



## **Regulatory Review of CSG-Induced Subsidence**

GasFields Commission Queensland

PO Box 15266

City East Qld 4002

By email: [enquiries@gfcq.org.au](mailto:enquiries@gfcq.org.au)

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# Regulatory Review of CSG-Induced Subsidence

## Introduction

Thank you for the opportunity to provide the GasFields Commission Queensland (GFCQ) input regarding the adequacy of existing regulatory frameworks to manage the potential impacts of CSG-induced subsidence on intensively farmed land.

It is Cotton Australia's view that all farming operations are not afforded the same protections under the existing framework, and we support the direction the GFCQ is taking to resolve this inequity. Namely, articulating a "clear pathway for impact assessment, determination or dispute resolution for all landholders who believe that they have been materially impacted by CSG-induced subsidence (other than through the Land Court of Queensland)"<sup>1</sup>. Also, that this pathway is simple to access and follow; that it includes both physical and financial measures for landholders to address both their economic loss and, the actual remediation of the land in question, back to its former capability.

In approaching this issue, it is imperative that all parties accept that landholders are not the ones who have created this situation, and therefore the protection to be afforded to them must be provided in a way that relieves them of any financial costs, and recompenses them for their time, energy and stress spent rectifying and restoring the productive capacity of their land.

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<sup>1</sup> GasFields Commission Queensland (GFCQ) "Regulatory review of coal seam gas-induced subsidence" Discussion Paper p5

**COTTON AUSTRALIA LIMITED**

Head Office Suite 4.01, 247 Coward St, Mascot NSW 2020 Australia

Phone + 61 2 9669 5222

Brisbane Level 3, 183 North Quay, Brisbane QLD 4000

Toowoomba Unit 3, 6 Rutledge St, Toowoomba QLD 4350

Narrabri Level 2, 2 Lloyd St, Narrabri NSW 2390

ABN 24 054 122 879

[www.cottonaustralia.com.au](http://www.cottonaustralia.com.au)

Our long-held policy principles in regard to Coal Seam Gas Extraction can be best summarised as:

- ) Protecting the sustainability of aquifers and surface water sources that service irrigated and dry land cotton production and their communities.
- ) Protecting high value agricultural land from CSG extraction and mining activities.
- ) Preserving the amenity of traditional cotton growing regions. This includes, but not limited to, impacts from dust, noise, air-blast, light, traffic movements, vibration, the loss of visual amenity and access to passive recreation areas enjoyed by the local community.
- ) And should extraction occur, landholders being appropriately remunerated.

As indicated in previous submissions to the GFCQ, in Cotton Australia's view The Regional Planning Interests Act, associated plans and regulations, do little, or nothing, to provide protection for the State of Queensland for Priority Agricultural Land Use (PALU) and Strategic Cropping Land (SCL). This is despite the Queensland Government's own policy document defining these areas as "a finite resource that must be conserved and managed for the longer term"<sup>2</sup>

Furthermore, we harbour serious concerns around the latitude the resource company has in determining whether

- ) the resource activity will have a significant impact on Priority Agricultural Areas (PAA) or Strategic Cropping Areas (SCA) and
- ) the activity will impact other landholders.

These concerns amplify the need to ensure the regulatory framework to manage coal seam gas-induced subsidence protects the productive value of our farmlands for future generations, in a manner which minimises the input required by landholders.

## RESPONSE TO CONSULTATION QUESTIONS

### Regulatory frameworks for managing CSG-induced subsidence

*1. Do you think the existing regulatory frameworks effectively manage CSG-induced subsidence? If you do not think the existing frameworks effectively manage CSG-induced subsidence, in your opinion what enhancement should be made?*

Noting the gaps identified by the Discussion Paper, Cotton Australia is indeed concerned that not all landholders are afforded 'equal treatment' in relation to subsidence. In our view, the regulatory framework should not make a distinction between the CSG-induced subsidence that occurs during the life of an extraction project or post operation and the ability to access a legal pathway for compensation and/or repair. Similarly, there also should not be a distinction between the landholder hosting direct drilling infrastructure to that of a landholder with indirect drilling infrastructure or a landholder in a district where CSG exploration to production occurs.

The current regulatory framework, and voluntary assurances such as provided by Arrow Energy through its "Voluntary Landholder Agreement" does discriminate amongst landholders, depending on the extent of their engagement with the resource industry.

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<sup>2</sup> "Protecting Queensland's strategic cropping land: A policy framework" (2010) p3;  
[https://cabinet.qld.gov.au/documents/2010/aug/cropping%20land%20policy/Attachments/strategic-cropping-policy-complete\[1\].pdf](https://cabinet.qld.gov.au/documents/2010/aug/cropping%20land%20policy/Attachments/strategic-cropping-policy-complete[1].pdf)

For example, landholders directly hosting have a CCA, and would presumably address the risks associated with subsidence in their CCA; landholders with a Deviated Well under their property may choose to sign an Arrow Voluntary Agreement, and that agreement does outline a pathway for resolution of the impact of subsidence (amongst other risks), but only for those lots that “host” deviated wells

Other lots, even when owned by the same entity, are not protected, and landholders which neither host above ground or deviated infrastructure must rely on the less than clear protections provided by the Mineral and Energy Resources (Common Provisions) Act 2014 (MERC 2014), and further even these provisions do not apply to a landholder who may be outside a tenure area, but still impacted.

It is imperative that there is a clear framework, that protects all landholders who can demonstrate that they have a prima facie case that they have suffered (or will suffer) an economic impact because the productive capacity of their land has been reduced due to CSG induced subsidence..

It is also very important, that the burden of proof as to the degree of economic impact should rest with the resource company. It should be required to disprove a landholders claim, rather than the landholder being required to prove the claim.

## *2. Do you think the existing regulatory frameworks are being implemented effectively?*

As an agriculture sector that invests in research and actively applies it to drive best practice, Cotton Australia has greatly appreciated the combination of Office of Groundwater Impact Assessment’s (OGIA) research and the ‘extension’ activities of GFCQ to foster better outcomes for landholders and our communities. However, we consider the overall approach by the Queensland Government to date has been piecemeal, reactive and very difficult for a landholder to comprehend, particularly given the limited amount of time and resources landholders can devote to the issue.

### *If you do not think they are being implemented effectively, what improvements should be made?*

Rather than considering measures that are ‘bolted on’ to the existing framework to address discrete elements such as the groundwater impacts, it would be an improvement to have a framework that has a whole of landscape or whole of concerned-community focus. It is the approach the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development has been taking as it updates its information guidelines. These now acknowledge the need to consider the accumulative impacts of a new project against an existing precinct, as well as the benefit of incorporating data from existing projects into the modelling assumptions of the proposed new project.

Hence, broadening the regular Underground Water Impact Reports (UWIRs) to have a whole of landscape focus that includes regular monitoring of subsidence and its impacts.

Legislation/regulation needs to ensure that responsibility for the whole of landscape monitoring does rest with OGIA, and it is resourced to appropriately carry-out its role – the role must be formally expanded to include the ongoing “best-science” modelling of subsidence impacts, measurement and reporting of actual impacts, identifying and assigning the resource companies responsible for remediation, and providing consistent and accurate forecasting of impacts.

The current framework for “water make-good”, represents a good high-level model of what is required, even if its regulatory framework might not be easily replicated.

Further, there needs to be established, a government funded service, that can provide landholders, with clear, unbiased advice on the legal rights of landholders in regard to interactions with the resource industry.

Since the demise, a number of years ago, of the Queensland Rural Legal Aid Service, landholders have had no access to truly independent, free legal advice to better understand their rights when dealing with resource companies.

While the GasFields Commission does have a role in helping to educate landholders on their rights, its independence is fundamentally limited by its role to facilitate co-existence between agricultural producers and the resource industry, and therefore its advice is slanted that way.

*3. Do you think that stakeholders are aware of the existing framework and the protections afforded to landholders?*

*What would be the most effective and efficient way to provide this information to stakeholders?*

The most direct answer is No. The fundamental protection against the impact of subsidence currently rests with provisions of the (MERC 2014 Act), however there is no general knowledge among the agricultural community on how a claim would be pursued, and it places a great burden on the landholder.

A further example, is the level of knowledge around the role of the Regional Planning Interest Act and the associated Regional Interest Development Approval (RIDA) process. It became evident during negotiations in regard to the Arrow Voluntary Agreement that neither the government or the Gasfields Commission had a clear and precise understanding of the role of the Act and of a RIDA.

Since then, the GasFields Commission has commissioned a factsheet, and while it goes some way to explaining the RIDA process, it is still difficult to interpret.

There is no simple, nor one-size-fits-all answer to this problem; what is needed is communication from multi-channels, repeated often.

As mentioned above, knowledge could be greatly enhanced with the formation of a genuine, independent legal advice service, along with better and clearer communication from existing bodies.

When landholder do need advice, such as when they are approached by a resource company, they do need to know that there is a truly independent source they can turn to, that can clearly outline their options, and depending on their view take appropriate action.

Unfortunately, for most landholders it has only been when a landholder is directly approached by a Resource Authority, do they hear about the existing framework. Hence there is an ongoing need for the GFCQ to continue its community and landholder information activities. The success of the jointly held forums with Land Access Ombudsman in localities hosting CSG is a case in point.

*Commission's preliminary review findings and principles for reform*

4. *What do you think of the Commission's preliminary review findings and principles for reform?*

Cotton Australia is supportive of the direction the GFCQ is taking to resolve the identified subsidence issue of a lack of a clear, effective and cost-effective pathway to remediate the impacts of subsidence on productive land.

In terms of the specific principles outlined by the Commission, Cotton Australia offers the following high-level responses:

- *provide a statutory framework that ensures appropriate protection for landholders where CSG-induced subsidence can be demonstrated to have an economic impact on-farm in areas where the agricultural land use (i.e. intensively farmed areas) is sensitive to potential subsidence impact;*

**Agreed**

- provide clear roles and responsibilities in relation to various entities involved in the assessment, monitoring and management of CSG-induced subsidence in high-value agricultural cropping areas;

**Agreed**

- ) take a risk-based approach to the management response, informed by an assessment of the likelihood, consequence, and materiality of CSG-induced subsidence;

**Agreed**

- ) where possible, include proactive management actions so that management arrangements are in place before impacts occur in high-risk areas;

**Agreed**

- ) ensure that management actions are not limited by tenure boundaries;

**Agreed**

- ) take an evidence-based approach, relying on independent monitoring, assessment and advice in assessing risks and resolving disputes using the best available science;

**Agreed**

- ) provide a pathway to impact assessment and resolving disputes, including alternative dispute resolution with an ultimate determination through the Land Court as a last resort; and

**Agreed**

- ) ensure reasonable and necessary costs are borne by the responsible tenure holder in relation to assessment and dispute resolution.

**Agreed**

**5. Do you have any further suggestions for improvement or amendment to the review findings and/or principles for reform?**

There needs to be an additional overarching principle that recognises that landholders have not brought this issue on themselves; managing the issue is not part of their core business, and therefore the pathway must absolutely minimise the requirements on landholders, and ensure they are adequately compensated for the time, effort and stress involved in ensuring the productive capacity of their land is maintained, or when required restored.

Further, while Cotton Australia can give high level, in-principal support for the principles, its ongoing support will be dependent on the detail and ongoing engagement as this framework is progressed.

For example, should a framework seek to identify acceptable thresholds for impacts, under which remediation/compensation would not be required, then there must be a recognition that it is unlikely that a “one-size-fits-all” set of thresholds could be put in place. It will be imperative that any proposed thresholds are thoroughly consulted on and are agreed by landholders as being “fit for purpose”.

Finally, while much of the focus of this submission has been on farm scale impacts, there is concern about the potential risk of interruption to landscape wide overland flow paths.

Any framework must have the capacity to address this risk, should it eventuate, and further, if modelling and measured impacts demonstrate trends toward damage that cannot be repaired, and the previous landscape then restored, then there must be a process that ensures the resource cannot continue in a manner that is causing unrepairable damage.

**Conclusion**

Cotton Australia congratulates the GasFields Commission on this Discussion paper, and the approach it is taking.

As an industry we see this as an important first step, but emphasise it is a first step, and further detailed consultation will be required as the framework develops.

Cotton Australia looks forward to a continued role in the process.

For further information regarding the framework, or for more detail on the content of this submission please contact Cotton Australia General Manager – Michael Murray – 0427707868 or [michaelm@cotton.org.au](mailto:michaelm@cotton.org.au) .



*Advancing Australian Cotton*

Yours sincerely,

Michael Murray