

Host farmers - The forgotten stakeholders in the Coal Seam Gas Industry

'Workplace Health and Safety Act vs Petroleum and Gas Safety Act' vs 1 - Oct 19

Summary.

This Factsheet is based on research findings by Shay Dougal, published in the international journal IOSH¹. Her research shows that Queensland farmers hosting coal-seam gas activities are exposed to additional workplace, health and safety risks. However, they have no clearly defined path for remedy via either the WHS Act or the P&G Act². This is due to a 'Memorandum Of Understanding' (MOU) between the Office of Industrial Relations and the Department of Natural Resources, Mining and Energy. This MOU ignores host farmers. It is due for a review in 2020.

Legislation

Farmers having to negotiate with CSG companies face a complex and unclear challenge. One reason is that there are four acts involved² which are poorly coordinated. The Biosecurity Act and the Environment Act have no direct relevance to this Factsheet and are dealt with elsewhere³.

The workplace, health and safety (WHS) on farms that host part of the CSG infrastructure comes under both the WSH Act and the P&G Act. The WSH Act is administered by Worksafe Queensland, which is part of the Industrial Relations Office. It is responsible for work health and safety at all workplaces including farms. The P&G Safety Act is administered by the Queensland Department of Natural Resources, Mining and Energy (QDNRME). It is responsible for the safety and health of all Queensland miners and people working in allied industries, which includes CSG.

This of course introduces issues as the two jurisdictions can be expected to interact in the field. Therefore, a Memorandum of Understanding (MOU) exists between the DNRME and the Office of Industrial Relations. The MOU details a jurisdictional split of WHS matters that favours the P&G Act. Its intention is to clarify jurisdiction between the departments but it fails to do so.

The nationally uniform WHS Act protects workers and 'other persons' against harm to health, safety and welfare caused by activities arising from work, particular types of substances or plant under control of a business. Farmers clearly are "other persons", given that CSG activities are on their properties. The Act applies to the CSG operations at: major hazard facilities; construction (e.g. creating roads, well pads etc.); hazardous chemicals (e.g. chemicals used in processing); and activities authorized under various Acts.

The MOU

The WHS Act identifies the duty the CSG industry owes to host farmers. The MOU then excludes 'operating plant' from the WHS Act and states that the P&G Act regulates the safety and health there. However, the P&G Act fails to expressly address the WHS of the host farmers.

- The P&G Safety Act includes 'other operating plants, contractors' but not host farmers.
- 'Operating plant' is the major component of CSG installations on host farmers' properties. It includes wells, pipelines, processing plants etc.
- The Act's Safety Management System is solely focused on activities within the boundaries of the area occupied by the CSG activities and does not extend beyond the fence.
- The System requires the reduction of risk to an 'acceptable level' unlike the WHS Act which states: to achieve the identification, elimination and minimization of risks.
- It fails to take into consideration the impacts on host farmers, despite the plant being located literally within their property. Any such impacts will extend directly into their workplace.

¹<https://www.tandfonline.com/doi/full/10.1080/14773996.2019.1649903?scroll=top&needAccess=true>

² . Work Health and Safety Act 2011 and Other Legislation Amendment Act 2017 (WHS).

. The Petroleum & Gas (Production & Safety Act, 2004 (P&G Act).

. Qld Biosecurity Act 2014, administered by the Department of Agriculture and Fisheries.

. Qld Environmental Protection Act 1994 and subsequent Regulations and Policies (2019) administered by the Department of Environmental Protection (DEP).

³ See factsheets '*Arrow's 2,500 wells*', *How to deal with Arrow's expansion - no1 and no 2* available from Shay Dougal.

- The P&G Act defines only a few issues as ‘legitimate compensatable effects’ which do not include any WHS issues. This negates any liability for farmers’ WHS issues caused by them.

Searches

Data from Worksafe Queensland between 2013 and 2018 showed all interactions between it and CSG companies concerning incidences within the enclosed CSG company-controlled areas.

Not one mentioned potential impact on host farms, even though they concerned: electrification of a perimeter fence, unlicensed persons doing electrical work, exposure to hazardous gas leaks, damage to underground pipes causing spills of material, and a lost radio-active source.

A search of available DNRME ‘Compliance Plans and Reports’ related to the CSG industry showed:

- There is no reference to the Australian Work Health and Safety Strategy (AWHSS) 2012–2022.
- Reports detail the other agencies that the DNRME work with but Worksafe Queensland is not mentioned.
- Landholder engagement is described in terms of responding to complaints, no details are provided regarding proactive inspections focussing on WHS for host farmers.
- Safety inspections relate to the Safety Management System requirements of the P&G Act.
- Where the reports outline the planned activities and commitments of Worksafe, no mention is made of any attention to be given to the WHS impacts on host farmers.
- The reports discuss extending P&G Act safety activities from the workplace to the ‘consumer and general public’, but no mention of host farmers or considering the WHS impacts on them.
- The reports discuss compliance strategies that build confidence in safety outcomes for workers within the P&G industry. There is no reference to building confidence with host farmers regarding the identification and management of WHS impacts on them.

Way forward

The potential for CSG activities on host farmers to inflict physical and mental health problems is real and potentially very serious. Causes include noise, traffic, rupture of gas pipelines, venting of pipes, spill of condensate, respirable silica and psychosocial hazards. The host farmers’ right to safe and healthy working conditions is a basic human right assured by the Covenant on Economic, Social and Cultural Rights. This right needs to be recognised and enforced.

More than 5,265 farmers have been involved and many more will become involved. Continuing to ignore the effects of CSG on the health and safety of host farmers is thus not a trivial matter.

Farmers can mitigate and help to correct this neglect of their WHS by:

- Alerting their political and industrial leaders at every opportunity that safeguarding their WHS needs to be included in the coming review of the MOU and is not negotiable.
- Insisting that farmers be part of that review process.
- When CSG companies come to seek a Land Access Agreement: including safeguards towards their WHS in the negotiations.
- Where such agreements already exist: documenting each and every breach, using the GazApp⁴ to do this with minimal effort.
- Entering these incidences on a confidential record for research purposes so the true extend of the impact on WHS of host-farms plus infringements of other Acts can become known.

Political leaders, public servants and industrial leaders need to acknowledge host-farmers as legitimate stake-holders in the CSG Industry. Interdepartmental arrangements and statutory reports need to state and include them. Ideally, a Code of Practice needs to be developed, including venues for host-farmers to seek quick and effective redress of breaches.

Co-existence of two industries in one space requires sincere mutual respect, agreed practices and ways to enforce rights and agreements. Those conditions are missing at the moment.

⁴ <https://www.molliwell.com.au/gashaz/>