Annual compensation for “rental” for the use of land for wells, pipelines, access roads and other infrastructure.

Gas companies also structure compensation payments in different ways, which makes direct comparison on a like-for-like basis difficult. For example in NSW, during the production phase of a project, annual compensation paid by AGL is largely based on the value of land occupied by infrastructure. Other operators calculate compensation based on different principles. Each approach may see landholders receive more or less compensation, depending on the value of land, the amount of infrastructure hosted, well production and commodity prices.

Annual compensation during the term of the agreement
Land occupied by surface and underground infrastructure

Annual compensation is based on a range of factors including the nature and extent of the agreed works, operational factors, and the value of land occupied. Annual compensation will typically include payments for each: □ Well that is producing gas; □ Well that is shut-in; □ Linear meter of pipelines or telecommunications lines (above or below ground); □ Square metre of land used for access roads; and □ Water monitoring bore.

Annual compensation rates are adjusted for CPI each year. AGL considers that both ‘market rental’ and ‘gross margin’ approaches could be used in estimating the value of land to determine these types of ‘rental’ payments, depending on the type of property. The value of land varies significantly between properties in the same region (or between areas on the same property) as a result of natural attributes and improvements, so the use of published average land values for different zones of NSW (such as those published by the Department of Primary Industries) in these calculations would not be appropriate.

The draft IPART benchmark model is based on the principles of the NSW Land Acquisition (Just Terms Compensation) Act 1991 (Land Acquisition Act). Valuations under the Land Acquisition Act (typically undertaken for compulsory acquisitions of land) will not necessarily be fair and equitable as the values determined for severance and injurious affection can be highly subjective and in many cases are not particularly relevant for CSG activities (as gas companies work closely with landholders to agree on infrastructure placement and conduct arrangements to minimise these impacts). Instead, AGL’s approach to access and compensation agreements is to determine fair rental value of the disturbed area based on a number of factors, and this approach has been accepted as fair and equitable by our landholders.

Landholders receive a land-value based payment to compensate for the amount of land utilised by
Santos’ surface facilities as well as a $30,000 annual service fee.

Reference 2 - 0.72% Coverage

In these examples, calculations are based on land valued at $1,000 per hectare, with facilities over one hectare of land (an average well site).
Year One  □ Santos pays 120% of the land value of the area used for our facilities □ The land value is based on the landholder’s rates notice □ $30,000 fee for service per landholder per annum, paid in a lump sum
Compensation: $1,200 for land utilised + $30,000 fee for service = $31,200 for Year One

Reference 3 - 0.74% Coverage

Year Two onwards 5
Santos Submission: Landholder benchmark compensation rates: Gas exploration and production in NSW
□ Santos pays 60% of the land value of the area used for our facilities □ The land value is based on the landholder’s rates notice □ $30,000 fee for service (paid at $2,500 per month)
Compensation: $600 for land utilised + $30,000 fee for service = $30,600 for Year Two and each year following for as long as activities remain on the land

Reference 4 - 0.74% Coverage

Production compensation Calculations are again based on land valued at $1,000 per hectare, with facilities over one hectare of land (an average well site).
Year One  □ Santos pays 120% of the land value of the area used for our facilities □ The land value is based on the landholder’s rates notice □ $30,000 fee for service per landholder per annum, paid in a lump sum
Compensation: $1,200 for land utilised + $30,000 fee for service = $31,200 for Year One

Reference 5 - 1.22% Coverage

Santos pays compensation based on land value, which is in turn based on the landholder’s rates notice. The rates notice is based upon a widely acceptable independent valuation by the NSW Valuer General.
The Valuer General supplies land values to councils to use in setting rates. The majority of councils receive new land values for rating every three years. The regular issue of land values ensures changes in the local property market are reflected in the councils’ rates model, helping to ensure fairness and equity for ratepayers, and anyone who chooses to use the rates notice to agree land values.
It should be noted that this arrangement has been effectively endorsed by the landholders who have agreed to be part of the Narrabri Gas Project.

Reference 1 - 0.97% Coverage

When it comes to the baseline payments for access during either exploration or production, Santos has already set the benchmark for exploration of the land in and around their project area in the PEL 238. Santos has already stated that for access during exploration they will pay an annual service fee of $30,000 per property (irrespective of size) for access, and will pay extra for the land that they utilise at a rate calculated on the land value multiplied by a percentage.

Reference 1 - 2.14% Coverage

“I think Santos starts with the landholder, the valuation from the Valuer General, because that is an objective thing. That is not exactly what the compensation arrives at, but that is an objective number
that you can't argue with. It is not my valuer or your valuer, it's what the government said” – Another example of an industry trying to mislead the tribunal and the landholder; to say a conservative rating valuation set at a base date is relevant for assessing compensation for the impacts of CSG utter garbage and completely irrelevant. It is a cheap attempt to reduce compensation by using a conservative, out of date irrelevant valuation. How many examples of mining industry “spin” does the tribunal need to see before they understand that this industry’s credibility when defending their industry is zero?

Reference 1 - 0.24% Coverage

The application of “gross margins” to the calculation of compensation is inappropriate to the calculation of the land occupied in a market because direct evidence of land values is commonly available. Moreover, gross margins are manifestly inappropriate in the valuation of land in more closely settled areas due to their inability to replicate the higher values per ha.

Reference 2 - 0.29% Coverage

Table 1 illustrates the gulf between localities in terms of property areas and range of values. Unsurprisingly, the Menangle area on the fringe of Sydney returns the highest values (and this reflects its role in providing “lifestyle” accommodation for the Sydney market). The variability of land values across areas affected by CSG projects demonstrates the impracticality of striking a standard rate per well for disparate property markets.

Reference 3 - 0.35% Coverage

Even in well-defined localities such as Menangle, values can fluctuate widely. An investigation of the characteristics reported in LPI, 2014 at Menangle and surrounding areas revealed a marked variation in property areas and value. The property areas indicate that the majority of these properties would be “lifestyle” or hobby farms rather than productive enterprises. An examination of sales evidence cited by LPI 2014 for the general Menangle area illustrates data characteristics relevant to assessment of compensation for individual holdings.

Reference 4 - 0.52% Coverage

There is an imprecise inverse curvilinear relationship between property area and value per hectare (which is common for more closely settled localities, but which also applies to the areas of Casino, Gunnedah and Bohena Creek in LPI, 2014). Obviously, there are many factors apart from property area affecting value. These may include: The quality of the holding in terms of topography and soils; The mix of country and its suitability for farming, or residential, uses (for example, adequate alluvial country, but with flood free grazing, or house site); Water availability and quality; Degree of improvement (including buildings, fences and paddock structures and pastures); Quality of access; Attractiveness in terms of the amenity of the neighbourhood and views Subdivisional potential.

Reference 5 - 1.17% Coverage

In fact, the difference referred to in respect of the period of occupation (the limited period in Smith) is not the only difference applying to CSG projects. CSG projects may vary throughout their life (with more land being taken up during establishment and during maintenance, or “workover,” in Halfpenny). Nuisance may vary throughout the CSG project. It may be comparatively high during construction of wells and during annual maintenance (Fibbens et al, 2014).

Occupation for CSG differs from mining exploration (which is often, but not always, for a short term). The prime difference is that the duration of occupation is often unknown at the outset (see NSW Government Draft Code of Practice for Coal Seam Gas Exploration, 2012, 10).

These are attributes of the project. Clearly, if these attributes add complexity to the access arrangement, the extra costs should be met by the gas operator and not the landholder. In fact, complexity is added to both the management of the holding occupied by the CSG work and calculation of compensation for occupation by CSG wells. This is especially so during development (where the
CSG development takes up more land during construction and less land after establishment. In the interests of rigorous property management, a prudent landholder would require a specification of the areas to be occupied, and the duration of occupation (including temporary occupation). Likewise, a clear specification of these issues would underpin estimates of compensation. Although the use of “drill holes” might be good enough to underpin very short occupations, a more exacting standard will probably be required for occupations in excess of six months. In the interests of landholders, attempts to compensate on the basis of a dollar rate per well should be resisted.

Reference 6 - 2.78% Coverage

Item 5.2.1 of the IPART issues paper nominates gross margins as a potential means of assessing compensation. These are not “appropriate for estimating compensation for the value of land occupied”. Land use classifications are made available by NSW Agriculture (see Hulme et al Agfact 25, 2002). It should be noted (Hulme et al, 6) that the classifications are principally a planning tool. Land values within the individual classifications might fluctuate significantly across different localities (as indicated in 1.4 above). As an example, class two alluvial flat might be expected to have a different value per hectare in the Menangle area to land of the same class in the Casino area. Moreover, “gross margins” are primarily a budgeting tool for farmers (Grains Research and Development Corporation, 2012). They may vary markedly due to variation in inputs and conditions (idem) and publications of “gross margins” often contain provisos (for example “This budget should be used as a GUIDE ONLY and should be changed by the grower to take account of movements in crop and input prices, changes in seasonal conditions and individual farm characteristics” NSW Primary Industry,2012-2013).

Although techniques utilising “gross margins” are popular with some agricultural consultants, they have significant problems in the valuation of compensation for partial occupation, which are summarised as follows:

- The use of a “gross margins” approach ignores the residential function of property which (even large holdings) is clearly present (see comments by the court in the Kater case where the affected property contained 1,027.35 ha).
- The use of “gross margins” for assessing compensation for lifestyle and hobby farm property owned for its residential amenity is manifestly inappropriate. Menangle, Hunter Valley, Gloucester and Casino (all areas that have been subject to CSG activity) are prime examples of areas that contain hobby farms. Farm productivity would not be an important consideration in the mind of the “prudent” purchaser. Instead, access, local amenity, views and physical characteristics are significant property attributes for this class of property.
- “Gross margin” techniques require estimates to be made of income (or extracted from government publications) and capitalised at a given rate of return. Valuation techniques based on income for rural land in Australia have long been the subject of misgivings, as Rost and Collins, 1990, 283 observed “... as a result, levels of market value are difficult to reconcile with prudent estimates of prospective estimates of net earnings”. The techniques do not have a base in the property market (Baxter and Cohen 2009, 236 report that value per hectare is used in sales analysis for rural holdings).
- Estimates of “gross margins” rest upon estimates of carrying capacity or productivity. There is frequently debate about the carrying capacity of rural holdings, but land areas can be measured. Calculations of this nature rely totally upon the identification of both a rate of interest and term, and are highly sensitive to fluctuations in these.
- Even at very low rates of income capitalization, values resulting from income approaches do not approach those achieved in the market in more closely settled areas (and their application in higher valued areas would produce alarming results).

Although “gross margins” approaches may be used to test validity of farm decisions (for example to lease rural property), Davies et al (DPI 2007) propose the main method of assessing a rural rent is to find a percentage of value per hectare. However, for some highly productive farms, income approaches may be relevant. Where this is the case, valuations would best be based upon actual production figures rather than generalised estimates. Surprisingly, the IPART discussion encompasses a consideration of the use of values “per well” (a course of action that is discouraged by researchers and industry bodies; and brought into question by information relating to gas field layout).

Indeed, the suggestion that a rate per well be used to simplify calculations for landholders appears contrary to the IPART principle of “adaptability”. Section 1.4 (above) outlines the problems inherent with this approach.

Reference 7 - 0.25% Coverage

Compensation for the first year includes recompense for the larger areas occupied during
establishment plus a larger allowance for loss of amenity (disturbance and injurious affection) occasioned during construction. Annual rent would be paid in advance. Rent for successive years would be based upon the smaller area of operational wells (with due allowance for extra areas for maintenance).

Reference 1 - 1.62% Coverage

In paragraph 5.2 it is enunciated that, according to Santos, an area of around 10,000 square metres (1 hectare) is required during the construction stage of a well, reducing to an area of 50 square metres once the well reaches production stage. The dangers of relying on CSG explorers for your base information are again shown here. APPEA has estimated that an area of 15m x 15m (225 square metres) is required for a production well. The Mining Warden in Halfpenny’s case held that 1,673 square metres were required for each production well, including road infrastructure. Again, in the interests of transparency, you must rely on scientific information for your base line information rather than relying upon CSG explorers whose self-interest must cloud your eventual recommendations in the minds of any reader.

Reference 2 - 4.32% Coverage

Due to the overall impact of mining activities both above and below the ground we believe the only equitable method of establishing the correct grounds for compensation should be based on the recognised value of land prior to the mining of such land. This has been recognised as against the market value of land that has been subject to mining activity. Compensation must be a “market based”. Gross Margins are inappropriate for estimating compensation for the value of land occupied. The ‘possible approach’ involves identifying the highest-value potential agricultural use for the land occupied by CSG infrastructure, and relating this information to the DPI’s gross margin estimates (or a similar proxy for gross margins). The five class system used by NSW Agriculture classifies land in terms of its suitability for general agricultural use. This system was developed specifically to meet the objectives of the Environmental Planning and Assessment Act 1979, in particular 5(a) (i) ‘to encourage the proper management, development and conservation of natural and man-made resources, including agricultural land...for the purpose of promoting social and economic welfare of the community and a better environment’. The classifications are a planning tool, and land values within the individual classifications will vary significantly across zones. Gross margin analysis and comparison has historically been used as a farm management tool and has no application in property valuation. Application of this method would present significant problems in the valuation of compensation for partial occupation, as it does not account for the residential amenity of property; is irrelevant to ‘lifestyle’ property; and inherently provides a variable range of results. Whist useful to determine rental affordability, the only acceptable approach is the application of rates per hectare for both /capital value and rental assessment, based on market evidence, applying the ‘piecemeal’ (summation) and ‘before and after’ valuation approaches. The approach taken in the Halfpenny case was a summation (piecemeal) approach which assigned a value to the land occupied and converted to a rent.

Reference 3 - 0.68% Coverage

Yes, the value of the ‘land occupied’ can be highly variable and site specific, with farm management factors a consideration. Where CSG activity is likely to have an impact on the value of the residual land through severance, the landholder should seek specialist legal and valuation advice on appropriate compensation payments for this impact.
In the past Eastern Star gas only paid 40% of the unimproved value of land which we feel is not sufficient. Landowners who are already contracted should be able to renegotiate their contracts under the terms of any new recommendations/guidelines that are legislated.

Cotton Australia believes that market value may not always be reflective of actual land value as such a scheme fails to recognise:

- Parcels of land that have good access to high quality land and water resources
- Where farmers have invested significantly in soil amelioration and made significant overall improvements to farm layout and operation i.e. the development of continuous paddock structure that allows for greater efficiency in operation of machinery.

We also believe that compensation should be made to account for future limitations on land value and use. Location of CSG infrastructure may restrict landholders ability to install new irrigation infrastructure such as centre pivots or lateral moves that place an upper limit future potential to improve irrigation efficiencies.

Cotton Australia is unsupportive of the use of Department of Primary Industries Gross Margin (GM) numbers for the estimation of compensation payments. We believe that these figures are highly conservative and beyond this are concerned that if the GM figures are only applied to the land that is physically impacted by the CSG footprint then it will underestimate the impact of the development on the landholder.

CSG infrastructure and the associated personnel that are involved in the monitoring of this equipment will generate a ‘nuisance’ and biosecurity impact on farming operations. Services such as irrigation channels may have to be relocated, machinery efficiency may be impacted due to changes in paddock layout and spraying regimes may need to be adjusted to avoid safety concerns. Given the potential for variability it is suggested that estimation of compensation may not be appropriate. In fact many of our growers are highly unsupportive of development and allocation of ‘compensation figures’. We believe that an alternative approach might be a comprehensive list of what is to be considered in the development of a compensation payment. To provide landholders with current rates of compensation payments, IPART could consider the use of non-identifying market based reporting mechanism.

Given the case by case nature of land access negotiations, a one size fits all approach for estimating the value of land occupied should not be adopted as it would lead to inappropriate outcomes for the majority of landholders. The gross margin and market rental approaches may be appropriate in some cases, but should not be relied on across the board.

Furthermore, the industry’s experience is that compensation based on a strict application of the loss in value of land occupied in general produces compensation amounts that are below the expectations of landholders. This is due to intangible factors landholders consider relevant in determining the value of impacts on their land.

The Productivity Commission’s review found “While legislation specifies the types of costs that a landholder can be compensated for, these are typically no more than a guide, as in most cases the terms of access are determined through negotiation between the gas company and the landholder. In
some cases, especially recently, gas companies are offering better terms than required under the legislation." This finding highlights the evolving nature of land access negotiations in Australia which is resulting in positive outcomes for landholders in the absence of direct government intervention.

MR PICKARD: I would like to see IPART completely set up a legally binding baseline benchmark for the area based on $30,000 from Santos with no strings attached. To qualify 45 that, Santos's $30,000 is dependent on whether the 46 landowner is prepared to do certain works on his property.

MR ROBERTSON: The gentleman mentioned Santos and the 13 Valuer General's valuation. As somebody who has made 14 Valuer General's rating assessments, I would like to 15 comment on that. The Valuer General's rating assessments 16 are done at a base date. They are for the purpose of 17 under-utilised before the gas production, no strings 32 attached, for $30,000 per annum. Then the rest of this can 33 go on top of that. 34 35 I bring this up because there are certain landholders 36 out there who are not on their properties. There are 37 certain landholders coming to the end of their working life who may not have the equipment any more to be able to carry 39 out the road maintenance or the spraying or whatever that 40 Santos requires.
base-dated assessment, they may not even reflect the
current situation with regards to pre or post-CSG values. To say there is no discussion, as
Santos said at Narrabri - or debate or argument - about this land value is not correct. We are looking at a rating
valuation that is
done for a specific purpose at a specific time and really has no relevance to the current market
value pre-CSG or current market value post-CSG. It is wrong to say that, because this is a valuation done for a specific purpose. I used to make those valuations, so I am pretty comfortable
with commenting on that.