



## Original Article

# Aboriginal engagement and agreement-making with a rapidly developing resource industry: Coal seam gas development in Australia

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## ABSTRACT

The onshore development of coal seam gas (CSG) is expanding rapidly in Australia. The industry's interaction with Aboriginal people has entailed 35 Indigenous Land Use Agreements in the State of Queensland in the period 2010–2013. Though the mining sector and, to some extent, conventional oil and gas development, are the source of much of our knowledge about agreement making in extractive industries, CSG extraction presents distinctive challenges. The industry has a distributed footprint on the landscape and multiple megaprojects are creating new forms of infrastructure to extract and handle the gas. This development is occurring during a period of evolution in law and regulation. The issues associated with agreement making and implementation that arise in this context are addressed here as seen from Aboriginal and practitioner viewpoints. Drawing on qualitative interviews, participant observation, applied native title research and indicative legal cases, we address the significance of capability challenges, the need for improved industry understanding of Aboriginal cultural politics, more explicit attention to factionalism among Indigenous groups, and the requirement for greater professional collaboration among all parties. CSG development can be seen to have accelerated the exposure of the resources sector more generally to the complexities of agreements with Indigenous people.

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## 1. Introduction

The coal seam gas (CSG) industry is currently expanding rapidly in the State of Queensland and into northern New South Wales with development anticipated in other parts of Australia. Understanding the industry's impact on Aboriginal people can be seen in the context of the ambivalence among the population generally about the regulation and methods of extraction of this new resource. Additionally, it is important to understand current legislation and legal precedent about Aboriginal rights in relation to land and waters.

CSG is known as an 'unconventional' natural gas (mostly methane) that is trapped, under high pressure, within coal seams. It is called unconventional as its extraction requires many wells across a landscape rather than the few deep wells that are conventionally employed to tap into relatively large gas domes

that are thousands of metres below the surface. Coal seams suitable for CSG extraction are usually closer to the surface (e.g., 200–400 m below) and relatively thin (often less than a metre thick), and these seams extend in a variegated pattern over large areas. An area of approximately 40,000 square kilometres in Queensland has CSG leases that are currently being developed (Department of Natural Resources and Mines, 2014).

There is an ongoing programme of well drilling and completion, including the associated activities of construction of roads and pipelines for gas and the saline water that comes with it, water treatment, construction and commissioning of gas compression stations, building of high tension power lines, and well pad and pipe route rehabilitation. Land access negotiations and monitoring activities are extensive. While the physical impact of each well is relatively small (about two hectares during drilling and a half hectare afterward), each gas field has a large dispersed footprint, with numerous interlinked wells geometrically spread across hundreds if not thousands of square kilometres for each proponent (Department of Natural Resources and Mines, 2014; US Department of Energy, 2004). These wells require access roads and pipeline rights of way on farm and grazing land as well as in areas

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of residual native vegetation that have not been cleared for agricultural use in this otherwise intensively farmed region (Williams et al., 2013).

CSG and other forms of onshore, unconventional natural gas are of growing importance as a domestic source of fuel in Australia, Canada and the USA (International Energy Agency, 2012). Three export facilities for CSG (as Liquefied Natural Gas, LNG) are currently under development in north-eastern Australia with activity also occurring in Western Australia. The CSG developments being pursued by four joint venture proponents in Queensland were initially valued at \$40 billion, a cost that has now risen to \$60 billion, with another \$20 billion in investment on hold (Queensland Department of State Development, Infrastructure and Planning, 2013).

While these developments provide important sources of energy and significant economic contributions, they have been highly controversial both within the development region and more broadly (de Rijke, 2013b, p. 415). There is opposition and substantial suspicion about CSG development in rural areas where some residents see a threat to agricultural landscapes and to a rural lifestyle and economy (Everingham et al., 2014). The opposition derives from the industry's significant impacts on communities and livelihoods (Measham and Fleming, 2014), feared environmental and health impacts (Carey, 2012), competition with agriculture for use of the land surface and underground water resources (Nghiem et al., 2011; Hamawand et al., 2013), and localised economic impacts such as the skills shortages and price increases of a boom region (Measham and Fleming, 2014). Such concerns are raised in literature internationally on onshore gas development, whether from coal seams or shale beds, as Hunter and Taylor (2013) have documented in their extensive annotated bibliography.

Supporters of CSG promote the industry's potential for generating regional development through billions of dollars in investment to extract the resource, company commitments to corporate social responsibility (CSR), employment and business opportunities, and the relatively low impact of individual gas wells (compared to large-scale coal mining, for example). These factors are highlighted particularly in areas that have suffered from a declining rural population and the stresses on agriculture of recurring drought (Chen and Randall, 2013; de Rijke, 2013a,b; Mercer et al., 2014; Walton et al., 2013).

In Australia, resource extraction companies must negotiate with Aboriginal parties who hold, or may hold, (native title or cultural heritage) rights and interests in the area of proposed development. These rights would be a result of the Future Act provisions of the Native Title Act (1993, Cth) and various legislative State regimes. The negotiations can potentially lead to agreements between Aboriginal parties and resource extraction companies, often in the form of registered Indigenous Land Use Agreements (ILUAs).<sup>1</sup> Agreements set out the terms that must be fulfilled as resource developments proceed. They may include provisions for monetary payments to the Aboriginal party, cultural heritage management plans as per the relevant legislation (which can include procedures for identifying and managing impacts on sites of significance according to Aboriginal cultural traditions), employment opportunities, and a range of other negotiated initiatives.

In addressing these challenges in the CSG arena, we first outline current knowledge and known issues around Indigenous agreements with companies across the resources sector. The perspectives of CSG industry 'practitioners' (Owen and Kemp, 2014, p. 1) working with Aboriginal parties are reported, followed by

discussion of general views among Aboriginal groups about the promise and reality of agreements with CSG proponents. This is an under researched area with what appears to be only one study addressing Indigenous engagement among 439 research projects related to CSG development in Australia across topics ranging from technology and the environment to society and economy (Veitch, 2013).

We consider a number of legal cases to illustrate the issues arising for those seeking to implement the kinds of agreements that have so far been negotiated. This is material indicating the importance of greater understanding in the corporate sector of internal social relations among the Indigenous parties. In concluding, we note that available information indicates a need for clear policies – within government and industry – on dealing with what is a vigorous Aboriginal politics that is mobilised in the context of seeking cultural rights, land rights and economic gains. The legal cases examined suggest that corporate withdrawal from agreement implementation is unlikely to result in sustainable relationships between the parties.

## 2. Current knowledge and issues relating to Indigenous agreements

Most current knowledge about agreement making in the extractive industries can be traced to experiences in the mining sector (Hamann, 2004; Langton, 2006; McMahon and Remy, 2001; O'Faircheallaigh, 2013; Sawyer and Gomez, 2012). One of the most comprehensive publications (Langton and Longbottom, 2012) has outlined risks of a 'resource curse' involving the reproduction of disadvantage among Aboriginal people amidst economic growth (Langton and Mazel, 2012; O'Faircheallaigh, 2012), the distribution of potential impacts and outcomes (Taylor, 2012), and cases where partnerships have been productive (Doohan et al., 2012). A range of other work has canvassed cultural and environmental issues arising for those Aboriginal communities involved intensively with mining developments (Altman and Martin, 2009). This literature parallels research considering these issues around the world (Gilberthorpe and Hilson, 2014). Langton (2012) has presented an extensive case for the importance of Indigenous engagements with the extractive industries in Australia, while others have challenged her position (Crook, 2013; Frankel, 2013; McClean and Wells, 2013). The governance of agreements, and how such governance contributes to effective implementation, has been examined (Allbrook and Jebb, 2004; Gibson and O'Faircheallaigh, 2010; Langton, 2004; Martin, 2009).

While all of this literature is relevant, there are important differences between CSG, conventional oil and gas extraction, and mining that are relevant to agreements between Indigenous and industry parties. Primarily, these differences relate to the physical dimensions of resource extraction, legislative regimes governing each commodity, and impacts on the landscape. Differences between petroleum and mining corporations, project lifecycles and CSR considerations may be less evident to Indigenous parties, but they can indirectly affect negotiation outcomes (Hilson, 2012, p. 135). In oil and gas operations, there is typically an intensive construction period involving highly specialised engineering, after which there is a much reduced rate of ongoing work. In contrast, mining operations follow intensive construction with a larger ongoing workforce to undertake a diverse range of roles, including low-skilled positions. These differences affect the profile of company needs for land access and ongoing interaction with Indigenous groups as well as timing of opportunities for entry-level employment.

Furthermore, the speed of CSG development is dictated by the promise of increased prices in the currently volatile international

<sup>1</sup> All references to 'agreements' throughout this article refer to ILUAs unless stated otherwise.

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