

ATTACHMENT TO PAPER 1 – INSURANCE AND ENVIRONMENTAL SECURITIES
RISK MODEL EVALUATION – INSURANCE AND ENVIRONMENTAL SECURITIES

Risk Technique/Strategy	Level of risk for Government	Administrative burden/complexity	Acceptance by Industry	Coverage of all Stakeholders	Extent of Coverage (1) – Past Incidents	Extent of Coverage (2) (tenement – specific or broader?)	Capacity to reward good oil field and environmental practices	Risk Identification ¹
<p>1. Security Deposits</p>	<p>Very low, if in the form of cash or bank guarantee. (The greater risk is likely to be the amount in a particular case may fall short of actual rehabilitation and remediation costs.)</p>	<p>Relatively straightforward, although that statement would need to be confirmed by the Department/OCSG.</p>	<p>Poor, industry dislikes payment of cash bonds and cash backed bank guarantees for mining/ oil and gas production but may accept lower security bonds for low-impact exploration (i.e., not involving pilot wells).</p>	<p>The security bond system is not intended to protect a wide group of stakeholders (e.g., farmers). Its purpose is more immediate – simply to cover the cost of direct site – specific rehabilitation and remediation costs in circumstances where the operator has not done so.</p>	<p>Given the short history of the CSG industry in NSW (i.e., as far as I am aware, the security bond system has always been in place for as long as CSG exploration and production has been undertaken in NSW), the greater risk is that available security bonds may be exhausted and, if that were to occur often, Government would be very exposed. One obvious objective of any risk control system would be to avoid such an outcome and in particular the need to establish a fund similar to the Derelict Mines Sites Fund, for derelict CSG well sites.</p>	<p>Tenement specific for security bonds granted pursuant to the <i>Petroleum (Onshore) Act (POA)</i>/a petroleum title, but may extend to adjacent/contiguous areas, although that would need to be confirmed by the Department/OCSG.</p> <p>A security bond if required under an EPA licence is more likely to be project specific and therefore potentially have a broader application. Query whether and to what extent bonded funds would be available for remediation/rehabilitation well beyond a well site, a matter to be confirmed by the EPA.</p>	<p>The security bond system is, as I understand, fairly inflexible. (Again, however, that should be confirmed by the Department/OCSG/EPA).</p>	<p>In the case of security deposits, which are only intended to cover the cost of rehabilitation and remediation at or near a well-site this is unlikely to be an issue.</p>

¹ The intention of this column is to distinguish those cases where identification of the source or cause of environmental damage arising from CSG operations may be critical and may even defeat a recovery claim. For example, in areas where there is more than one CSG operator or even different sources of pollution, it may be difficult, even impossible, to establish that a particular CSG operation caused downstream environmental damage.

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<p>2. Other forms of financial assurance (e.g., self-insurance, indemnities and securities, parent companies guarantees, mortgages etc.)</p>	<p>Assuming the more flexible forms of security (e.g., a parent company guarantee) were only available to larger operators with a proven record of environmental performance this may not be a significant issue. Protection could include requiring the proponent to make out its case for another form of financial assurance based on its capitalisation, links to the State, record of environmental compliance etc. and sanctions for breach could be swift and immediate (restoration of a cash bond/guarantee on breach and threat of licence withdrawal).</p>	<p>Relatively high, but possibly not while the NSW CSG industry is small and there are only a few operators.</p>	<p>High. I expect widening the range of financial assurance choices available to industry would be very welcome.</p>	<p>Properly managed, any widening of financial assurance choice should not affect or concern other stakeholders. However, to allay concerns one possibility may to require higher levels of cost coverage the less secure the type of financial assurance chosen. So, for example, an insured, indemnified or non-bank guaranteed amount may be twice the bond amount or even in some cases unlimited.</p>	<p>As above, except to the extent more flexible financial assurance provisions, if sufficiently secure, may give greater coverage.</p>	<p>As above</p>	<p>Flexibility should provide scope to reward good practice.</p>	<p>As above</p>

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<p>3. Pollution legal liability insurance</p>	<p>Insurance as an alternative to security bonds has traditionally been seen as unacceptable. There are other risks with insurance – understanding and interpreting policies; difference in policy coverage and exemptions; defaults in premium payments etc. On the other hand, an appropriate and comprehensive pollution liability insurance policy which includes voluntary and mandated clean-up costs could offer a level of indemnity greater than that provided by a security bond or other form of financial assurance.</p>	<p>Administration and supervision of an insurance scheme will be complex.</p>	<p>Unknown, although there is anecdotal evidence large operators are seeking out such policies. To add to the uncertainty we have no information about the likely level of premiums insurers will charge for such insurance.</p>	<p>This is a clear advantage of a pollution legal liability insurance policy. The insured can potentially include the operator and its subcontractors and service providers on site and provide coverage to a wide range of third parties including landowners, affected businesses and even Government.</p>	<p>Insurers for reasons which are obvious enough will not generally underwrite past incident risk and in any case an insured's duty to disclose may effectively preclude such cover. No coverage for past incidents will be available under an "occurrence" based policy. (Pollution liability insurance is typically "claims made" although "occurrence" based insurance is available to drillers.)</p>	<p>Insurance of this kind can extend well beyond a tenement to cover pollution that migrates off site.</p>	<p>As we understand, premiums offered under insurance of this kind will be highly dependent on good oil field and environmental practices both on application and on annual renewal.</p>	<p>Disputes as to the immediate cause of environmental damage, especially if off-site, are likely as insurers may be keen to deny liability or seek contribution.</p>

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<p>4. CSG Rehabilitation Fund</p>	<p>Government will be most exposed in the early years of the proposed fund (as capital in the fund grows) and also in the event of operator insolvency. Three possible resolutions are:</p> <p>(1) to retain security deposits for immediate well-site remediation/rehabilitation only (and in a lesser amount) as baseline security;</p> <p>(2) to retain security bonds for inherently more environmentally sensitive projects and/or in cases where operators cannot meet a prescribed capital adequacy requirement; or</p> <p>(3) phase in the fund over 2 to 5 years and retain the bond system with a progressive return of funds to operators.</p>	<p>Difficult to assess but note that the Mine Subsidence Compensation Fund is a model. Some intelligence could also be obtained about the Western Australian experience with its recently established Mine Rehabilitation Fund.</p>	<p>High, if the reported reaction to the Western Australian mine rehabilitation funding scheme is correct.</p>	<p>Yes, this scheme should appeal to all stakeholders although one would expect there will be concern about its capital adequacy, especially in its early years.</p>	<p>As I see it, coverage of past incidents is one of the best reasons for establishing a CSG Rehabilitation Fund (thereby hopefully avoiding the need for a consolidated revenue funded fund.) The significant point is funds can be deployed to remedy/rehabilitate land and other resources affected by CSG operations, whenever undertaken.</p>	<p>Again, the proposed CSG Rehabilitation Fund should offer coverage well beyond a well site.</p>	<p>If properly administrated there may be capacity through setting lower annual levies for proven good practice and performance. Query however the extent to which levies of this kind, which may not be significant compared to overall operating costs, can in fact influence behaviour.</p>	<p>No issue of identifying the source of CSG contamination should arise at least so far as ensuring the necessary rehabilitation remediation work is done. (For other purposes – setting an annual levy, example – such identification may be necessary.)</p>