Mineral and Energy Resources and Other Legislation Amendment Bill 2024

Submission No: 22

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Publication:

Attachments: No attachment

Submitter Comments:

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[redacted]

TO THE CLEAN ECONOMY JOBS, RESOURCES AND TRANSPORT COMMITTEE

SUBMISSION TO MINERAL AND ENERGY RESOURCES AND OTHER LEGISLATION AMENDMENTS BILL 2024

A BRIEF OVERVIEW TO THE SURAT GAS PROJECT - JOINT VENTURE
SHELL/PETROCHINA AND
ARROW ENERGY

I PREFACE THIS SUBMISSION BY STATING THAT COAL SEAM GAS ACTIVITY MUST NOT TAKE PLACE ON PRIORITY AGRICULTURAL AREAS (PAA'S) ON PRIVATE FREEHOLD PROPERTY (SEE THE REGIONAL PLANNING INTERESTS ACT 2014 STATUTORY GUIDELINES/REGULATIONS)

We are landholders at 584 Springvale Road, Dalby, owners of Wysall Park, a dryland farm that's been in the family since 1947/8 and continually farmed since that time! Our farm 55DY592 is currently part of the Surat Gas Project, RIDA application RPI 22/004 Kupunn-Springvale along with 2 neighbouring properties on Springvale Road. This project sits on the Condamine Alluvium floodplain, prescribed as a regionally significant water source, a critical groundwater resource for agriculture (Arrow's own document on the Condamine Alluvium).
This submission will be written from the perspective of a dryland farmer who believes in the democratic process whereby voters elect a government to uphold the laws of Queensland; in this case, the Regional Planning Interests Act 2014 (RPI) which aims to manage the impact of resource activities on areas of regional interest throughout Queensland, on Priority Agricultural Areas (PAAs) by applying relevant assessment criteria. It is now apparent that the Queensland Government ignored the intent of the RPI Act and approved the Surat Gas Project without conducting due diligence/risk assessment, associated with impacts to the Priority Agricultural Areas and the need to apply the precautionary principle (please refer to the RPI Act, Statutory Guideline 02/14).
Furthermore by introducing the MEROLA Bill, the Queensland Government is moving the goal posts part way through the Surat Gas Project. This has legal implications for the rights of landholders who are at different stages of the project, creating an inequitable, discriminatory and arbitrary process. This is dealt with in more detail below in the Explanatory Notes; 2nd dot point.
This Bill has made a convoluted, one size fits all approach, with those landholders already impacted, those not yet impacted by the activity, and those where the coal seam gas activity has not yet commenced.

This submission is predicated on the Subsidence Management Framework to be removed from the MEROLA Bill and inserted into the Regional Planning Interests Act 2014.
It will take a broad brush approach with relevant headings and will not explore complex scientific/technical issues. I will leave that to others who have a very clear understanding of what's involved. I will comment on the relevant sections of the MEROLA based on the sequence as they appear in the Bill but first a general observation.

1) **The Explanatory Notes for the MEROLA Bill 2024**
state:

Policy objectives and the reasons for them
The primary objectives of the Mineral and Energy Resources and Other Legislation Amendment Bill 2024 (the Bill) are to:
• **enhance the State's coexistence framework;**
COMMENT: I have no idea what the Queensland Government hopes to achieve by legislating for a concept that has no legal foundation, forcing those landholders who dont want to coexist by allowing coal seam gas extraction under their properties. Coexistence means a mutual arrangement that benefits both parties. A landholder who experiences subsidence who has opposed the activity and/or had no input into the activity by under-drilling etc, is NOT COEXISTENCE. Can the Government please explain to me how a landholder will benefit from coexistence. What up-front terms, including potential compensation for any loss/inconvenience suffered in the future, are being offered to the landholder, prior to any CSG activity being commenced; what assurances/guarantees are being given to the landholder will not suffer impacts such as loss of water and subsidence; who has no CCA and is being under-drilled without a say in the location of the well pads and generally is expected to comply with this coexistence goobledygook!! Furthermore some of the language contained in the section dealing with Subsidence Management Framework is coercive (eg. OBLIGED to accept a Subsidence Plan etc; no landholder should be obliged to do anything on his own property, especially when the outcome is predicted to be subsidence. **That is a deliberate act by the Queensland Government causing harm. It conflicts with P & G Act 2004, Chapter 11-804; Duty to avoid interference in carrying out authorised activities. A person who carries out an authorised activity for a petroleum authority must carry out the activity in a way that does not unresaonably interfere with anyone else carrying outa lawful activity. Maximum penalty – 500 penalty units).**

• **provide a framework for managing the impacts of coal seam gas induced subsidence;**
COMMENT: This policy objective is REACTIVE. It's predicated on subsidence that has already happened as been proven by some landholders who have already experienced the impacts of subsidence on their properties, who are now experiencing economic productivity loss on their properties. The current Queensland Government has exceeded its remit by drafting legislation that is expecting landholders to accept such draconian, and complex legislation that holds out the faint hope of receiving compensation, when in a nutshell, there are no original baselines that should've been gathered prior to any approval of all coal seam gas extraction on the Condamine Alluvium (Surat Basin). Already we have Arrow Energy denying all liability to those landholders who have experienced subsidence. (**THE MANTRA – IT CANT BE US).** Without the original baselines, all landholders where the Surat Gas Basin Project has not yet commenced should, under this legislation, be able to have the option, to deny access to those properties, based on (a) No original baselines prior to the commencement of all coal seam gas activity over the Condamine Alluvium (b) The suitability of LiDAR which needs an independent review (c) It is noted that OGIA sits under the Queensland Government Water Act 2000, which is presented as an independent body in the MEROLA Bill. This arrangement has caused concern, particularly being funded by an Industry levy. Arguably this gives rise to a perception of a conflict of Interest! Once again its's stresssed these operations are taking place on private Freehold property.
Based on the above Comment, the Queensland Government needs to redraft "the framework for managing the impacts of coal seam gas induced subsidence" as currently exists. It needs to be broken up into two parts with a clear emphasis on providing compensation, which currently has limitations based on lack of original baseline data (I stress this is the fault of the Queensland Government by allowing the Surat Gas Project to commence without establishing an unequivocal structure that all landholders could follow through fact sheets and a public education campaign) In other words the Government needs to establish a fund to compensate those who fit into this category. **NOTE**: It also needs to be stressed that subsidence is predicted until 2060 and beyond, therefore provisions need to be implemented to take account account of those landholders who may make multiple claims for subsidence impacts over the life of the Surat Gas Project and beyond:

(I) A clear pathway for compensation for those landholders who have already experienced subsidence without running the legal gauntlet of, for example, Arbitration that is clearly unsuitable for a civil matter. This is NOT an Industrial Relations matter and landholders are NOT employees. (As an aside these MEROLA (amendments) appear to be treating us as employees of the government whilst expecting landholders to oblige the government and coexist without a murmur!!)
(2) A clear pathway for those landholders where the Surat Gas Project has not yet commenced. These landholders should be offered 2 choices within an independent framework free of bias. The **first choice** is for those landholders who wish to continue with coal seam gas on their properties, who will continue to be assessed under the RPI Act 2014, which will includes a clear pathway to compensation free of expensive legal framework. **Second choice** for those landholders are given the option of opting-out from the Surat Gas Project, including the requirement of NOT being under-drilled from a neighbouring property/ies, within a radius, for example, of 3 kilometres of an extraction point! This option of opting-out completely from the Surat Gas Project is reasonable, based on the Minister having the power to allow it under the section on critical consequences.

• **improve regulatory efficiency; and**

COMMENT: The regulatory framework must be strong and comply with the original intent of the RPI Act 2014. The Political will must be evident when any part/section of the MERCP Act is breached and compliance notices issued and acted upon!

• **modernise the Financial Provisioning Scheme.**

COMMENT: I quote "The purpose of the Scheme is to improve the State's management of its financial risk in the event holders of a resource activity environmental authority (holders) or small scale mining tenure (SSMT) fail to comply with their environmental management and rehabilitation obligations.Oct 3, 2023". The Queensland Government needs to ensure that the financial provisions reforms under the Queensland Treasury provide for the "Financial assurance and rehabilitation in the resources sector" particularly in relation to the dot point – A higher level of environmental performance". It is argued that rehabilitation obligations needs to be redefined as theoretically rehabilitate refers to and I quote "land disturbed" in Queensland. Within this context and applying this requirement to Arrow Energy, and the subsidence that has already occurred (which is predicted to continue until at least 2060), which has been caused by Arrow's coal seam gas activities, the significance of rehabilitation takes on a new perspective!. In other words if Arrow has caused the subsidence, Arrow Energy are obliged to pay for the rehabilitation. This then brings into question the adequacy of the Financial Provisioning requirements that potentially encompasses a large area of he Condamine Floodplain and beyond!
The Queensland Government, Arrow Energy/ Resource Companies, OGIA have all acknowledged subsidence will occur hence these amendments to manage, including prevent, mitigate or remediate under the CSG-induced subsidence section.
This submission argues that subsidence impacts across the Condamine Alluvium Floodplain will be catastrophic for lost agricultural production, including the remediation costs of trying to remedy the subsidence.
NOTE further down in this submission it is noted that Coffey Consultants have said subsidence is "largely irreversible"; in other words how can the resource holder (Arrow) remediate land subsidence that is "largely irreversible".
Subjecting landholders to a merry-go-round of legal entanglements trying to ensure their farms are restored to their original conditions, is an unjust burden that should be borne by the resource holder (in this instance Arrow Energy) . That's a requirement under legislation – to be restored to it's original condition, an impossible job when subsidence is, and I repeat, predicted to be largely irreversible! In other words, rehabilitation/restoring the land to its original condition. In the event that compensation is denied by Arrow Energy, the Queensland Government must ensure the financial provisions are adequately costed, based on realistic dryland and irrigated farm remediation costs, including quantifying lost

production. This will ensure remediation can be undertaken by the Queensland Government on a large scale across the Condamine Alluvium and beyond.

AUTHORISED BY PARLIAMENTARY COUNSEL AND COEXISTENCE

At the bottom of each Page are the words & quote**; "Authorised by Parliamentary Counsel.** Is that purely a formality or have these lawyers experience in complex scientific matters in, for example, hydrogeology/hydrology and associated coal seam gas activity/extraction on prime agricultural land, agronomy and contract law etc.
The amendments to the MEROLA are complex and have serious legal ramifications; for the sake of fairness and justice, the **advice of a QC is needed, who is experienced in: coal seam gas activity impacts encompassing hydrology/subsidence, an agronomic expert, and an arbitration and contract law expertise**. It's impossible to expect our Parliamentary representatives to get their heads around such complex issues, including other bundled pieces of legislation before parliament, who are then expected to vote without a clear understanding of what they are voting on, within a particular time frame. This observation is meant with the best of intentions and not personally directed to any individual, but I stress these amendments do impact private property and the future financial livelihood of farmers. Can I suggest that our parliamentary representatives ensure they are comprehensively briefed by those experts who understand the complexities of coal seam gas on a shallow aquifer/floodplain and have adequate time to comprehend these complex issues! Thank you.

Coexistence is a rubbery concept that carries no legal weight. Yet the government legislates with the expectation that landholders will embrace it. People cannot be forced to coexist. It's a mutually beneficial arrangement between 2 parties. Coexisting with a resource company knowing it will damage one's property is not Coexistence. Some sections of the MEROLA are drafted with coercive intent, which will not lead to a mutually beneficial outcome (within the parameters of coexistence), with the possibility of a compensation claim ending in an expensive legal battle with no winners!

GASFIELD COMMISSION

The name change from GasFields is to Coexistence Queensland seems a strange choice. In the future a landholder who is seeking advice on a proposed development would do a word search, for example, on either gas, renewables, solar, wind turbines, transmission lines etc. Most people wouldn't be familiar with the word coexistence! Regarding the composition of the GasFields Commission board, the existing members seem to have a strong resources/industry background. To bring balance, there should be a board member/s with an agriculture/agronomy background who has a practical working knowledge of farming practices. This oversight needs to be rectified!

SUBSIDENCE MANAGEMENT FRAMEWORK – CHAPTER 5A – PART 1

Part 8: Amendment of Mineral and Energy Resources etc. To include & quote; **INSERT INTO DICTIONARY**: manage (prevent, mitigate or remediate).
Chapter 5ACSG-induced subsidence management.
1**84AA Purpose of chapter.**
(1) The purpose of this chapter is to provide a framework for managing the impacts of CSG-induced subsidence that includes—
(b) (ii) requiring particular relevant holders for the area to undertake particular activities or take particular action;
and

(iii) **giving the Minister, the chief executive and the office functions and powers related to the identification, assessment, monitoring and management of the impacts of CSG-induced subsidence in the area**

COMMENT:

The above relating to Chapter 5A is of concern for the following reasons:

- It's clear that the Queensland Government intends to pursue a legislative framework with the knowledge that subsidence is predicted and is largely irreversible (See Coffey report link below) which will cause an act of deliberate harm to the landholder, thus triggering a Qld Human Rights violation under the Act 2019.
- **NOTE**: Under the Regional Interests Act 2014 (RPI Act), Statutory Guideline 02/14. By omisson, the RPI Act refers to impact that is unknowingly caused by a resource proponent – hence why the RPI Act refers to the precauionary principle. It had been confirmed by OGIA and this MEROLA, that subsidence will 100% occur. Not carrying out the principles of the precautionary principle is irresponsible, and a grave breach of the Civil Liability Act 2003.
- There appears to be no mechanism to challenge/disagree with any of the management processes and decisions, that will be carried out to produce a Subsidence Impact Report.
- No risk assessments have yet been carried out identifying which areas will be categorised as A, B, or C. There is no detail or guidelines as to how these categories will be assessed.
- The Government is forcing landholders to coexist with a Coal Seam Gas Company using legislative powers to develop a framework; supposedly to provide a pathway to compensation for subsidence impacts/damages, which is overly legalistic and complex (arbitration law), giving rise to a landholder getting bogged down in legal arguments, conducted by high-powered lawyers acting for the resource holder. This scenario gives rise to an uneven bargaining power between the parties.

Firstly in relation to (iii) above (highlighted), the Minister has been given powers to manage subsidence. Coffey, Arrow's consultants state in their report commissioned by Arrow that subsidence is largely irreversible. With respect Minister over to you!

See.....Page 29

https://acrobat.adobe.com/id/urn:aaid:sc:AP:017fe948-de9b-4e5a-be28-94b79048c898

The Minister, under these amendments, **will have the power** to further investigate subsidence and consider the long-term consequences/damage to prime agricultural land on private property across the Condamine Floodplain. This longer-term damage will impact farmer's financial livelihoods through lost production.

With respect, the Minister will have to face the reality of the destruction of the agricultural industry on this area of the Darling Downs, as already highlighted above, and use his powers to call a halt: ALL COAL SEAM GAS ACTIVITY MUST CEASE UNTIL AFFECTED LANDHOLDERS ARE COMPENSATED. THERE NEEDS TO BE A GENUINE DEMONSTRATION BY ARROW ENERGY, WILL HONOUR THE COMPENSATABLE EFFECT SECTION IN MERCP. What is needed is the political will, in order to protect the future of agriculture in this region.

The question that needs asking in relation to compensation is: compensatory effect is already defined in the MERCP Act yet to my knowledge no compensation claims have been successful. Will the compensation framework in these amendments be any more successful in providing a secure a clear pathway to compensation without getting subsumed by legal shenanigans by powerful lawyers will deny all liability, due to the lack of original baselines, as already described above, being non-existent, prior to all coal seam gas activity commencing on the Condamine Alluvium and beyond off-tenure?

Hence my discussion on **The Explanatory Notes for the MEROLA Bill 2024 - Policy objectives and the reasons for them - • provide a framework for managing the impacts of coal seam gas-induced subsidence.**

My position as a landholder:

- Not yet sure which category our farm will be classified as.

- Our risk profile is zero, meaning no subsidence, not 1mm. We have a right to expect no surface impacts, from being under-drilled from a neighbouring extraction well pad, alternately described under the P & G Act 2004; **Duty to avoid interference in carrying out authorised activities etc….must carry out the activity in a way that does not unresaonably interfere with anyone else carrying out a lawful activity. Maximum penalty – 500 penalty units).**
- **Under 184AB on Page 88**; **"CSG-induced subsidence means ground motion resulting from the poduction of coal seam gas under a petroleum resource authority (csg)", will unreasonably interfere with carrying out of farming activities (ground motion means a change in the elevation of land at the surface, regardless of the reason for the change; (See (b) on Page 89).**
- For areas like Springvale that rely on overland flow which flows in a SSW to N across the floodplain, this change in land surface elevation would be catastrophic for the replenishment regime of a full moisture soil profile which allows us to farm in dry times!
- Once again I stress that would be an unreasonable interference in carrying out a lawful activity on one's own property!
- Why should we suffer the impacts of subsidence and its consequences on our own private property, particularly when we are engaged lawfully farming the land when it's highly unlikely we will receive compensation, based on (a) the cost of proving subsidence in court, and (b) Arrow's record of denying liability!
- Onus of proof needs to be reversed onto the resource holder. It's cold comfort to read (2) on Page 87 of the MEROLA, which states & I quote; "Also, this chapter provides for the payment of compensation by particular relevant holders for a Subsidence Management Area for particular cost, damage or loss arising from the impacts of CSG-induced subsidence". I stress once again to the Queensland Government, that as an owner of Freehold private property, we should not have to experience impacts and interference to our farming operations/practices. That is a right under the Human Rights Act. See ""Human Rights Act 2019"
• CSG induced subsidence triggers the HR Act Section 24 (2.) A person must not be arbitrarily deprived of the person's property. The inability of landholders to be able to make profitable use of their subsided land is unjust and unreasonable
• HR Act 2019 section (2) (c) the relationship between the limitation and its purpose. Arguably being deprived of the "highest and best use" is limiting one's right and is unreasonable under the circumstances (argued in the context of being lawfully engaged in carrying out my farming business).Therefore these amendments conflict with the Queensland Human Rights Act 2019.
(A detailed discussion on the Queensland Human Rights Act 2019 is below)

SUBSIDENCE MANAGEMENT AREA – PART 2

184BA Declaration of area
(1) The Minister may, by gazette notice, amend a subsidence management area by (a) declaring a part of Queensland to be part of the area; or
COMMENT:
Gazetting an area by declaring an area may be impacted by CSG-induced subsidence will impact on land valuations by flagging a particular area or region will be prone to subsidence. This will call into question the devaluation of land with the added designation being attached to the title for as long as subsidence is a problem. Considering that subsidence is predicted to continue to occur until at least 2060, the declaration will be seen as an encumbrance on the land title for generation/s, potentially making a particular property difficult to sell. Valuations of land are valued as the "highest and best use" of land. It's crucial for accurate property valuation and forms the foundation for market appraisals. Anything that detracts from that determination will potentially destroy the system of land valuation that Queenslanders/authorities have come to accept as normal practice!

184BB Information or advice by office before declaration of area

(4) The office may give the chief executive information or advice about whether the chief executive should, as a priority after the declaration, give the holder a subsidence management direction to undertake baseline data collection for, or a farm field assessment of, agricultural land in the subsidence management area.

COMMENT:

"Baseline data (or simply baseline) is data that measures conditions before the project starts for later comparison (IFRC, Baseline Basics, 2013). In other words baseline provides the historical point of reference for the next steps of project monitoring and evaluation.Aug 25, 2017 (See No.4 above; a quote downloaded)".

Obtaining a baseline for all intents and purposes, prior to a project being commenced, is to accurately reflect the conditions/state of the subject being measured; in this case obtaining a baseline of the cultivated paddocks/fields within the Surat Gas Project area and prior to any activity being commenced!

No.(4) as outlined above, is sugggesting that baseline data will be collected after the event. The Queensland Government obviously needs to be reminded that the Surat Gas Project has already commenced, therefore one needs to question the validity of the (4) and how accurate and reliable the baseline data obtained! Arguably, the Queensland Government is being duplicitous in suggesting this approach and is trying to play catch-up after the approval of the Surat Gas project. It should be pointed out: IT'S TOO LATE TO COLLECT BASELINE DATA. THOSE LANDHOLDERS IN RESONABLE PROXIMITY TO SHUT DOWN/ EXISTING/PRODUCING WELLS, THE DATA COLLECTED WILL BE TAINTED!!

I stress trying to find a pathway through, to keep the Surat Gas Project moving along, is based on a false premise! CSG-induced subsidence has already happened and is predicted to keep happening! I repeat this clause from MEROLA (already quoted above) and I quote again: **"giving the Minister, the chief executive and the office functions and powers related to the identification, assessment, monitoring and management of the impacts of CSG-induced subsidence in the area"** The Minister has the power to manage, including **PREVENT**, **MITIGATE OR REMEDIATE** the activity by calling a halt to the harmful activity. Otherwise is the Queensland Government seriously suggesting legislating a policy of harm on private property; that landholders should subject themselves to years of subsidence impacts, of lost agricultural production, based on some ridiculous notion of coexistence that has no legal basis? Furthermore the Queensland Government is in "breach of duty"; see the Civil Liability Act 2003 (Chapter 2 – Civil liability for harm) and Human Rights Act 2019!

This baseline strategy should also apply to any gasfields, prior to the Surat Gas Project, within a particular radius that are/were in operation, which may impact the current and existing area within the Surat Gas Project area. The calculated radius from an existing gasfield which may impact on the baseline for the Surat Gas Project, needs to be scientifically established!

The above COMMENT also applies to **184BC and Division 2 – Baseline data collection**

184CG Peer review by technical reference group

COMMENT:

I question the lack of public scrutiny of this group. It requires an additional 6 (c) or a No.7; that a report be published on the "peer review" findings and the information made available on a Queensland government website.

Part 4 Identification, assessment, and monitoring of impacts of CSG-induced subsidence

184DB What is land monitoring of agricultural land

Land monitoring, of agricultural land, is the ongoing monitoring of the land to obtain information about changes in relation to the land, including any changes to the drainage, slope or form of the land that may have happened because of ground motion or CSG-induced subsidence.

COMMENT:
Drainage/overland flow was identified in the Potential consequences of CSG-induced subsidence etc Report (See link below) as a central concern, impacting crop yield. Any change in slope or form of the land would impact on overland flow and result in critical economic consequences for production. Overland flow is particularly important on dryland as it restores a full soil moisture profile, a bonus in dry times. Any change to this regime would be devastating for dryland farmers.
NOTE: Prior to any reports/categories being prepared and adopted relating to CSG-induced subsidence, there are still **outstanding studies** to be completed **before any CSG activity commences.**
- The Horrane Fault results being currently processed, not yet completed and compiled by OGIA. The outcome of this study is critical, due to its potential impacts on the overland flow pathways across the Condamine Alluvium, particularly for the Springvale area in the vicinity of the Horrane Fault (currently awaiting a RIDA decision). Any projected areas senstive to subsidence within the zone of the Horrane Fault, the overland flow will be significantly impacted by any changes to drainage, slope, and erosion caused by subsidence. (See the link; The final Consequences Report: https://acrobat.adobe.com/id/urn:aaid:sc:AP:64b0f731-7110-4aa9-b7c4-dd44a8708b6b)
- A regional assessment on Overland Flow is critical including inter-farm drainage assessments.
- More nested bores need to be installed East and West of Horrane Fault.

I stress again these need to be completed prior to any CSG activity proceeds! And NOT by Arrow Energy.

Division 3 Farm field assessments

COMMENT:
Farm field assessments are taken for the purpose of subsidence management which includes prevent, mitigate and remediate. Guidelines will need to be clearly articulated, whilst recognising that the principle purpose of Priority Agricultural Areas (PAA's) is to protect its qualities of Priority Agricultural Land Uses (PALU) stipulated in the Regional Planning Interests Act 2014 (See Statutory Guideline 02/14). In other words its importance as one of the few vertisol soil areas in Australia, that even in dry periods have the ability to produce grain and fibre for local and overseas consumption. By jeopardising these qualities, we are threatening our food and water security.
Farm Field Assessments and auditing should be carried out by people who are adequately qualified to prepare a report based on expert knowledge of the state of the soil/growing conditions within a particular district, and any regenerative projects that are currently being trialled. This will include the attributes of a property and assessment of the potential impacts based on the particular location of said property, within a zone of subsidence. This

assessment should also include the drainage, slope and overflow patterns and any potential changes based on, for example, flood flows and other unknown events that may contribute to those changes!

As already discussed, correct baseline data measurement is obtained prior to the commencement of a project. This approach ensures the results are not tainted by activity already commenced within a particular radius of "new activity". Knowing that subsidence has already occurred, it's a gross injustice of a landholder's right for a resource holder, with the approval of the Queensland Government, to continue pursuing CSG activity; knowing the consequences of subsidence impacts, within a particular category! That is not coexistence. It's extortion! I note penalty units apply. Who ensures compliance and enforcement, within each relevant section of the Act relating to CSG activity. Based on current behaviour, the resource holder "rules the roost". Unless the Queensland Government takes its monitoring and compliance and enforcement duties seriously in the future, no penalty units will ever apply.

NOTE Arrow Energy is not to undertake the FFA/audit. It should be carried out by an independent expert who has a broad understanding of agriculture and modern farming practices.

The above COMMENT also applies to**184DC – Relevant holder to undertake land monitoring!**

184FB What is a farm field assessment of agricultural land

(2) If an impact or predicted impact mentioned in subsection (1)(c) is assessed to be more than minor, the farm field assessment of the agricultural land **must state that the relevant holder is required to enter into a subsidence management plan with each owner and occuppier of the land.**

COMMENT:

A general observation on Division 3: This is the time when a landholder should be given the option to exit the Surat Gas Project with no future CSG activity on his property, and with no under-drilling from the neighbouring property/s within, for example, a 3 kilometre radius of an extraction point. Furthermore this subsidence management process as outlined in MEROLA is lengthy, legalistic, costly and time-consuming for the landholder. How is the farmer expected to be able to carry on his business and protect his interests, within the definition of the Subsidence Management Framework process? This is an extremely lengthy and complex process with serious legal implication. Is the Queensland Government seriously expecting the impacted landholder, when engaged in running his farm, particularly at critical times of the year, to set aside hours, days, weeks, months, just to deal with these overly complicated legalistic issues with the capacity to impact on a farmer's business model; especially if he has no prior experience in dealing with such formalities. Could be seen and will be seen, as intimidating!?

Management of, and compensation for, impacts of CSG-induced subsidence
Division 1 Subsidence management plan

184HB What is a subsidence management plan for agricultural land

(1) A subsidence management plan for agricultural land is a plan that— (a) is agreed between the following parties— (i) the relevant holder; (ii) an owner or occupier of the land; and (b) contains measures (each a subsidence management measure) for

the land to address how and when the holder will manage the impacts of CSG-induced subsidence on the land.

COMMENT:
The above description of a subsidence management plan reinforces and strengthens the argument, subsidence can only be affectively managed (meaning prevent, mitigate and remediate) by 2 actions:
(1) Implementing the intent of the Regional Planning Interests Act (RPI Act), by triggering the Regional Interests Development Approval (RIDA) process, which will examine the impacts of subsidence by using the assessment criteria contained in the RPI Statutory Guidlines/Regulations.
(2) To achieve the above, the Subsidence Management Framework should be removed from the MEROLA Bill and placed in the RPI Act where logically it belongs, due to the assessment criteria, necessary to evaluate the impacts of subsidence and whether they can be prevented, mitigated and remediated, within the RIDA process.

Upon completion of the RIDA process, depending on the outcome, the Subsidence Managment Framework (CSG-induced subsidence impacts) kicks in with the various steps of the MEROLA , and as already discussed in the Bill, ending in a Subsidence Compensation Agreement, but still under the RPI Act as the lead agency.

NOTE: This will avoid duplication which leads to confusion when spread across two or more governments departments. This is a failing of the Queensland Government when dealing with the coal seam gas industry, where various departments are involved with no one prepared to take ultimate responsibility for the activity of the resource holder!

DIVISION 2 CRITICAL CONSEQUENCES

184KI Application for critical consequence decision
(1) An owner or occupier of agricultural land in a subsidence management area may apply to the Minister for a critical consequence decision for the land if—
(a) the owner or occupier is a party to a subsidence management plan with a relevant holder for the area; and
(b) the owner or occupier reasonably believes—
(i) a subsidence management measure contained in the subsidence management plan has failed or is ineffective; and
(ii) there has been, or is likely to be, a critical consequence for the land.
(2) Also, an owner or occupier of agricultural land in a subsidence management area may apply to the Minister for a critical consequence decision for the land if—
(a) the owner or occupier is a party to a subsidence opt-out agreement with a relevant holder for the area; and

(b) the owner or occupier reasonably believes—
(i) there has been a material change in circumstances since the relevant holder undertook a farm field assessment of the land; and
(ii) there has been, or is likely to be, a critical consequence for the land.

COMMENT:
Category A (high risk of subsidence) and Category B (moderate risk of subsidence) and Category C (minor/low or no risk of subsidence).
A landholder should have the right to request the Minister, based on the definition of the above risk categories to exit (opt-out) from the Surat Gas Project, including being excluded from any under-drilling within the landholder's property and including any under-drilling from the adjoining neighbouring property/s, within for example, a 3 kilometre radius from any extraction point. As a landholder who values his land as an intergenerational asset, our risk category is zero. I repeat that is a right to manage property without **any interference to its operation** for the sole purpose of providing an economic resource which helps guarantee food and water security for Queensland and by extension Australia. See **P & G Act 2004, Chapter 11-804; Duty to avoid interference in carrying out authorised activities. A person who carries out an authorised activity for a petroleum authority must carry out the activity in a way that does not unreasonably interfere with anyone else carrying out a lawful activity. Maximum penalty – 500 penalty units).**

It is also a right under the Human Rights Act. See **""Human Rights Act 2019"**
• CSG induced subsidence triggers the HR Act Section 24 (2.) A person must not be arbitrarily deprived of the person's property. The inability of landholders to be able to make profitable use of their subsided land is unjust and unreasonable • HR Act 2019 section (2) (c) the relationship between the limitation and its purpose. Arguably being deprived of the "highest and best use" is limiting one's right and is unreasonable under the circumstances (argued in the context of being lawfully engaged in carrying out my farming business).Therefore these amendments conflict with the Queensland Human Rights Act 2019.

Also there is another avenue to opt-out, but there are no details or guidelines as to how a subsidence management plan relates to a particular situation that may arise and any opt-out implications! See below:
184HD Owner or occupier's right to elect to opt out
(1) An owner or occupier of the agricultural land may elect to opt out of entering into a subsidence management plan with the relevant holder.
(2) The election to opt out is a subsidence opt-out agreement and is invalid if it does not comply with the prescribed requirements for the agreement.

THE QUEENSLAND HUMAN RIGHTS ACT 2019

Human rights are impacted by the Statement of Compatibility, included in the MEROLA. Particular amendments outlined in the MEROLA are incompatible with the rights protected under section 58(1)(a) of the Human Rights Act 2019 (Qld) (HR Act) to make a decision that is compatible with human rights. 174

- To comply with this provision, the MEROLA amendment must either not limit human rights, or must only limit human rights to an extent that is demonstrably justifiable by reference to s 13 of the HR Act. 175
- Section 13(1) of the HR Act provides that a human right may only be subject to reasonable limits "that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom".
- Section 13(2) of the HR Act lists a number of factors that may be relevant in deciding whether a limit is reasonable and justifiable, including the nature of the right, the nature and purpose of the limitation, whether there are any less restrictive ways to achieve the purpose, and the importance of preserving the human right, taking into account the nature and extent of the limitation.

174 Human Rights Act 2019 (Qld) s 58.
175 See Owen D'Arcy v Chief Executive, Queensland Corrective Services [2021] QSC 273 at [125].

- As discussed further below, the proposed activities will limit the fundamental human rights of the landholders, namely their right to property. 176
- The amendments are incompatible with the right to property as it will limit this right "to an extent that is not reasonable and demonstrably justifiable". 177

Nature and Scope of the Right to Property
- Section 24(2) of the HR Act provides that "a person must not be arbitrarily deprived of the person's property".
- Contravention of the right to property involves three elements:
1) The first element, 'property', encompasses 'real and personal property such as land, chattels and other economic interests'. 178
2) The second element, 'deprivation', has been broadly interpreted. It can include both a formal expropriation, involving forced displacement or extinguishment of title, as well as a de facto expropriation involving a substantial restriction in fact of a person's use or enjoyment of their property. 179
3) The third element, that the deprivation be 'arbitrary', is concerned with capriciousness, unpredictability, injustice and unreasonableness, in the sense of not being proportionate to the legitimate aim sought. 180 A deprivation of property, when considered broadly and generally, 181will be arbitrary if it extends beyond what is reasonably necessary to pursue economic development.
- In Waratah Coal Pty Ltd v Youth Verdict Ltd (No 6) [2022] QLC 21, President Kingham found that the noise and dust and subsidence impacts of the proposed Waratah Coal mine on the land amounted to a significant restriction on the owners use or enjoyment of the property. Her Honour concluded that approving the Galilee Coal Project would amount to an arbitrary deprivation of property, placing particular emphasis on the fact that the noise and dust levels were predicted to exceed the draft environmental authority levels, and that there was significant uncertainty about how to either limit or respond to subsidence impacts. 182

176 Human Rights Act 2019 (Qld) s 24(2).
177 Human Rights Act 2019 (Qld) s 8.
178 PJB v Melbourne Health (2011) 39 VR 373 at [87].
179 PJB v Melbourne Health (2011) 39 VR 373 at [89] citing Zwierzynski v Poland (2004) 38 EHHR 6.
180 WBM v Chief Commissioner of Police (2012) 43 VR 446 at 472 [114],[117] (Warren CJ) approved in Thompson v Minogue [2021] VSCA 358 at [55].

181 Thompson v Minogue [2021] VSCA 358 at [56].
182 Waratah Coal Pty Ltd v Youth Verdict Ltd (No 6) [2022] QLC 21at [1667]-[1671]

- Approval of the Project would limit the right to property of the landholders.
- As has been detailed throughout this submission, the proposed activities will impact the landholders' use and enjoyment of their properties as follows:

● There is an increased risk of subsidence as a result of the proposed activities, which will alter existing ground slopes and overland flow on the Subject Land, limiting the effective drainage of surface water for agricultural activities and increasing flood risk.
● There is a risk of well integrity failure, which may lead to groundwater contamination, gas leakage, and fluid spills and seepage at the surface.
● There will likely be dust and noise produced by land clearing and installation of infrastructure associated with the Project, which will impact amenity and enjoyment of the landholders' properties.
● On completion of each well, the associated infrastructure will be capped and then left in situ. This will restrict and constrain the landholders' capacity to place bores on their properties, which will have to be drilled in a manner which avoids the subsurface wells.

● The deprivation of the farmers property based on the assumption that, in the example of subsidence, it is acceptable to permit a certain impact to be suffered by the farmers on the property even if the details of the impact are unknown. Also made under the assumption that any impacts will be remediable, compensatable and provable by the farmer, where no evidence has been provided by the proponent to attest to this.
● Additionally the impact on the farmers own productive capacity on the property and additional costs due to adverse physical and economic impacts on property and property values attributable to activities and risk exposures associated with unconventional gas eg. monitoring, mitigation, time, insurance, financial taking time away from the core business prior to the installation. Loss of property value attributable to impacts of the industry and practices is not addressed by "compensation". Dr Oswald Marinoni 183 of CSIRO identified that farmers are losing an average of $2.17 million due to the mining of coal seam gas. The value in their land is lost over a 20 year period where CSG activity occurs, most significantly due to loss of agricultural production from access tracks and infrastructure areas.
● Infrastructure and associated noise, dust, light, traffic, loss of privacy, impact to economic viability, impact on business methods, encroachment on time, compromise families' ability to enjoy the use of their property. Lack of original baseline testing (prior to commencement of Surat Gas Project), industry exclusive access to data, and inequitable position of the landholder means that pursuing remedies for impacts post signing a CCA is nearly impossible and cost prohibitive.

183 Marinoni & Navarro Garcia, 2016. A novel model to estimate the impact of Coal Seam Gas extraction on agro-economic returns. Land Use Policy, 59, pp 351–365.

- In these circumstances, the approval of the Project would clearly contribute to a substantial restriction on the landholders' use of their properties, amounting to a de facto deprivation of property.

The limitation of the right is arbitrary
- The limitation of the landholders`property rights that will be caused by the proposed activities clearly extends beyond what is reasonably necessary to pursue economic development of the kind proposed by the Applicant.
- There is a real risk of loss of productive capacity of the Subject Land for priority agricultural land use by the landholders as a result of the proposed activities.
- The Proposed Activities will also have negative impacts to the financial viability of the landholders' agricultural practices by impacting their ability to obtain comprehensive insurance and by decreasing property value, which in turn may impact their ability to leverage the value of their property as security for other ventures.
- As the Applicant argues that that there will be no surface impacts as a result of the Project, the proposed activities are characterised as preliminary activities. This means that in most instances we understand that Conduct and Compensation Agreements have not been negotiated with the landholders, and they will not be compensated for the financial loss they are likely to experience as a result of the proposed activities.
- This all goes to demonstrate that the deprivation of property that will be contributed to by the Project cannot be viewed as anything but arbitrary.

The limitation cannot be demonstrably justified
- Taking into account the nature of the right and the extent of the
limitation, it cannot be demonstrably justified.
- The right to property is a fundamental and 'ancient' feature of the common law. 184 Property rights can take on particular importance when considering the rights of people with 'strong, personal and continuing connection' to their land. 185 This is certainly the case for the landholders, for whom the Subject Land represents not only the main source of their livelihoods, but also their homes.

COMMENT:
The argument above is a rebuttal to the Statement of Compatibility contained in the MEROLA Bill

Amendment of Land Access Ombudsman Act 2017
Subdivision 2 - Industry levy

● **Has the Government given any thought** to expanding the Industry levy in Subdivision 2 regarding a resource authority holder who may suffer financial difficulties, facing bankruptcies/or any other reason such as upon cessation of a project, who is unable to meet his financial penalty obligations for compensation for damage caused to a landholder; whereby the court process has proven that the resource authority holder is liable for damages payable.

TO SUM UP

Based on the matters raised in this submission and the facts/evidence presented, the Queensland Government must acknowledge that the risk of subsidence occurring over the Condamine Floodplain has been predicted, hence the reason for the MEROLA. The primary purpose of the MEROLA should be to achieve the following:

(1) To **protect and strengthen** Priority Agricultural Areas **(PAA's**) and Priority Agricultural Land Use **(PALU) under the RPI Act 2014. This is fundamental to preserve and protect prime agricultural land on the Condamine Alluvium/Floodplain Darling Downs.**

(2) The Subsidence Management Framework (CSG-induced subsidence) must be placed in the Regional Planning Interests Act (RPI Act) 2014 due to the importance of adhering to the Statutory Guidelines/Regulations which will enable the impacts of Subsidence to be carefully assessed against the criteria in the Statutory Guidelines/Regulations.
Management of CSG-induced subsidence includes the intent to prevent, mitigate and/or remediate. This can only be achieved under the RPI Act with the ability to trigger a Regional Interests Development Approval (RIDA)!
Therefore **the Subsidence Management Framework must be removed from MEROLA and inserted into the RPI Act to achieve its stated purpose of protecting PAA's and the Condamine Alluvium, prescribed as a regionally significant water source, a critical groundwater resource for agriculture (Arrow's own document on the Condamine Alluvium), under the RPI Act Statutory Guideline 02/1**

(3) There needs to be a clear and independent proactive pathway/s to compensation free of unnecessary legal obstacles (such as proving subsidence is caused by CSG activity due to, for example, inadequate baselines/poor LiDAR data) and uneven bargaining power as part of negotiations for those landholders already impacted by CSG-induced subsidence and those landholders not yet impacted by CSG-inducecd subsidence, including the areas not yet developed/commenced.

(4) There needs to be a **Pool of Experts** for landholders to access for advice, free of bias (such as previous employment history with resource Industry and Government), such as experts in coal seam gas/LiDAR/InSAR/subsidence/hydrogeology/geology/agronomist/agro-econimics) – there is a significant dearth of experts for various reasons. It is suggested that this could be provided and administered by Geoscience Australia.
- Pool of Experts is needed to potentially oppose any OGIA findings that may be in conflict with real impact that is occurring and poor baseline data. At the end of the day OGIA is funded by the Resource Industry and its administration is under the Qld Department of Water.
- The **Pool of Experts** needs to be funded by the Resource Industry and/or Government. Our agricultural lands need to be valued and protected from CSG, including loss of water through unlimited take by resource companies (the Condamine Alluvium is the headwaters of the Murray-Darling Basin System).

(5) No substantial subsidence compensation fund has been set aside. This needs to be remedied by the Queensland Government. Use the royalties from the CSG Industry. Increase them if necessary!

(6) The Subsidence Mangement Framework (SMF) **must be administered by Queensland Department** of Agriculture (DAF). Its strange not once has DAF been mentioned in the MEROLA as needing to have responsibility for SMF impacting agricultural land. **Department of Resources knows nothing about agriculture** and only promotes the interests of the resource industry!

(7) OGIA needs independent oversight through a panel, free of bias, of experts knowledgeable in hydrogeology/hydrology and agriculture.

(8) A mechanism needs to be introduced to allow landholders to challenge the decisions that result in the Subsidence Impact Report and other reports that impact the rights of landholders. These should be freely available to all members of the public. This project is a matter of public interest involving environmental impacts over a wide range of the Darling Downs!

(9) It is **NOTED** that the Minister will have the power to call a halt to CSG activity under the Surat Gas Project!

(10) The SMF is in breach of the Human Rights Act 2019 as previously discussed.

(11) The Human Rights Act 2019 rebuttal to the Statement of Compatibility contained in the MEROLA Bill.

NOTE: WITH DUE RESPECT, ALL PARLIAMENTARY REPRESENTATIVES ARE THERE TO REPRESENT ALL QUEENSLANDERS WHOSE PRIVATE FREEHOLD LAND IS BEING IMPACTED BY CSG ACTIVITY AND RENEWABLES AND NOT THE RESOURCE INDUSTRY – THANK YOU FOR YOUR INTEREST IN THIS IMPORTANT MATTER.