GasFields Commission Queensland

Long-term public liability for remediated coal seam gas infrastructure on private property

Issues Paper

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List of Acronyms & Definitions

ATP	Authority to Prospect
CCA	Conduct and Compensation Agreement
CSG	Coal Seam Gas
DES	Department of Environment and Science
EA	Environmental Authority
EP Act	*Environmental Protection Act 1994*
ICA	Insurance Council of Australia
Legacy Infrastructure	Decommissioned, abandoned and rehabilitated coal seam gas infrastructure
MERCP Act	*Mineral and Energy Resources (Common Provisions) Act 2014*
MERFP Act	*Mineral and Energy Resources (Financial Provisioning) Act 2018*
P&G Act	*Petroleum and Gas (Production and Safety) Act 2004*
PL	Petroleum Lease
PPL	Pipeline Licence
QAO	Queensland Audit Office
QFF	Queensland Farmers' Federation
QGIF	Queensland Government Insurance Fund
Resources	Department of Resources
Resource authority	A collect term that refers to an ATP, PL, PPL and other licenses or authorities granted under the P&G Act
The Commission	GasFields Commission Queensland
The Issues Paper	"Long-term public liability for remediated coal seam gas infrastructure on private property" Issues Paper

Executive Summary

The ability for rural landholders to access public liability insurance for areas of 'post-gas activity' on private land has emerged as a serious concern for the agricultural sector and landholders. The insurance industry, via the Insurance Council of Australia (ICA) has indicated that many insurance companies currently exclude public liability insurance coverage for decommissioned, abandoned and rehabilitated coal seam gas (CSG) infrastructure (legacy infrastructure) in their farm pack insurance for landholders.

Based on engagement with the insurance industry, the current position is that insurers will not consider extending coverage to include legacy infrastructure. The insurance companies have made this decision based on their own assessments about what they perceive to be a level of uncertainty and risk for landholders associated with legacy infrastructure.

Landholders have raised concerns that they will be left financially exposed to the possibility of:

1. exposure to public liability from third parties (compensation for personal injury or damages to equipment) resulting from the failure of legacy infrastructure;
2. flow on impacts (and particularly the inability to access finance and mortgages as a result of a lack of appropriate public liability insurance coverage for legacy infrastructure on their property); and
3. more recently, some landholders have indicated concern around entering into a conduct and compensation agreement (CCA) due in particular to their perceived uncertainty about long-term liability. This is restricting the ability of resource companies to secure CCAs, which in turn has the potential to delay on-ground authorised activities.

The GasFields Commission Queensland (the Commission) has engaged with a range of stakeholders to obtain a better understanding of these landholder's concerns and the official position of the insurance industry.

The Commission has received input and advice from government agencies, including the Department of Resources (Resources), Department of Environment and Science (DES), Queensland Treasury and the Queensland Government Insurance Fund (QGIF) regarding the State's regulatory framework and liability.

Government agencies have indicated they believe:

- there is adequate provisions under the existing regulatory framework for the rehabilitation or decommissioning of CSG infrastructure to a high standard;
- that, consistent with this framework, the State can remedy failures of legacy infrastructure where required; and
- where the State has assumed responsibility, any environmental harm presented by legacy infrastructure can be addressed under the existing residual risk framework, the financial provisioning scheme or other sources of revenue if necessary.

Based on the advice from Resources and DES, the Commission is of the opinion that:

- the intent of the existing regulatory framework is that landholders are afforded many protections and will not be liable for harm caused by or arising from the failure of any legacy infrastructure on their properties, unless they have caused or contributed to the harm;

- in most circumstances the regulatory framework is designed so that the State takes responsibility for legacy infrastructure; and
- any liability for personal injury, property damage or other loss caused as a result of the failure of legacy infrastructure will ultimately depend on all the relevant facts and circumstances. Situations will need to be dealt with on a case by case basis.

Agencies further clarified that under the existing regulatory framework, the State would not accept responsibility for liability to the extent that the actions of the landholder contributed to the failure or any associated harm or loss.

As a result of the analysis undertaken by the Commission with assistance from relevant departments and stakeholders, the Commission is of the view that:

- perceived insurance risk is low, based on the rationale that the State has arrangements in place for accepting responsibility for legacy infrastructure; and
- the State has sufficient regulatory frameworks in place that allow for future issues to be remedied appropriately.

Context and purpose of paper

In May 2020, a major insurer (WFI, a subsidiary of CGI group) announced its intention to no longer provide liability insurance to landholders if there was any CSG activity (including infrastructure) on their property.

Following concerns raised by the agricultural sector and landholders about the ability of landholders to access affordable public liability insurance, the Commission established a 'working group' to explore a collaborative solution to the matter. The working group included representatives from the ICA, AgForce, Australian Petroleum Production & Exploration Association (APPEA), Queensland Farmers Federation (QFF), Cotton Australia and relevant government departments.

During the working group's discussions, the ability for landholders to access public liability insurance for areas of 'post-gas activity' emerged as a serious concern for the agricultural sector and landholders alike. Rural landholders and peak bodies raised concerns with the Commission and other stakeholders that some insurance companies will not provide public liability insurance to Queensland's farmers for legacy infrastructure on their property as part of their farm pack insurance.

This has been confirmed by the ICA and a number of insurance companies. Insurers are excluding any 'latent liability' associated with legacy infrastructure from their farm pack insurance cover.

Landholders have raised concerns that they will be left financially exposed to the possibility of:

1. exposure to public liability from third parties (compensation for personal injury or damages to equipment) resulting from the failure of legacy infrastructure;
2. flow on impacts, particularly the ability to access finance and mortgages, as a result of a lack of appropriate public liability insurance coverage for legacy infrastructure on their property; and
3. some landholders have indicated concerns about entering into a CCA given what that see as a level of uncertainty regarding long-term liability. This is restricting the ability of resource companies to secure CCAs, which has the potential to delay on-ground authorised activities.

The Commission sought to examine the nature of any transfer of risk to landholders and exposure to third party liability related to legacy infrastructure on their property following the relinquishment of petroleum and gas tenures back to the State.

There are a number of existing regulatory frameworks regarding long-term liability that specifically relate to environmental remediation and tenure. This Issues Paper seeks to identify and explain these regulatory frameworks and document what relevant protections are afforded to landholders. The Commission's purpose was to collect and examine those structures to assist with clarity on this issue. This research is intended to help educate those involved in the industry about what is available in the existing regulatory frameworks and how they interact.

Scope of Issues Paper

This Issues Paper will examine:

1. the regulatory framework for authorised gas activity approvals, decommissioning, abandonment and rehabilitation – understanding current regulatory standards, how they apply and how risk is managed;
2. public liability insurance exclusions for post-CSG infrastructure – what is the insurance industry's position in relation to exclusions for legacy infrastructure, how these will apply and what is the basis for them;
3. the State Government's self-insurance policy – would the State Government cover compensation payable to a third party for personal injury, property damage and financial loss that may result from the failure of legacy infrastructure; and
4. links to finance – understanding the implications of public liability exclusions associated with post-CSG activities from a banking perspective – i.e. would it impact on compliance with existing mortgage conditions around insurance and borrowing capacity for new mortgages.

In relation to (1) above, the paper will explain how the risk of harm to the environment, property and people from the potential failure of legacy infrastructure is managed post-gas activities. This includes a consideration of the standards for decommissioning and rehabilitation of legacy infrastructure, the process of relinquishing a petroleum and gas tenure, the residual risk framework and consideration of the existing remedies available under the State Government's self-insurance scheme in determining liability for harm caused to a third party.

The Commission will facilitate discussion to allow the working group to evaluate how well the existing regulatory framework manages these risks. Focus will be given to the perspective of the landholder and the likely occurrence of potential failures of legacy infrastructure and the potential consequences for liability to a third party if such failures were to occur.

Regulatory Framework - Overview

A resource company carrying out gas and petroleum resource activities in Queensland must conduct their activities in accordance applicable legislation, regulations and codes. This regulatory framework manages resource a company's activities, establishes conditions to protect environmental values and maintains standards of practice for the safety and health of workers. The regulatory framework also establishes the requirements and standards for the construction and decommissioning of CSG infrastructure.

In this Issues Paper, the focus will be on the aspects of the regulatory framework that govern the decommissioning and rehabilitation of gas activities and those that facilitate the return of areas back to the State post-resource activities. Key aspects of the regulatory framework include:

- environmental authority (EA) requirements for rehabilitation of CSG infrastructure regulated under the *Environmental Protection Act 1994* (EP Act);
- decommissioning and tenure relinquishment requirements under the *Petroleum and Gas (Production and Safety) Act 2004* (P&G Act); and
- the Residual Risk framework that applies to surrender of EAs related to authorised activities under the EP Act.

Approval of gas projects

Authorised activities cannot be undertaken without a resource company first obtaining a relevant resource authority under the P&G Act (e.g. an authority to prospect [ATP], petroleum lease [PL] or pipeline licence [PPL]). A resource authority gives the holder the right to enter land to undertake authorised activities related to either exploration for, or production of, any petroleum resources below the surface of the land.

Resource authorities cannot be granted unless the company has been issued an EA. The EA is required for an operator to undertake all the authorised activities for the resource authority that are environmentally relevant activities under the EP Act. The EA includes conditions that must be complied with by the operator in order to prevent, mitigate or manage impacts to environmental values such as air, land or water. EAs are required for petroleum exploration, petroleum production, petroleum pipelines and petroleum surveys.

Life of resource authority/environmental authority

Resource Authorities

Once a resource authority is approved, the holder[1] is generally only able to enter private land to undertake advanced authorised activities (activities that have more than a minor impact on the business or land use activities of a landholder) if they have entered into a CCA with the landholder[2].

The CCA sets out:

- how and when the holder may enter the land;
- how authorised activities, to the extent they relate to the landholder, must be carried out; and
- the holder's compensation liability to the landholder (or any future compensation liability that the holder may have).[3]

The holder's compensation liability arises from any compensatable effect[4] suffered by the landholder, that is:

[1] i.e. a resource authority holder for the purposes of the *Mineral and Energy Resources (Common Provisions) Act 2014*)
[2] Section 43 of the *Mineral and Energy Resources (Common Provisions) Act 2014*
[3] Section 83 *Mineral and Energy Resources (Common Provisions) Act 2014*
[4] Section 81 *Mineral and Energy Resources (Common Provisions) Act 2014*

- any of the following caused by the holder, or a person authorised by the holder, carrying out authorised activities on the landholder's land –
    - deprivation of possession of the land's surface;
    - diminution of the land's value;
    - diminution of the use made, or that may be made, of the land or any improvement on it;
    - severance of any part of the land from other parts of the land or from other land that the landholder owns;
    - any cost, damage or loss arising from the carrying out of activities under the resource authority on the land; and
- consequential loss incurred by the landholder arising out of a matter mentioned above.[5]

It should be noted that a CCA is not always required in order to claim compensation for a compensatable effect occurring on the landholder's property. For example, a compensatable effect may arise from a preliminary activity which does not trigger a requirement for a CCA. The compensation may be negotiated (or, if no agreement can be reached), the Land Court can determine it. A landholder may also have common law rights to pursue the resource authority holder for damages arising from authorised activities.

Additionally, during the life of the resource authority, the landholder is not civilly liable to anyone else for a claim based in tort for damages relating to the carrying out of the authorised activity except to the extent the landholder caused, or contributed to, the harm the subject of the claim[6].

Environmental Authority

An EA is required to undertake authorised activities including CSG activities. After applying for the relevant tenure, the proponent needs to apply for an EA. Once it is approved, it remains in force on its terms[7] until surrendered, transferred or cancelled.

Conditions will be imposed on an EA to regulate the authorised activities. In the case of authorised activities these are generally based on the model conditions for such activities[8]. These model conditions extend to cover construction, maintenance and stimulation activities as well as the planning and undertaking of rehabilitation activities. These model conditions also allow for dams to be retained by the landholder.

Rehabilitated areas must meet the relevant conditions prior to relinquishment of all or part of a resource authority and before surrendering part or all of an EA.

Decommissioning, rehabilitation and surrender of resource authorities and infrastructure

At the end of the life of a resource authority, the holder must apply to surrender both the EA and the resource authority (other than an ATP which cannot be surrendered[9]). The resource authority cannot be surrendered unless the relevant EA has been cancelled or surrendered. The extent to which the holder has

[5] Section 81 *Mineral and Energy Resources (Common Provisions) Act 2014*
[6] Section 563A *Petroleum and Gas (Production and Safety) Act 2004*
[7] An EA usually has an 'anniversary date', but are usually re-granted on a continuing basis.
[8] ESR/2016/1989 Streamlined model conditions for petroleum activities
[9] Section 574A of the *Petroleum and Gas (Production and Safety) Act 2004*

complied with the conditions of the EA as well as the public interest must also be considered in the decision to approve any resource authority surrender.[10]

Obligations prior to end of the resource authority or when an area ceases to be in the area of the authority

Before the end of the resource authority, obligations attach to the holder in relation to the infrastructure and improvements on the land in the area of the authority.

Decommissioning Wells

The holder of a resource authority has an obligation to decommission any petroleum well, water injection bore, water observation bore or water supply bore drilled by or for the holder before the tenure ends or the land on which they are located ceases to be in the area of the authority (i.e. in circumstances where the tenure is partially relinquished or cancelled).[11]

A petroleum well is only decommissioned if it is done in the manner prescribed under a regulation.[12] The well decommissioning standards are set out in the Code of Practice for the construction and abandonment of petroleum wells and associated bores in Queensland. Those standards are invoked by the Petroleum and Gas (Safety) Regulation 2018.[13] The well abandonment objectives contained in the code are directed to:

a) the isolation of aquifers from each other and from permeable hydrocarbon zones;

b) the isolation of permeable hydrocarbon zones from each other unless commingling is permitted;

c) seeing that permeable formations containing fluids at different pressure gradients and/or significantly different salinities are isolated from each other to prevent crossflow;

d) seeing there is no pressure or flow of hydrocarbons or fluids at surface both internally in the well and externally behind all casing strings;

e) recovery/removal of surface equipment so as to not adversely interfere with the normal activities of the owner of the land on which the well or bore is located; and

f) the site being left safe and free from contaminants.[14]

Despite being decommissioned, the holder has responsibility for any well or bore until such time when the petroleum tenure ends or the land ceases to be part of the authority. At this time, the State becomes responsible for the well or bore[15], unless the well or bore has been transferred to the landowner via an agreement.

Decommissioning Pipelines

The holder of a resource authority must decommission any pipeline within its area before the authority ends, or the land on which they are located ceases to be in the area of the authority.[16]

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[10] Section 578 of the *Petroleum and Gas (Production and Safety) Act 2004*
[11] Section 292 of the *Petroleum and Gas (Production and Safety) Act 2004*
[12] Section 292(4) of the *Petroleum and Gas (Production and Safety) Act 2004*
[13] Section 36 of the Petroleum and Gas (Safety) Regulation 2018
[14] Code of Practice for the construction and abandonment of petroleum wells and associated bores in Queensland
[15] Section 294 of the *Petroleum and Gas (Production and Safety) Act 2004*
[16] Section 559 of the *Petroleum and Gas (Production and Safety) Act 2004*

A pipeline remains the holder's personal property while the resource authority is in force. Section 540 of the P&G Act provides that generally, it remains the personal property of the holder even if the authority ends, or the land on which it is located ceases to be part of the authority. Section 540 also provides that the holder, or former holder, may dispose of a pipeline that has been decommissioned under Section 559 to anyone else.

In the event that the holder no longer exists (i.e. there has been a disclaimer or it has been de-registered), the pipeline can be remediated under Chapter 10, Part 3 of the P&G Act – the abandoned operating plant framework.[17]

Pipeline infrastructure remains the property of the previous authority holder despite the surrender of the authority. The Commission has identified that the provisions relating to the decommissioning of pipeline infrastructure described in section 540 is an anomaly when compared to the rest of the decommissioning provisions of the P&G Act. All other infrastructure is either removed from the land and/or the State assumes responsibility of it, pipelines remain the ownership of a third party.

The Commission recommends that the State amend the P&G Act so that section 540 and the decommissioning of pipelines is consistent with other decommissioning provisions in the P&G Act.

Equipment and Improvements

The resource authority holder also has an obligation to remove any equipment or improvements from the land before the day the authority ends or the day the land ceases to be in the area of the authority (whichever is earlier) unless the landholder otherwise agrees.[18]

Equipment or improvements taken onto, constructed or placed on land in the area of a resource authority, for the purposes of the authority, remain the property of the holder while the authority remains in force. However, if the holder of the resource authority fails to remove equipment or improvements, the State may authorise a person to enter land to remove it. At this point it becomes the property of the State.[19]

State's power to authorise entry to undertake activities after tenure has ended

The State also has a range of powers to authorise persons (including the former holder) to enter land under the P&G Act to remove equipment, decommission petroleum wells, remediate legacy boreholes, and comply with end of authority or area reduction obligations.

Standards for the rehabilitation of CSG infrastructure

Specific obligations and conditions in relation to the construction, operation and decommissioning of petroleum and CSG infrastructure are imposed on authority holders through an EA granted under the EP Act.

The EA includes rehabilitation requirements that must be achieved before the EA can be approved for surrender and the relevant petroleum and gas authority can be returned to the State. These requirements will vary depending on the condition of the land and its use prior to the commencement of the authorised activities.

[17] Chapter 10, Part 3 of the *Petroleum and Gas (Production and Safety) Act 2004*
[18] Section 560 of the *Petroleum and Gas (Production and Safety) Act 2004*
[19] Section 585 of the *Petroleum and Gas (Production and Safety) Act 2004*

Generally, rehabilitation requirements require any disturbance caused by the authorised activity to be rehabilitated, leaving a site that will not cause environmental harm and that is suitable for a future use.

The surrender process includes an assessment of compliance with the EA conditions in relation to rehabilitation. For this reason, the conditions of the EA are critical in determining the final rehabilitation outcome including which 'site features' may remain when an EA is surrendered.

The surrender of an EA may be approved where site features remain on the site. The site features include both legacy infrastructure (e.g. pipelines and wells) as well as infrastructure that the landholder has agreed to use and take responsibility for (e.g. water bores and dams)[20]. The residual risks associated with any legacy infrastructure transferred to the landholder by agreement are not considered as part of the surrender process. To clarify, if the landholder has agreed to take responsibility for any legacy infrastructure, that infrastructure is not considered in the evaluation of residual risk calculations.

Once all required rehabilitation work under the EA is completed and the remaining residual risks are calculated and paid, an EA can be surrendered, and the associated tenure surrendered. However, before the tenure can be surrendered, the tenure holder must fulfil all of the conditions of the resource authority as well as the rehabilitation conditions of the EA. Once the tenure and the EA are surrendered, all obligations of the resource authority holder cease.

Residual risk framework

Once an application to surrender an EA is approved, the resource company is generally no longer responsible for the monitoring, maintenance and rectification of the site. However following surrender, there may be ongoing requirements to monitor and manage aspects of the site. There may also be a need to rectify any subsequent failures of rehabilitation that occur after the surrender was approved. The government therefore needs to do all it can to secure sufficient funds from the holder to undertake this work should it be necessary or desirable to do so. The EP Act provides authority to secure such funds through a residual risk payment.

Residual risks are those risks to the environment that remain at a rehabilitated resource site after the EA is surrendered. Residual risks are only relevant once all rehabilitation requirements have been met (e.g. after disturbance and/or infrastructure associated with authorised activities has been decommissioned and/or rehabilitated to the standards required). When surrendering an EA the resource company must carry out a risk assessment of the land and, if the risk assessment identifies relevant residual risks, the administering authority must estimate all potential associated costs and expenses, which could include ongoing management activities and the cost of remediating a potential future failure. These details are captured in a residual risk post-surrender management plan.

The amount paid by the company (the residual risk payment) is determined by the administering authority. All payments are held in a residual risk fund and managed by financial experts so that sufficient funds will be available for the State to undertake activities, should it be necessary or desirable to do so. The residual risk payments and fund are only designed to cover the management of residual risks of the land where the State may need to undertake activities. Therefore, if the landholder has agreed to take over ownership of

[20] https://environment.des.qld.gov.au/__data/assets/pdf_file/0009/213012/rs-gl-transferring-petroleum-infrastructure-to-landowners.pdf

rehabilitated or decommissioned resource infrastructure, the fund does not cover the risk presented by its failure.

To understand the risks of rehabilitated sites, DES has partnered with a third-party provider with expertise in the resources industry and environmental risks. Working with industry peak bodies, relevant data was collected to develop and validate the residual risk values that will generally be used to determine the residual risk payment.

Landholder obligations under the residual risk framework

Under the residual risk framework, there are no obligations placed on the landholder to monitor or manage residual risks on their property post EA and tenure surrendered. The existence of a residual risk post-surrender management plan does not require the landholder to undertake any work or legally restrict them from undertaking any activities on their land.

Where residual risks are identified before surrender, the management of those risks and the assumptions regarding the rehabilitation undertaken will be described in a risk management plan which must be included as part of the post-surrender management plan. The development of a risk management plan must include landholder consultation.

In circumstance where the State may need to access a landholder's property to undertaken monitoring or management, or remedy an issue, there are requirements under the land access provisions (in the relevant resources legislation) which can be used to provide an entry notice prior to access, to advise the landholder when access will occur and the work that needs to be done.

There is flexibility for the State to use residual risk funds to engage third parties to manage residual risks where it is appropriate, cost-effective and efficient. This could in fact be the landholder where their capabilities suit the work to be undertaken. However, where this is the case, it will be subject to contractual arrangements by agreement.

State's ability to remediate abandoned operating plant

Chapter 10, Part 3 of the P&G Act provides for the remediation of abandoned operating plant. It applies where the tenure holder abandons a site without having decommissioned the relevant wells, pipelines or equipment. By way of example, this situation can occur when a company disclaims onerous property under the Commonwealth's *Corporations Act 2001*.

These provisions provide the State with the power to authorise a person to enter land to remediate the abandoned operating plant. These provisions link with the financial provisioning scheme established under the *Mineral and Energy Resources (Financial Provisioning) Act 2018*, allowing Resources to apply for funding to remediate abandoned operating plant.

The abandoned operating plant provisions do not apply to bores or wells that are legacy boreholes. However, it should be noted that the State also has the power under section 294B of the P&G Act to authorise a person to enter land to remediate a legacy bore or well and rehabilitate the surrounding area.

Responsibility for legacy infrastructure

In the event of the failure of legacy infrastructure causing environmental damage, the responsibility generally rests with the State to undertake the relevant remediation activities to repair, manage and/or prevent any further environmental damage. Exceptions to this position may include:

- where the State has lawfully transferred ownership of a decommissioned gas well or bore to the owner of the land on which the well or bore is located or the holder of a geothermal tenure or mining tenement the area of which includes that land;
- where ownership in a decommissioned pipeline is retained by the relevant tenure holder; or
- where the relevant tenure holder has disposed of a decommissioned pipeline to another person.

Depending on the circumstances, the residual risk fund may be applied.

Relevantly, the State has the necessary powers to authorise and/or undertake remediation activities required in relation to legacy infrastructure. This includes broad powers under the abandoned operating plant framework in Chapter 10, Part 3 of the P&G Act. It also includes the power in section 294B to authorise a person to remediate certain bores or wells and to rehabilitate the surrounding area in compliance with requirements prescribed by regulation.

The issue of liability for personal injury, property damage or other loss caused by legacy infrastructure will ultimately depend on all the relevant facts and circumstances. These situations need to be dealt with on a case by case basis. If harm is caused to a third party as a result of a failure of legacy infrastructure, the individual circumstances that led to the harm being caused will determine where legal responsibility lies.

However, in most circumstances landholders will generally not be liable for harm caused by or arising from the failure of any legacy infrastructure on their properties, provided the landholder's actions did not cause or contribute to the failure or the resulting harm. In most circumstances the regulatory framework is designed so that the State takes responsibility for dealing with issues arising from legacy infrastructure.

The Queensland Government Insurance Fund

The Commission has undertaken discussions with the Queensland Government Insurance Fund (QGIF) in relation to the States responsibility to pay compensation to third parties for personal injury, financial loss or property damage as a result of a failure of legacy infrastructure.

The Commission understands that if injury, loss or damage occurred to a third party as a result of the failure of legacy infrastructure and it was found the failure was the direct fault of the State, then the State would be liable to pay compensation. The Commission acknowledges that each claim against the State would need to be considered and investigated on a case by case basis to determine the contributing factors including :

- the nature of the failure;
- the cause of the failure;
- the actions that the State did or did not take that caused fault; and
- the actions that the third party did or did not take that contributed to the injury, loss and or damage.

Links to finance and the bank sector

Landholders have raised concerns that they may be left financially exposed to the possibility of flow on impacts from legacy infrastructure being excluded from future insurance policies. Landholders are particularly concerned about the ability to access finance and mortgages and of the possibility that they will be unable to secure finance as a result of a lack of appropriate public liability insurance coverage for legacy infrastructure on farming properties.

The Commission has engaged with the banking sector to understand the implications on landholder's ability to continue to obtain finance if legacy infrastructure is excluded from farm pack public liability insurance.

Some aspects of the banking sector indicated that the exclusion of legacy infrastructure from farm pack insurance posed a limited risk on the ability to access finance. Whereas other institutions indicated that there may be some concerns. However, there was a consensus that the ability for landholders to access finance would need to be considered on a case-by-case basis and be dependent on the circumstance of the situation.

An exclusion of public liability coverage associated with legacy infrastructure potentially represents an issue from a banking perspective. Where there is an exclusion on an insurance policy, the exclusion could trigger a review of an existing loan, however it is noted that this review would generally not be considered an act of default. It would not be considered an act of default as the landholder has no control over the presence of gas infrastructure.

The banking sector indicated that where it can be demonstrated that the States' regulatory framework provides protections to landholders against the risk associated with legacy infrastructure, this would be considered favourably when determining the landholder's ability to secure finance.

In summary, the banking sector, like the insurance sector is complex. The individual circumstance of any financing transaction would need to be considered on a case-by-case basis and take into account a range of determining factors. Legacy infrastructure exclusions from an insurance policy and the States regulatory protections would be part two of a number of factors the banking sector would consider.

Conclusion

It can be seen from the above summary of the interlocking regulatory regimes that:

- the intent of the existing regulatory framework is that landholders are afforded many protections and will not be liable for harm caused by or arising from the failure of any legacy infrastructure on their properties, unless they have caused or contributed to the harm;
- in most circumstances the regulatory framework is designed so that the State takes responsibility for legacy infrastructure; and
- any liability for personal injury, property damage or other loss caused as a result of the failure of legacy infrastructure will ultimately depend on all the relevant facts and circumstances. Situations will need to be dealt with on a case by case basis.

There is strong legislative and regulatory coverage of the matters set out above. There are many avenues by which landholders are protected from liability for harm caused by or arising from the failure of any legacy infrastructure on their properties.

As a result of the analysis undertaken by the Commission with assistance from relevant departments and stakeholders, the Commission is of the view that perceived insurance risk is low based on the rationale that the State generally accepts the responsibility for legacy infrastructure and has regulatory frameworks in place that allow for future issues to be remedied.

During the Commission's analysis of the regulatory framework an anomaly was identified in relation to the continued ownership of gas pipelines by gas companies post surrender of tenure under the *Petroleum and Gas (Production and Safety) Act 2004* (section 540). This particular provision is inconsistent with how all other legacy gas infrastructure is treated under the P&G Act (i.e. State assumes responsibility) and it has the potential to create confusion in terms of liability.

Recommendations

Under section 7(1)(f) of the *Gasfields Commission Act 2013*, the Commission may make recommendations to the Minister regarding leading practice or management relating to the onshore gas industry.

In the context of this function, the Commission recommends that Government

1. clarify the regulatory protections provided to landholders in relation to the rehabilitation and decommissioning of gas infrastructure along with the State's liability in relation to legacy gas infrastructure; and
2. address legislative inconsistency identified in relation to pipeline ownership post surrender (i.e. section 540 of P&G Act).

GasFields Commission Queensland

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