understand whether clause 13 has sufficient regard for the rights and liberties of individuals. We therefore seek your advice as to the justifications for partially abrogating existing tenures, authorities, leases or other arrangements on excluded land.

**Answer-** The lock out area which is similar to the implementation of the Steve Erwin environmental park announced on the 20-11-2011 by the premier. This set a precedent for the implementation of this bill.

