

**Submission
No 436**

INQUIRY INTO COAL SEAM GAS

Organisation: NSW Ombudsman

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The Hon. Robert Brown, MLC
Chair
General Purpose Standing Committee No. 5
Parliament House
Macquarie St
Sydney NSW 2000

Dear Mr Brown

Submission to the Inquiry into coal seam gas

I understand the Inquiry has invited submissions in relation to the coal seam gas (CSG) industry in NSW. I have decided to write to you about a number of issues of concern we have identified in the course of our complaint handling work.

We have received several complaints which have raised issues about how the CSG industry is regulated and in particular how the environmental conditions in exploration and production licences issued under the *Petroleum (Onshore) Act 1991* and water bore licences issued under the *Water Act 1912* are enforced. As part of our inquiries into several incidents at CSG sites we have examined how the industry is regulated by relevant agencies.

We have identified three main issues:

Potential conflict of duties

The Department of Trade, Investment Regional Infrastructure and Services' (DTIRIS) has the roles of:

- promoting the industry
- issuing licences, and
- taking enforcement action.

This means the department is responsible for both promoting investment in the CSG industry and regulating it. The DTIRIS web site states the following about its trade and investment function:

Trade and Investment drives sustainable economic growth in New South Wales. We do this by working with and supporting the vast range of businesses and industries across NSW to advance investment, innovation, activity and improvements across all industry sectors.¹

¹ <http://www.trade.nsw.gov.au/>



There are obvious challenges for one agency in advocating for businesses and industries across the state while at the same time being an independent arbitrator of regulatory issues in relation to those same industries.

Multiple agencies with regulatory and enforcement responsibilities

Compliance and enforcement responsibilities for environmental incidents are shared across several agencies including DTIRIS, the Office of Environment and Heritage and the Office of Water. Our inquiries suggest there is a lack of clarity about how these intersecting responsibilities should be exercised by the various agencies.

In particular we have seen situations where there has been confusion about which agencies have responsibilities for environmental incidents at coal seam gas sites. It is commonly thought that as these incidents concern environment issues, they come under the purview of the Environmental Protection and Regulation Group (EPRG, formerly the Environmental Protection Authority) of the Office of Environment and Heritage. However, in practice licences are issued by DTIRIS for exploration, assessment leases and production licences and water bore licences and other water related approvals are administered by the Office of Water. Those licences and approvals may contain environmental conditions which are subject to compliance/enforcement action by the respective agencies.

A separate but related issue is how the Office of Environment and Heritage administers the legislation it is responsible for, particularly in relation to pollution and contaminated land events. The stated functions of the Office of Environment and Heritage are:

The Office of Environment and Heritage works with the NSW community to help protect the environment by improving our air, our water quality and supply, and to minimise pollution and any risks to human health associated with use of chemicals, pesticides and waste. We regularly audit and regulate the most potentially hazardous industries, including those using radiation-based technologies. We also undertake active programs to contain and reduce soil degradation and invasive pests and weeds, which can undermine the productivity of land and its capacity to support biodiversity.²

Our inquiries suggest that despite being the environmental regulator, the EPRG in the Office of Environment and Heritage has only an advisory role in regard to coal seam gas environmental issues.

Resourcing of compliance activities

Our inquiries have also identified concerns about the adequacy of resources for compliance and enforcement activities. I understand that exploration and extraction of coal seam gas has significant impacts upon available water resources and the Office of Water has responsibility for enforcing the provisions of the *Water Management Act 2000*. However, we understand there are fewer than 20 inspectors in the Office of Water who perform a compliance or enforcement function in relation to the use of water across the state. Given the breadth of responsibilities and the geographical spread of water related matters across NSW, it is difficult to see this as adequate for ensuring appropriately robust compliance and enforcement.

² <http://www.environment.nsw.gov.au/environmentalissues.htm>

In addressing the above issues, consideration should be given to the potential conflict of duties issues if regulatory and enforcement functions are not carried out separately to functions associated with the promotion of industry and investment in the state. If more than one agency is to have responsibilities in relation to regulation and enforcement, there needs to be clarity about how this works in practice to ensure there are no gaps or omissions in the regulatory framework. Any regulatory framework also needs to be appropriately resourced if it is to be effective. While I recognise the resource constraints that apply across the NSW public sector, one possible way to address the resource issue could be by way of a levy or additional fee incorporated into licenses.

My office will continue to monitor how the coal seam gas industry is regulated and I await with interest the outcomes of the Inquiry.

Yours sincerely

Bruce Barbour
Ombudsman

19/9/11