Chapter 2

Regulation of coal and onshore gas activities

2.1 The bill responds to the tension that can exist between private land tenure and Crown ownership of petroleum resources (the extraction of which is licenced by the Crown to petroleum companies). The bill also responds to concern in some sections of the community regarding the practice of hydraulic fracturing (commonly referred to as 'fracking').

2.2 This chapter introduces these issues by outlining some of the evidence the committee received from landholders about their experiences living near coal mining and unconventional gas extraction activities and how they deal with the companies that undertake these activities. As explained in Chapter 1, however, the Senate has not asked the committee to conduct a wide-ranging inquiry into issues associated with coal mining and onshore gas extraction. Rather, the committee has examined a specific legislative proposal. Although the committee acknowledges the evidence it has received that expressed concern about coal mining and unconventional gas operations, the committee's deliberations depend on whether the bill can fit within Australia's legal framework and be implemented effectively.

2.3 The remaining sections of this chapter examine the current framework of property and mineral rights in Australia, to the extent relevant to the bill, and the role of the Commonwealth in land access issues and the regulation of onshore minerals and petroleum exploration and production.

Experiences living near coal mining and unconventional gas extraction

2.4 During this inquiry, the committee heard how resource activities on farmland can present challenges for landholders when going about their ordinary business, and the risks or damage to their property that can result. For example, ditches dug for pipe construction can make it difficult for farmers to traverse their property and can lead to livestock injuries.[1] The opening and closing of farm gates is also an issue.[2] Landholders explained how they have encountered difficulties when dealing with the

1 No Fracking WAy, *Submission 15*, p. 3.

2 Mr Leslie Manning of p&e Law explained that he has clients who 'had to go and re-identify all of their breeding stock because gates have been left open and cattle have intermingled'. Mr Neil Cameron of the Basin Sustainability Alliance added that: '…not only were gates that had been closed sometimes left open, you also had the other dangerous situation where a gate that had been deliberately left open so stock could access water for their survival was shut'. Mr Leslie Manning, Director, p&e Law, *Proof Committee Hansard*, 27 July 2015, p. 41; Mr Neil Cameron, Committee Member, Basin Sustainability Alliance, *Proof Committee Hansard*, 27 July 2015, p. 20.

petroleum companies, such as instances of a disrespectful approach taken to accessing and traversing their land.[3]

2.5 Concern was also expressed about:

- competing water use—the committee received evidence that farmers face restrictions on their water use while petroleum companies enjoy unrestricted access;[4]
- air pollution and noise from mining and unconventional gas extraction, such as the noise and pollution from the increased number of diesel trucks in the area, and noise from compressor stations and flaring;[5]
- concern that contamination near food production areas would prevent farmers from supplying national vendor declarations, which would jeopardise their access to local and export markets;[6] and
- the inability to manage risk associated with damage caused by contamination related to coal seam gas (CSG) extraction on neighbouring properties, particularly as insurance companies do not insure against this risk.[7]

2.6 Evidence was also received about the implications of coal and gas activity for the lifestyles of people who live in rural communities. Mrs Sally Hunter, who is the president of the organisation People for the Plains, told the committee:

> You go to be in the agriculture industry because a lot of times that is the type of environment that you want for your children growing up et cetera. It is then as if you have been placed into an industrial zone outside a town. You are no longer in a rural zoning; you are in an industrial estate and you really have no choice about that. You are not prepared for that and you are not used to that. If you buy a block in an industrial estate, at least you know

3 For example, see Mr George Bender, Spokesperson, Hopeland Community Sustainability Group, *Proof Committee Hansard*, 27 July 2015, pp. 23–24.

4 See Mr Leslie Manning, p&e Law, *Proof Committee Hansard*, 27 July 2015, p. 39; Mrs Pan Bender, Spokesperson, Hopeland Community Sustainability Group, *Proof Committee Hansard*, 27 July 2015, p. 28.

5 No Fracking WAy, *Submission 15*, p. 5.

6 Ms Heather Gibbons, *Submission 13*, pp. 16–17; Livestock SA, *Submission 20*, p. 2; Ms Leanne Emery, *Submission 51*, p. 6.

7 For example, the committee was informed of a case where a dam of produced water from CSG activities burst, resulting in water flowing across neighbouring properties and beyond. The witness observed that the landholder in question could not manage this risk effectively as they cannot insure against this risk and was not in a position to take legal action against the state government, gas company or neighbour. Mr Phil Laird, National Coordinator, Lock the Gate Alliance, *Proof Committee Hansard*, 25 August 2015, p. 8. For other examples, see People for the Plains, *Submission 50*, p. 3 and Ms Sarah Ciesiolka, *Submission 52*, p. 2.

> what you are in for and you get some advantages out of it. When it comes to your doorstep, it is a totally different kettle of fish.[8]

2.7 Many submissions referred to potential environmental and health effects related to unconventional gas extraction. Submitters argued that there is concern internationally about various potential risks to the environment and health caused by hydraulic fracturing and unconventional gas activities more generally. Among other things, these risks include drinking water being affected as a result of underground migration of methane and/or fracking chemicals associated with faulty well construction, surface spills that could result in soil and water contamination, and inadequate wastewater treatment leading to surface water contamination.[9]

2.8 The potential health effects associated with unconventional gas extraction particularly attracted comment. The committee heard reports of residents with various symptoms, such as bleeding noses, nausea and headaches, who had not experienced these symptoms before unconventional gas activities commenced in their area.[10] However, QGC, a gas company, argued that no links have been drawn between health issues and CSG production, despite a 'number of substantial bodies of work undertaken in response to these claims'.[11]

2.9 Other concerns expressed about hydraulic fracturing and unconventional gas extraction more generally included:

- the 'substantial amount of water required in unconventional gas extraction', which No Fracking WAy submitted may be up to 20 million litres of fresh water per fracked well (including up to 4000 litres of proppants and up to 200,000 litres of chemicals)—No Fracking WAy argued that the 'unconventional gas and coal industries compete with the water needs of agriculture, of urban and regional populations, and of the sustainability of our natural environment';[12]
- that although accidents can happen in all regulated industries, accidents related to hydraulic fracturing could present more widespread problems as the

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8 Mrs Sally Hunter, President, People for the Plains, *Proof Committee Hansard*, 25 August 2015, p. 18.

9 Limestone Coast Protection Alliance (LCPA), *Submission 91*, p. 229. The LCPA cited the following report by the New York State Department of Health: *A Public Health Review of High Volume Hydraulic Fracturing for Shale Gas Development*, December 2014.

10 The committee was also informed of international medical studies that analysed hospital admissions and indicated that hospitalisations for heart conditions and neurological illnesses were higher among people who live near unconventional oil and gas extraction activities. See Dr Geralyn McCarron, *Proof Committee Hansard*, 27 July 2015, p. 56.

11 QGC provided a list of studies undertaken in Queensland. See QGC, *Submission 22*, p. 4.

12 No Fracking WAy, *Submission 15*, p. 2.

movement of water between aquifers could mean that any contamination would not be contained to one aquifer;[13] and

- the integrity and permeability of old, inactive wells—No Fracking WAy argued that the cement and steel could deteriorate over time, posing a contamination risk.[14]

Property and mineral rights in Australia

2.10 The tension that can exist between landholders and resource companies is a consequence of Australia's system of mineral rights. Landownership in Australia 'is subject to an inherited feudal tenure framework'; meaning that the state, in right of the Crown, is 'the ultimate owner of all land and may exercise sovereign power over all of its inhabitants'.[15] Ms Kate Galloway, a senior lecturer at James Cook University's College of Business, Law and Governance, explained that interests in land may generally be held as freehold, native title or state tenures (leasehold). Ms Galloway commented that freehold 'can be held either as a legal interest (registered title) or an equitable interest (broadly speaking, unregistered but still recognised by law)'. Ms Galloway added that interests in land 'extend beyond freehold estates, to easements, mortgages and leases—all of which can be either legal or equitable'.[16]

2.11 As Ms Kate Galloway observed in her submission, however, 'when the Crown in the right of the state grants an interest in land, it reserves mineral rights to the Crown'.[17] Professor Samantha Hepburn of Deakin Law School explained:

> The common law scope of private land ownership has been modified by legislation enacted in each state and territory which purports to vest the ownership of minerals and resources back to the state. Indeed, all Australian states and the Northern Territory have legislatively declared that petroleum in situ is owned, without exception, by the Crown regardless of when the land containing the petroleum passed into private ownership.[18]

2.12 Professor Hepburn noted that the ownership of resources by the Crown 'is grounded in the core assumption that the state is the appropriate owner of the resources because it has the capacity to ensure that those resources are properly utilized for the common benefit of all citizens'.[19]

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13 Livestock SA, *Submission 20*, p. 2.

14 No Fracking WAy, *Submission 15*, p. 7. However, the CSIRO provided evidence about the risk of barrier failure and how strong regulatory regimes can reduce this risk. See Professor Damian Barrett, Research Director, Energy, CSIRO, *Proof Committee Hansard*, 28 July 2015, p. 35.

15 Professor Samantha Hepburn, *Submission 86*, p. 3.

16 Ms Galloway noted that the bill uses the term 'legal or equitable interests' in land, which is likely to cover all of these freehold interests. Ms Kate Galloway, *Submission 10*, p. 1.

17 Ms Kate Galloway, *Submission 10*, p. 2.

18 Professor Samantha Hepburn, *Submission 86*, p. 2.

19 Professor Samantha Hepburn, *Submission 86*, p. 2.

2.13 Professor Hepburn submitted that when the state 'issues a resource title to a mining or petroleum proponent, it authorizes the holder to exercise ownership rights it has statutorily reclaimed'. Such action 'necessarily diminishes the scope of the ownership entitlements of a private landholder'. Professor Hepburn stated that under the current legal framework:

> …the rights of the resource title holder may be accompanied by an express or implied access entitlement to access the resource by crossing the land. The private landholder is bound to uphold this entitlement and cannot deny the rights of the state in this context. The state is the absolute owner of the land. The state has reclaimed ownership of the resource. The tenure framework gives the state the power to disaggregate those resources and reclaim them. Access to the resource is a necessary consequence of resource ownership. Access entitlements may be constructed as a[n] express requirement of the resource title or, pursuant to expressly conferred ancillary rights or, as a right which is implied and necessary.[20]

2.14 Similarly, Ms Galloway noted that although the mineral rights granted by the state are less extensive than 'the bundle of rights comprising the concept of ownership of land' and attach only to the minerals, they 'have implicit rights of access and to lay waste to the land itself'.[21]

2.15 Ms Galloway provided a useful overview of how the tensions between interests in land and mineral rights can be concerning to landholders. Ms Galloway stated that the current framework 'affects both the object and the extent of [the landholders'] ownership' for two reasons:

> First, the activity of mining and some lesser mineral rights, lawfully undertaken, consume the land itself. The activities destroy the object of landholders' ownership, even though ownership rights continue. Even fulfilment of remediation requirements cannot reinstate the landholder's land. Compensation equalises the respective values of the interests at stake, but the exercise of the mineral rights alters what might be called the property itself. Secondly, while ostensibly a narrower bundle of rights, the mineral rights operate despite the landholder's rights, affecting the extent of their ownership.[22]

2.16 Some submitters expressed concern about the current framework of competing property and mineral rights. An example is as follows:

> It is ridiculous when freehold land is paid for and owned, that it can be so severely affected by others rights which a landowner is obliged to defer to. Those third parties have not purchased the land, do not pay rates on the land, however, when they come onto it, they treat it as their own, abuse it,

20 Professor Samantha Hepburn, *Submission 86*, pp. 4–5.

21 Ms Kate Galloway, *Submission 10*, p. 2.

22 Ms Kate Galloway, *Submission 10*, pp. 2–3.

> disregard landowners rights (fencing, gates, stock etc) and complain about landowners trying to fight to protect what they have purchased.[23]

2.17 Mr Ken Grundy argued that 'both the extent of mining and methods of extraction employed today, bring into question, whether the landholder's rights need revision'. He submitted:

> When the 'right to mine' laws were established, mining was very low key. It was a pick and shovel task, often digging horizontal tunnels into the side of stony hillsides. The arrival of crude mechanisation enabled considerable expansion and delivered more 'product' per man hour but it was quite meagre compared to the modern scene.
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> In the 21st century, the machinery is so massive that whole hills and small mountains are devoured within a couple of years. A regular 6 foot man is dwarfed by the machines, many of which are 'driven' from a computer in a city office. New techniques of extraction are employed with potential detrimental side-effects to the environment.[24]

Existing state frameworks for access and compensation

2.18 Although the states retain mineral rights and permit companies to extract the resource, various state legislatures have recognised, and attempted to address, certain issues related to land access. In South Australia, for example, under the *Mining Act 1971* and *Petroleum and Geothermal Act 2000*, where a company has a license or lease to explore and extract natural resources the landholders are required to be consulted at the application and approval stages. There are also provisions that address compensation. The South Australian Chamber of Mines and Energy (SACOME) explained that under this framework, the landholder must be notified of the intention to enter the land by a notice of entry 21 days before access is required. After receiving a notice of entry:

> …the landholder has the right to object to the entry requirements as defined in the relevant sections of the Acts fourteen days to three months after service of the notice. Once the objection is lodged the company can accept the objection and move to a different area or proceed to negotiate access through the Wardens or Environment, Resources and Development courts where applicable. These courts upon determining whether substantial hardship or damage to the land has or can occur can set areas not to be used or what conditions they can be accessed by. Furthermore the courts can determine compensation for the landholder where access has been allowed under specific conditions.[25]

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23 Mr David and Ms Leah McDonnell, *Submission 2*, p. 1.

24 Mr Ken Grundy, *Submission 6*, p. 1.

25 South Australian Chamber of Mines and Energy (SACOME), *Submission 23*, p. 3.

2.19 In Queensland, the *Petroleum and Gas (Production and Safety) Act 2004* requires 'that resource companies enter into access agreements or "Conduct and Compensation Agreements"…with owners and occupiers of private land, prior to carrying out "advanced activities" (e.g. construction of wells and other infrastructure) on their land (subject to a range of exemptions)'.[26] The *Water Act 2000* (Qld) also imposes a 'make good obligation' on petroleum tenure holders if an existing water bore owned by the landholder has an impaired capacity as a result of the extraction of underground water associated with petroleum operations.[27]

2.20 EDO New South Wales submitted that the laws in New South Wales generally allow exploration for, and production of, CSG and coal without landholder consent. Dr Emma Carmody, a solicitor at EDO New South Wales, added:

> In relation to exploration, access agreements have to be signed before exploration can take place, but ultimately the landholder is compelled to enter into an access requirement. Really, the best they can do is make sure the terms of the agreement are as favourable as possible. There are some exceptions. For example, in relation to exploration activities consent is required within 200 metres of a dwelling house that is a principal place of residence. In relation to production activities, similarly consent is required for activities within 200 metres of a dwelling house. However, we would argue that, for a large open-cut coalmine, 200 metres is an insignificant distance. We can speak most authoritatively about New South Wales but, having conferred with our colleagues, in other states and territories the laws are similarly weighted in terms of mining and petroleum companies.[28]

2.21 Further, Dr Carmody commented that New South Wales landholders are entitled to compensation 'if the surface of their land is "injuriously affected" by CSG activity'. Dr Carmody noted, however, that this does not apply to damage to aquifers given they are below the surface of the land, and that 'it is difficult to demonstrate the cause of harm on the basis of limited data'.[29]

2.22 It was also made clear to the committee that state legislation does not support the right of a private landholder to ultimately veto access to land. For example, Professor Hepburn explained that although it 'is often claimed' that the relevant [Western Australian] legislation[30] confers a right to veto access, the legislation only

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26 Australian Petroleum Production and Exploration Association (APPEA), *Submission 21*, p. 5.

27 *Water Act 2000* (Qld), chapter 3, part 5.

28 Dr Emma Carmody, Policy and Law Reform Solicitor, Environmental Defenders Office New South Wales (EDO NSW), *Proof Committee Hansard*, 27 July 2015, p. 4.

29 Dr Emma Carmody, EDO NSW, *Proof Committee Hansard*, 27 July 2015, p. 5.

30 *Petroleum and Geothermal Energy Resources Act 1967* (WA), s. 16.

'imposes a qualified obligation to obtain consent from landholders where the land fits particular exemption requirements'.[31]

2.23 Nevertheless, the state legislation provides a framework within which resource activities are to be conducted and also include various protections. The following table was provided by the Australian Petroleum Production and Exploration Association (APPEA), which it advised is based on information contained in a 2013 report of the Productivity Commission. The table compares the various state legislative arrangements that provide protection to landholders when land is accessed.

Table 2.1: Comparison of state protections for access to private land for exploration

Protection	***NSW***	***VIC***	***QLD***	***WA***	***SA***	***TAS***
Land access arrangement agreed to with land holder before the explorer can access land	Yes	Yes	Yes	Yes	No~	No#
Compensation available to land holder for loss or damage arising from exploration activity	Yes	Yes	Yes	Yes	Yes	Yes
Compensation for legal costs incurred by land holders in negotiating access agreements	Yes	No^	Yes	Yes	Yes	No^
Compensation for other costs associated with negotiating access agreements	No	No^	Yes*	Yes**	Yes***	No^
Exploration prohibited within specific distances of buildings and other improvements	Yes	Yes	Yes	Yes	Yes	Yes
Landholder veto over exploration on agricultural land	No	No^^	No	Yes^^^	Yes+	No

Note: The Northern Territory is not included as most private land is restricted to cities and towns. Outside of the urban areas, around half of all land is Aboriginal land and the other half is Crown land under pastoral lease.

~ Authorisation to enter private land can be provided through the written consent of the land holder or by serving the land holder a statutory form (Notice of entry on land) under the *Mining Act 1971* (SA).

No formal agreement is required between the landholder and the explorer before exploration commences. However, where exploration involves ground disturbance, officers from the Department of Infrastructure, Energy and Resources are generally involved in the oversight of exploration activities to ensure that these activities adhere to the work plan.

^ Although there is no specific reference to compensation for legal, or other, costs incurred by land holders in negotiations with explorers, the legislation does not 'rule out' the provision of such compensation.

31 Professor Hepburn explained that the relevant statute sets out that the holder of a petroleum title shall not enter the land for the purpose of exploration or recovery of petroleum or geothermal energy resources unless the consent in writing of the owner has first been obtained. This is only applicable, however, to private land not exceeding 2000 m^2 or, land used as a cemetery or burial place or, land less than 150 metres from a cemetery, burial place, reservoir or substantial improvement (which is to be determined at the Minister's discretion)'. Professor Samantha Hepburn, *Submission 86*, p. 6.

* The Queensland Land Access Code provides for the compensation of reasonable accounting and land valuation costs incurred by the landholder.

** The *Mining Act 1978* (WA) provides for reasonable legal or other costs of negotiation for private land under cultivation.

*** The South Australian guidelines make specific reference to compensation for legal costs and the *Mining Act 1971* (SA) provides for the reasonable costs incurred by the landholder in connection with negotiations.

^^ The Minister can have agricultural land excised from the licence where the economic benefit of continuing to use that land for agricultural purposes is greater than the work proposed in the licence.

^^^ This applies to mineral tenements, but not to oil and gas tenements.

+ Exploration on cultivated land requires landholder consent. Where agreement cannot be reached, the explorer has the option of seeking a determination through the courts.

Source: APPEA, *Submission 21*, p. 9; adapted from Productivity Commission, *Mineral and Energy Resource Exploration*, Report no. 65, September 2013.

2.24 Various states have reviewed aspects of their land access and improvements to these frameworks are expected to result. For example, the New South Wales Farmers Association (NSW Farmers) noted that the New South Wales Government commissioned Mr Bret Walker SC to conduct a review of arbitration arrangements. Ms Danica Leys from NSW Farmers advised that 'a number of good recommendations' were made by the Walker review, including ensuring that landholders can have legal representation at the negotiation table and to provide some compensation for legal costs and time spent at arbitration. Ms Leys noted that these recommendations have not yet been implemented, 'but they are coming in the near future'.[32]

2.25 Mr Charlies Thomas from the National Farmers' Federation (NFF) added:

> Queensland went through a fairly comprehensive review of their land access arrangements probably four or five years ago now. I think Victoria are looking at doing a similar process now, given that onshore gas is starting to take place in that state. Other states have not been through comprehensive review processes.[33]

Issues with the state frameworks

2.26 The principal problem that submitters identified with the state access and compensation arrangements is that they do not address the imbalance in bargaining positions between petroleum companies and individual landholders.

2.27 Mr Leslie Manning from p&e Law stated the lack of bargaining power for landholders is 'very evident'. He explained that it 'comes from a lack of ability by many farmers to actually understand the information that is being put before them and the quantity of information that is being put before them'. Mr Manning provided the following example:

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32 Ms Danica Leys, Policy Director, Environment, New South Wales Farmers Association, *Proof Committee Hansard*, 28 July 2015, p. 24.

33 Mr Charlie Thomas, General Manager, Agribusiness and Rural Affairs, National Farmers' Federation (NFF), *Proof Committee Hansard*, 28 July 2015, p. 24.

> Recently, in a matter that is going through court at present, we sought disclosure from the Department of Environment and Heritage Protection in relation to an environmental impact statement, various rehabilitation plans and other documents that were required to form part of the environmental authority, and we were delivered a disc with over 3,000 pages on it to review. So, the extent of the paperwork that a farmer has to get to grips with and understand is quite immense.[34]

2.28 Mr Manning added:

> The clients get left in the position that they have to trawl through these documents to try to work out what information is there, what is relevant to their land, without the expertise that the companies have. If you put yourself into the position of a farmer, he is running a business; his business is operating his farm. He is given this material, and the party on the other side has myriad experts to assist, facilitate and explain. That is a significant imbalance of power. There is a real difference between the knowledge of the companies and the knowledge of the farmers, and that is one of the things we tried to rectify in the early days of trying to negotiate conduct and compensation agreements. We attempted to put clauses into agreements that said that the company guarantees that the client—the farmer—has all the necessary documents from which to make a decision and if there is a failure to produce any of those documents then the agreement can be set aside. None of those clauses have been taken up. We have not been able to get them into any agreements. But that is just an example of the sort of imbalance of power that starts with a lack of information[35]

2.29 Inadequate payments and broad conditions used in contracts were also highlighted. An example was provided of a gas company offering a landholder $265 to develop wells and 'associated petroleum infrastructure'. The landholder observed that:

> No-one knows what 'associated petroleum infrastructure' is. It could mean anything. To allow them on for $265 was absolutely stupid.[36]

2.30 Ms Laura Hogarth from Creevey Russell Lawyers, told the committee that landholders use all reasonable endeavours to enter into a conduct and compensation agreement, as they are required to under Queensland law. However, she added that, over time, the landholder discovers that they have no option other than to enter into the agreement that the petroleum company seeks:

> As time goes on and they realise how inflexible the company is about the location and intensity of their activities and the amount of compensation on offer, they realise that there is not going to be a good outcome for the

34 Mr Leslie Manning, Director, p&e Law, *Proof Committee Hansard*, 27 July 2015, p. 38.

35 Mr Leslie Manning, Director, p&e Law, *Proof Committee Hansard*, 27 July 2015, p. 38.

36 Mr George Bender, Hopeland Community Sustainability Group, *Proof Committee Hansard*, 27 July 2015, p. 23.

> landholder and, by that time, they have costs for accounting, legal and valuation and possibly other environmental experts such as dust or overland flow of water experts that are required by the valuer. So they may be out of pocket by a significant amount for months or years and the only way they can cover those expenses is to sign a [conduct and compensation agreement], as bad as it is. So that is a serious concern.[37]

2.31 The imbalance in bargaining position under the current state laws was also noted by the NFF, which stated that:

> The NFF's view is that a forced negotiation, where the landholder does not have the option to refuse an agreement, is not an equal or fair negotiation. Fixed outcome negotiation provides an unfair advantage to well-resourced mining and gas companies, which employ skilled professionals to negotiate these types of agreements on a regular basis.[38]

2.32 Another issue that concerned some submitters is that the current frameworks are based on the principle of 'coexistence'. Mr Drew Hutton, the President of the Lock the Gate Alliance, commented that coexistence is 'nonsense'. He argued:

> The more remote the land, obviously the more likely it is that coexistence can occur. In a great many areas in southern Queensland intensive agricultural pursuits are carried out. The more intensive those pursuits, the less that coexistence as possible. We have got coalmining and coal seam gas occurring in a lot of areas in the Darling Downs for example, where there is intensive cropping and other forms of intensive agriculture in fairly closely settled areas.[39]

2.33 Miss Nicholson from the Basin Sustainability Alliance argued that coexistence has only emerged as an issue recently because of the rapid growth in the industry, compared to the activity that had previously been carried out for decades:

> The fact is: until recently, all CSG, and the majority of coalmining, was undertaken for Australia's domestic supply and was not comparable to the tsunami being rolled out across the country now to feed an export market. In fact, I do not even know—and I have been on the land for 40 or 50 years—where those original CSG wells were. I was a lawyer some time ago, and we never looked at the Resource Industry Act. I do not even know where those CSG wells were. There were no problems because there were so few—similarly with coalmining.[40]

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37 Ms Laura Hogarth, Solicitor, Creevey Russell Lawyers, *Proof Committee Hansard*, 27 July 2015, p. 46.

38 Mr Charlie Thomas, NFF, *Proof Committee Hansard*, 28 July 2015, p. 22.

39 Mr Drew Hutton, President, Lock the Gate Alliance, *Proof Committee Hansard*, 27 July 2015, p. 9.

40 Miss Lynette Nicholson, Chairperson, Basin Sustainability Alliance, *Proof Committee Hansard*, 27 July 2015, p. 17.

2.34 Representatives of APPEA, however, argued that coexistence can, and does, occur. APPEA's chief technical officer, Mr Rick Wilkinson, referred to overseas examples to demonstrate this point:

> An overseas example is Texas, which is smaller than New South Wales, smaller than Queensland, which has an agricultural output rate greater than either of those states. Texas has 218,000 onshore wells on agricultural land. The industry has been there for more than a century. Clearly that example from overseas shows that that is the case. Canada is similar to Australia, with the same crown law and so forth. It has exactly the same arrangements.[41]

2.35 Returning to Australia, Mr Wilkinson noted that there are 6,700 CSG wells located near Roma, Chinchilla and Miles in Queensland. Mr Wilkinson argued that these wells are located in 'some of the best agricultural area in Australia' and are 'operating in a very positive way'.[42]

2.36 Mr Ian Thompson from the Department of Agriculture noted that although coexistence does not apply for projects such as open-cut coalmines, the application of the principle is evident in parts of Queensland and New South Wales 'depending on how coal seam gas operations are undertaken and the relationship they have with the farmers involved and the regional community'. He described the overall situation as being a 'mixed picture':

> There are certainly case studies of agriculture flourishing in conjunction with coal seam gas and, I think, there are some examples where the farm sector is saying it has been to its detriment. I think the mining industry has also said that the concerns about accessing land also have impacts on their reputation and possibly the approval processes affect the investments that they can bring into the country.[43]

Role of the Commonwealth in land access issues and unconventional gas

2.37 The Commonwealth's direct role in issues related to coal mining and the extraction of unconventional gas is limited. As the Department of Industry and Science explained, 'state and territory governments have primary responsibility for regulating onshore minerals and petroleum exploration and production, including onshore gas and coal land access arrangements'.[44] Mr Dean Knudson, Department of the Environment, added that land use matters are 'managed principally by the states and territories', with issues around land access 'managed by the individual companies,

41 Mr Rick Wilkinson, Chief Technical Officer, APPEA, *Proof Committee Hansard*, 28 July 2015, p. 52.

42 Mr Rick Wilkinson, APPEA, *Proof Committee Hansard*, 28 July 2015, p. 52.

43 Mr Ian Thompson, First Assistant Secretary, Sustainability and Biosecurity Policy Division, Department of Agriculture, *Proof Committee Hansard*, 28 July 2015, p. 17.

44 Department of Industry and Science, *Submission 31*, pp. 2–3.

who will do outreach on the ground with landowners in an area where they wish to develop a resource'.[45]

2.38 A direct role for the Commonwealth, however, arises under environmental legislation. Under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), a person must not take an action that has, will have, or is likely to have a significant impact on any matter of national environmental significance (as defined by the Act) without the approval of the minister administering that Act. The minister may decide that an action:

- is a controlled action because it is likely to have a significant impact;
- is not a controlled action if undertaken in a manner specified; or
- is not a controlled action and therefore does not require approval.[46]

2.39 Included in the nine matters of national environmental significance protected under the EPBC Act are water resources, in relation to coal seam gas and large coal mine developments.[47] Following amendments to the EPBC Act made in 2013, a constitutional corporation, the Commonwealth or a Commonwealth agency commits a criminal offence if they take an action involving coal seam gas or large coal mining development that has, will have, or is likely to have a significant impact on a water resource without an approval or exemption from obtaining an approval under the EPBC Act. Offences also apply to persons who, for the purposes of trade or commerce, engage in this conduct.[48]

2.40 Mr Knudson explained that in regulating water-related impacts from coal or coal seam gas projects, the Department of the Environment:

> …work[s] extensively with states and territories to ensure that any potential impacts on matters of environmental significance are managed in a way that their impacts are limited to those that would be deemed acceptable by the decision maker.[49]

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45 Mr Dean Knudson, First Assistant Secretary, Environment Standards Division, Department of the Environment, *Proof Committee Hansard*, 28 July 2015, p. 2.

46 *Environment Protection and Biodiversity Conservation Act 1999*, ss. 75–77A.

47 The other matters of national environmental significance are: world heritage properties; national heritage places; wetlands of international importance (listed under the Ramsar Convention); listed threatened species and ecological communities; migratory species protected under international agreements; Commonwealth marine areas; the Great Barrier Reef Marine Park; and nuclear actions (including uranium mines). Department of the Environment, *What is protected under the EPBC Act?*, www.environment.gov.au/epbc/what-is-protected (accessed 21 July 2015).

48 *Environment Protection and Biodiversity Conservation Act 1999*, s. 24D.

49 Mr Dean Knudson, Department of the Environment, *Proof Committee Hansard*, 28 July 2015, p. 1.

2.41 Mr Knudsen added that expert advice is relied upon during the decision-making process, including from the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development (IESC). The IESC was formed in 2012 and provides advice to federal and state regulators 'on what appropriate measures should be put in place to manage either areas where there is uncertainty or residual risk associated with the project'.[50]

2.42 The Australian Government has also taken a leadership role in energy policy, by chairing the COAG Energy Council[51] and by developing and promoting various policies, such as the 2015 Energy White Paper and the Domestic Gas Strategy.[52] The Domestic Gas Strategy, which was released in April 2015, articulates the Australian Government's role, and its expectations of state and territory governments, and industry, in developing unconventional gas.[53] The Strategy contains the following statement:

> The States are primarily responsible for the regulation of onshore gas resources in their jurisdictions, and the Australian Government expects the States to support the development of the unconventional gas industry using strong scientific evidence to underpin any decision.
>
> The benefits of developing a stronger unconventional gas sector should be balanced with managing impacts upon communities, other industries, and the environment and be supported by an evidence-based understanding of risks (for example, impacts on water quality, or trade-offs for land usage).[54]

2.43 The Strategy also outlines the Australian Government's three principles for the development of CSG, which are as follows:

- 'that access to agricultural land should only be done with the farmer's agreement and farmers should be fairly compensated';
- 'there must be no long-term damage to water resources used for agriculture and local communities'; and
- 'that prime agricultural land and quality water resources must not be compromised for future generations'.[55]

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50 Mr Dean Knudson, Department of the Environment, *Proof Committee Hansard*, 28 July 2015, p. 1.

51 The Minister for Industry and Science, currently the Hon Ian Macfarlane MP, chairs the COAG Energy Council.

52 Ms Margaret Sewell, Head of Division, Energy, Department of Industry and Science, *Proof Committee Hansard*, 28 July 2015, p. 13.

53 Department of Industry and Science, *Domestic gas strategy*, 2015, p. 1.

54 Department of Industry and Science, *Domestic gas strategy*, 2015, p. 1.

55 Department of Industry and Science, *Domestic gas strategy*, 2015, p. 2.

2.44 The committee received evidence regarding the work undertaken by the COAG Energy Council in response to, among other things, challenges presented by land use conflicts. Of relevance to the bill being examined by the committee are the Multiple Land Use Framework and the National Harmonised Regulatory Framework for Natural Gas and Coal Seams.[56] Ms Margaret Sewell, Department of Industry and Science, also advised that in December 2014, the COAG Energy Council committed to working with the industry and science agencies:

> …to develop a set of specific actions to promote community confidence and engagement in resources development, with a very strong focus on, in particular, improving local community engagement including through the promotion of leading practice approaches.[57]

2.45 The report returns to issues such as the role of the Commonwealth in the next chapter, where the evidence received about how this bill interacts with matters traditionally considered to be state responsibilities is outlined. The next chapter also examines the evidence received by the committee about the specific proposals in the bill.

56 Officers of the Department of Industry and Science provided an overview of these frameworks and how they were being implemented in various jurisdictions. See *Proof Committee Hansard*, 28 July 2015, pp. 14, 19 and 20.

57 Ms Margaret Sewell, Department of Industry and Science, *Proof Committee Hansard*, 28 July 2015, p. 13.