Quick Guide

Make good obligations

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Summary of make good obligations

When water is extracted from a coal seam, underground water levels decline in the area surrounding the well. In some situations this may affect private landholder bores. The purpose of this quick guide is to explain how impacts on landholder bores are identified and addressed.

Chapter 3 of the *Water Act 2000* (Water Act) provides the framework for monitoring, modelling and making good impacts that result from petroleum and gas operations. This framework ensures that a bore owner is not disadvantaged by such operations.

Figure 1 summarises the process for ensuring that a bore is properly monitored, and, where necessary, that any impacts caused by a petroleum and gas operation, are 'made good'.

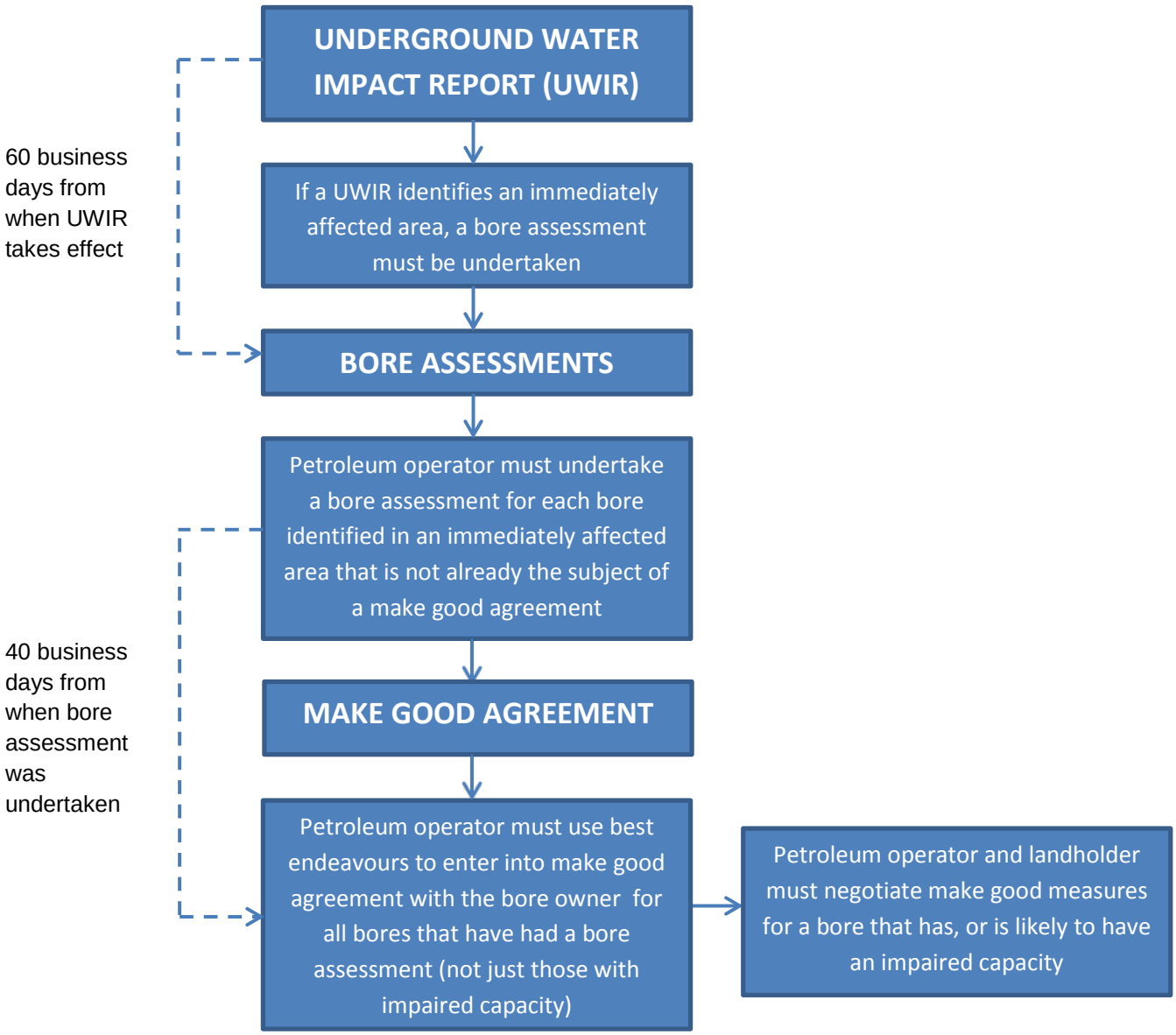

Figure 1: Framework for monitoring, modelling and make good impacts

Underground water impact report

A key part of the framework for managing impacts on underground water associated with petroleum and gas operations (the underground water management framework) is the requirement for petroleum tenure holders to prepare an underground water impact report (UWIR). An UWIR makes predictions of groundwater impacts, and sets out future monitoring obligations and spring impact management strategies for the petroleum tenure.

If there are multiple petroleum tenures adjacent to each other, the impacts of water extraction on underground water levels may overlap. In these situations, a cumulative approach is required for the assessment and management of underground water impacts, and the government may declare a cumulative management area (CMA) such as the Surat CMA which was declared in March 2011.

The Office of Groundwater Impact Assessment (OGIA) is a statutory body responsible for preparing UWIRs for CMAs.

Predicting impacts from a petroleum operation

A key role of an UWIR is to predict groundwater impacts that are likely to occur in both the immediate and long-term. The purpose of making these predictions is to ensure that petroleum tenure holders and bore owners can enter into make good agreements before any impacts occur.

Petroleum tenure holders and OGIA must review the predictions and maps included in their UWIR each year, and submit a summary of this review to the Department of Environment and Heritage Protection (the department). The summary must include any details about substantial changes to information or predictions included in an UWIR. Petroleum tenure holders and OGIA are also required to submit a new UWIR every three years.

Unforeseen impacts

The underground water management framework is specifically designed to proactively identify impacts so that make good agreements can be determined ahead of any impacts. However, if a bore owner is concerned that their bore is experiencing an impact that has not been predicted, the bore owner should contact the CSG Compliance Unit in the Department of Natural Resources and Mines on either:

Phone: 07 4529 1500

Email csg.enquiries@dnrm.qld.gov.au.

A petroleum tenure holder can carry out a bore assessment and enter into a make good agreement, even where an impact has not been predicted in an UWIR.

Make good obligations

Bore assessment and make good agreement

A petroleum tenure holder is subject to four make good obligations:

- Undertaking a bore assessment;
- Entering into a make good agreement, and if the bore is, or is likely to be impaired, provide make good measures for that impairment;
- Complying with the make good agreement; and
- If asked to vary the make good agreement in specified circumstances, negotiate a variation of the make good agreement.

These obligations ensure that a bore is properly monitored and, where necessary, that any impairment caused by a petroleum and gas operation are 'made good'.

A make good agreement is only required to include make good measures where a bore has, or is likely to have, an impaired capacity because of a petroleum and gas operation. Sometimes a bore assessment will show that a bore will not be impaired by a petroleum and gas operation. In these circumstances, the make good agreement is only required to state the findings of the bore assessment.

Bore assessments

The first make good obligation is for a bore assessment to be undertaken by (or on behalf of) the petroleum tenure holder. This assessment is used to establish whether a bore has, or is likely to have, an impaired capacity as a result of a petroleum and gas operation. A bore assessment must be conducted for bores identified in an immediately affected area within 60 business days after the UWIR takes effect. In certain circumstances, the chief executive may agree to a longer period to conduct a bore assessment.

All bore assessments must be carried out in accordance with the 'Bore assessment guideline'. The Bore assessment guideline provides responsible petroleum tenure holders and bore owners with details about the minimum requirements for undertaking bore assessments, including the requirement for bore assessments to be completed by an independent third party, or certified by an independent third party. A bore assessment can include:

- historical records
- observations from the bore owner
- pumping tests or flow/pressure tests
- a measurement of flow rate (only where pumping is not possible e.g. because of immovable head works which prevent access).

The petroleum tenure holder must notify the bore owner, at least 10 business days before conducting the bore assessment.

It is important that the bore owner facilitates access to the bore, and provides any available information about the bore, for example, drill logs, pump records and a description of how the bore is used. The more information provided, the more accurate the assessment will be.

After a bore assessment has been completed, the petroleum tenure holder is required to provide a copy of the outcome of the assessment to the bore owner within 30 business days. If the bore owner has concerns about the assessment, the bore owner should discuss this first with the petroleum tenure holder. If the bore owner's concerns are not adequately addressed, the bore owner should contact the CSG Compliance Unit.

Figure 2 outlines the key obligations for petroleum tenure holders and bore owners during the bore assessment stage of the make good process.

Petroleum tenure holder	Bore owner
• Give notice to bore owner 10 business days before assessment • Conduct bore assessment • Determine if capacity impaired, or likely to be impaired • Provide a copy of bore assessment outcome to bore owners 30 business days after the assessment • Explain outcome of bore assessment	• Give access to bore • Provide information about bore • Understand bore assessment and its implications

Figure 2: Summary of bore assessment obligations and responsibilities

Make good agreement

A make good agreement is legally binding agreement entered into by a petroleum tenure holder and a bore owner about a water bore. A make good agreement is required for all bores that have had a bore assessment undertaken (not just those with an impaired capacity). Make good agreements are separate contractual arrangements from conduct and compensation agreements required under petroleum legislation for access to private land.

If the bore assessment has shown that a bore has, or is likely to have, an impaired capacity because of a petroleum and gas operation, the agreement must include make good measures negotiated by the petroleum tenure holder and the bore owner (see Make good measures).

As make good agreements are legally binding, it is important that bore owners seek appropriate independent professional advice when making this agreement, including advice regarding make good measures. A petroleum tenure holder is required to compensate the bore owner for any reasonable accounting, legal or valuation costs incurred during the negotiation process, other than the costs of a person facilitating alternative dispute resolution, if the bore owner requests this.

Figure 3 outlines the key obligations for petroleum tenure holders and bore owners during the make good agreement stage of the make good process.

Petroleum tenure holder	Bore owner
• Seek agreement on bore assessment • Compensate for reasonable professional costs • Negotiate make good measures if bore impaired, or likely to be impaired	• Seek appropriate professional advice • Seek agreement on bore assessment • Negotiate make good measures if bore impaired, or likely to be impaired

Figure 3: Summary of make good agreement obligations and responsibilities

Make good measures

Make good measures are required for a make good agreement where a bore has, or is likely to have, an impaired capacity.

When does a water bore have an impaired capacity

When determining impaired capacity, existing and new bores are treated differently.

Existing water bores (bores in existence and lawfully authorised before the first UWIR for the area takes effect) are considered to have an impaired capacity where:

- there is a decline in the water level of an aquifer due to extraction of water by the petroleum tenure holder; and
- because of that decline, the bore can no longer provide a reasonable quantity and quality of water for its authorised use or purpose.

For new water bores (bores constructed with a lawful authority after the first UWIR takes effect or bores already constructed and authorisation obtained after the first UWIR takes effect), the bore is considered to have an impaired capacity where:

- the requirements for establishing an impaired capacity for an existing water bore are met; and
- the decline in the aquifer's water level is greater than predicted in the relevant UWIR (that is, the UWIR which is in effect at the time the bore is drilled or authorised).

Types of make good measures

As part of the negotiation process, a bore owner is free to seek make good measures other than those proposed by the petroleum tenure holder during the negotiation process. Potential make good measures may include:

- ensuring the bore owner has access to a reasonable quantity and quality of water for the water bore's authorised purpose for example:
  - adding a rising main to lower the pump setting in the bore
  - increasing the water column above the pump
  - improving the pressure at the bore head, including new headworks and piping, if the affected supply is artesian

  - changing the pump so that it is better suited to the decreased water level in the bore
  - deepening the bore to allow it to tap a deeper part of the aquifer
  - reconditioning of the water bore to improve its hydraulic efficiency
  - drilling a new bore
  - providing an alternate water supply
- carrying out a plan to monitor the water bore, for example, by undertaking periodic bore assessments
- providing the water bore owner compensation (monetary or otherwise) for the bore's impaired capacity.

If monetary compensation is accepted as a measure instead of a new water supply, bore owners are encouraged to fully consider how this will affect long-term viability of the land use, and the impact that this might have on land value. Monetary compensation could also be used to improve other water infrastructure on the land.

While the requirement to implement make good measures is designed to ensure that a bore owner is not disadvantaged, petroleum tenure holders are not responsible for making good impairment that results from the poor maintenance of a bore (e.g. a bore with a collapsed or rusted casing).

In some circumstances multiple factors may limit a bore's ability to supply water. For example, while a bore might be collapsed or rusted in, if fixed, its authorised use or purpose would still be impaired by a petroleum and gas operation. Where this is the case, the petroleum tenure holder is responsible for make good to the extent that the impairment can be attributed to the petroleum and gas operation.

In these circumstances, a bore owner and a petroleum tenure holder may negotiate to either:

- share the costs associated with accessing a new water supply (e.g. the petroleum tenure holder would pay for the costs of drilling a new bore, minus the cost for the bore owner to fix the existing problem); or
- agree that the petroleum tenure holder will carry out a bore assessment and provide appropriate make good measures when the bore owner fixes the problem with the existing bore.

Make good measures should not be influenced by the degree to which a bore owner utilises the supply. The key issue is the authorised capacity of the bore, and the level to which this capacity is impaired, or is likely to be impaired. For example, a functioning bore used at times of short water supply is still entitled to the same reasonable quality and quantity of water for its authorised use or purpose as if it was required for frequent use.

Figure 4 outlines the key obligations for petroleum tenure holders and bore owners when negotiating make good measures.

Petroleum tenure holder	Bore owner
• Negotiate make good measures • Provide alternative solutions • Consider alternative solutions • Compensate for reasonable professional costs	• Negotiate make good measures • Provide alternative solutions • Seeks appropriate professional advice • Consider the long term implications

Figure 4: Summary of make good measure obligations

Circumstances where an agreement can be changed

The impact on a bore caused by a petroleum and gas operation may change for a number of reasons. For example, a petroleum tenure holder may change production plans, or a newly released UWIR might predict new impacts. There may also be situations where a bore owner discovers that a previously agreed make good measure is ineffective.

Because of the potential for change, a bore owner or a petroleum tenure holder can seek to vary a make good agreement, in three situations:

- there is a material change in circumstances
- the make good measures are ineffective

- another effective and more efficient measure is available.

In any of these situations, both the petroleum tenure holder and bore owner must enter negotiations using their best endeavours to vary the agreement. This statutory right seeks to ensure that any impacts on a bore are properly 'made good'.

A make good agreement may also be varied for reasons other than the three specified situations if both parties agree to the variation.

Complaints and disputes

Resolving disputes

Concerns regarding the undertaking of bore assessments, entering into make good agreements, or negotiating a change to a make good agreement can be referred to the CSG Compliance Unit in the Department of Natural Resources and Mines on:

Phone 07 4529 1500

Email csg.enquiries@dnrm.qld.gov.au.

Additionally, if there is a disagreement about a make good agreement, either party may seek a conference or independent alternative dispute resolution (ADR) to negotiate a resolution of the dispute. To seek a conference or ADR, the requesting party must complete an election notice and provide a copy to the CSG Compliance Unit and the other party. If a conference is sought, officers from the CSG Compliance Unit will conduct a conference to try to negotiate resolution of the dispute.

Further information and resources

Visit www.ehp.qld.gov.au to access other resources linked to bore assessments and make good agreements including:

- frequently asked questions
- dispute resolution election notice
- UWIR and final report guideline
- copies of approved UWIRs
- bore assessment guideline.