# Mining & CSG – landholder Update

April 2018

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Welcome to the April Issue of the p&e Law Mining and CSG Landholder Update

## Beware CSG offers that include advice costs

Recent behaviour by CSG companies when meeting with landowners is cause for significant concern.

Entering into a Conduct and Compensation Agreement (CCA) that allows coal seam gas activities to occur on rural land is a decision that requires great consideration. A CCA is a complex, long-term legal transaction that binds current and future landowners. Like any complex legal document, it is important to obtain independent advice so that an owner or occupier of land is are aware of their rights, risks and responsibilities.

Gas companies have a legal requirement to pay landowners for any "compensatable effect" they suffer as a result of CSG activities carried out on their land. This is what is known as the gas company's "compensation liability". Part of this liability includes compensating landowners for accounting, legal or valuation costs necessarily and reasonably incurred to negotiate or prepare a CCA. The requirement to pay professional costs is in **addition** to the requirement to reimburse a landowner for impacts to their land and land value.

Landowners have reported to us that gas companies are offering to pay them an amount of compensation for CSG activities inclusive of professional fees, on the basis that if a landholder chooses not to get independent legal, accounting or valuation advice, or minimises the amount of advice they receive, the landholder can keep money.

The effect of this practice is to discourage landholders from obtaining independent professional advice about the effect of a CCA and to discourage a landholder from obtaining assistance in the negotiation of the CCA. The conduct in question in our view demonstrates sharp commercial practice, and is inconsistent with the values of "honesty and fairness in dealing with consumers" to which the unconscionability provisions of the Australian Consumer Law are directed.

Remedies available for unconscionable conduct include damages, compensation and other orders including orders modifying or declaring void all or part of a CCA.

## THE BIG BLUE DOT

The protected plants regulations under the *Nature Conservation Act 1992* and *Nature Conservation (Wildlife Management) Regulation 2006*, otherwise known as the 'big blue dot', has caused frustration and confusion amongst landholders. So, what is it, and what does it mean for farmers?

Basically, the big blue dot means that you are in a high risk area where plants that are endangered, vulnerable or near threatened are present or are likely to be present 'in the wild'.

The protected plants map is **different** to the regulated vegetation mapping generated under the *Vegetation Management Act*. Under the VMA, blue mapping represents remnant vegetation. Under the protected plants mapping, the blue dot represents a high risk area under the NCA.

You can obtain a protected plants flora survey trigger map from the following website:

https://www.ehp.qld.gov.au/licences-permits/plants-animals/protected-plants/map-request.php

It is an offence under s89 of the NCA to take a protected plant that is 'in the wild' unless it is taken under a permit or pursuant to an exemption.

Prior to clearing land, you should check the protected plants flora survey trigger map to determine whether your property is within a high risk area.

If an exemption doesn't apply, it is likely that you will need to engage an ecologist to carry out a flora survey and provide that survey to the Department of Environment and Science to confirm that no endangered, vulnerable or near threatened plants will be impacted by the clearing.

Please contact us if you would like further advice.

## VEG MANAGEMENT AND OTHER LEGISLATION AMENDMENT BILL 2018

On 8 March 2018 the *Vegetation Management and Other Legislation Amendment Bill 2018* was introduced into Parliament.

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## VEG MANAGEMENT AND OTHER LEGISLATION AMENDMENT BILL 2018

The Bill seeks to deliver the Government's 2017 election commitment to *"protect remnant and high conservation value non-remnant vegetation; amend the accepted development vegetation clearing codes to ensure they are providing appropriate protections based on Queensland Herbarium advice; and align the definition of high value regrowth vegetation with the international definition of High Conservation Value"*

Under the VMA, the definition of 'high value regrowth' is currently limited to vegetation that is an endangered, of concern or least concern regional ecosystem on land the subject of a lease under the *Land Act 1994* for agricultural or grazing purposes which has not been cleared since 1989.

The Bill proposes to broaden the definition of high value regrowth to include vegetation that is an endangered, of concern or least concern regional ecosystem on freehold, indigenous, occupation licence and leasehold land (for grazing and agricultural purposes) that has not been cleared for 15 years. This means that a much greater area of land is likely to be classified as 'high value regrowth' and will no longer have the benefit of the 'category x non-remnant' clearing exemptions.

A further significant change sought by the Bill is the removal of the ability to apply for a vegetation clearing permit for the purposes of 'high value agricultural clearing' or 'irrigated high value agricultural clearing'. If the Bill passes, development applications to clear vegetation for these purposes will not be permitted.

Other changes include the expansion of the definition of 'Category R', which protects regrowth vegetation along particular watercourses, to include the following water catchments- Eastern Cape York, Fitzroy and Burnett-Mary river catchments and the reintroduction of the requirement to obtain a riverine protection permit to clear vegetation in a watercourse, lake or spring.

Public hearings on the Bill are currently before the State Development, Natural Resources and Agricultural Industry Development Committee. The committee is expected to table its report on the Bill following the completion of those hearings on 23 April 2018.

If you have questions, please do not hesitate to contact

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