




Environmental  
Defenders Office

# The Hunter Gas Pipeline:

What to expect and what  
landholders can do





“The most common way  
people give up their power  
is by thinking they don’t  
have any”

- Maya Angelou



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[www.edo.org.au](http://www.edo.org.au)

*While every effort has been made to ensure the information is accurate, the EDO does not accept any responsibility for any loss or damage resulting from any error in this content or use of this work.*

# What is physical commencement?

A legal term related to the lapsing of development consents

Three-stage test to identify if a development consent has lapsed:

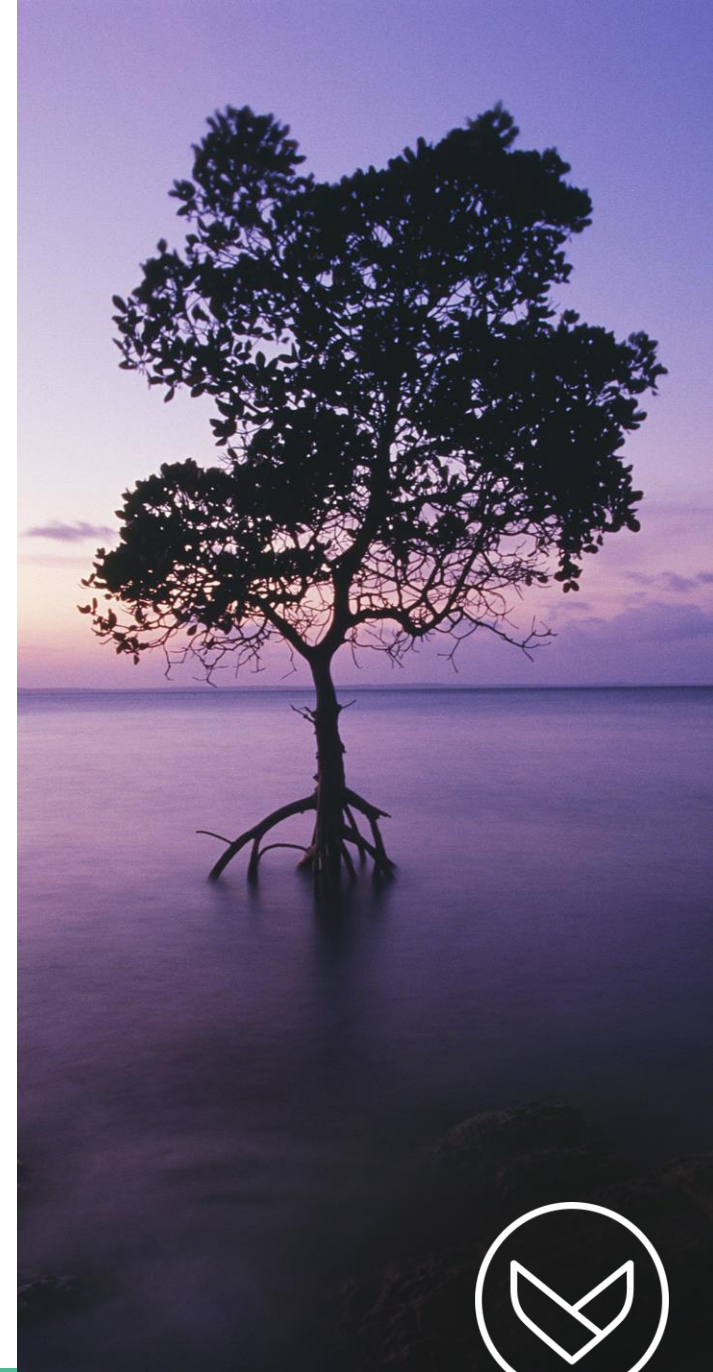
- Was the work relied on building, engineering or construction work?
- Did it relate to the approved development?
- Was it physically commenced on the relevant land before the relevant date?

Courts have determined the following works to be physical commencement:

- Survey works, including clearing of vegetation, digging of holes, placement of pegs or stakes
- Geotechnical work, including excavation of test pits and testing of soil samples
- Clearing of shrubs

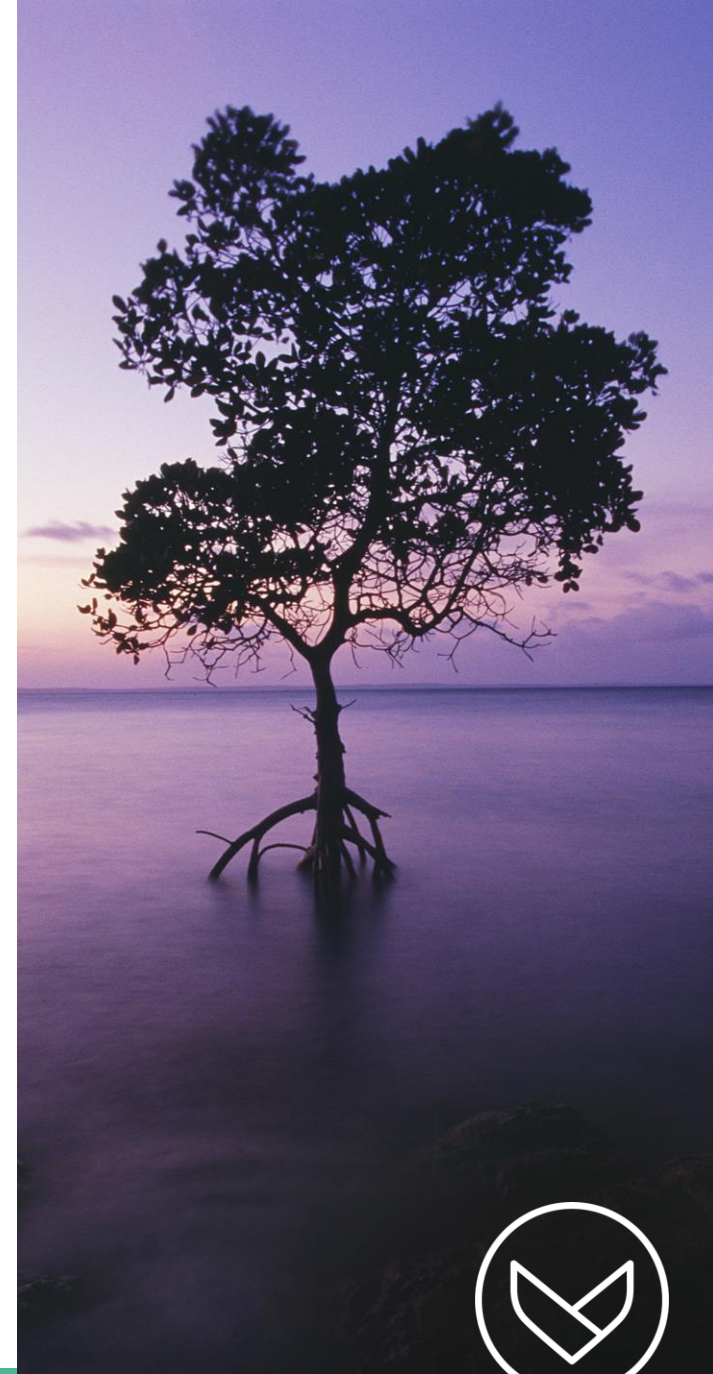
Work relied on must comply with conditions of consent

Must be real link between the work and the approved consent

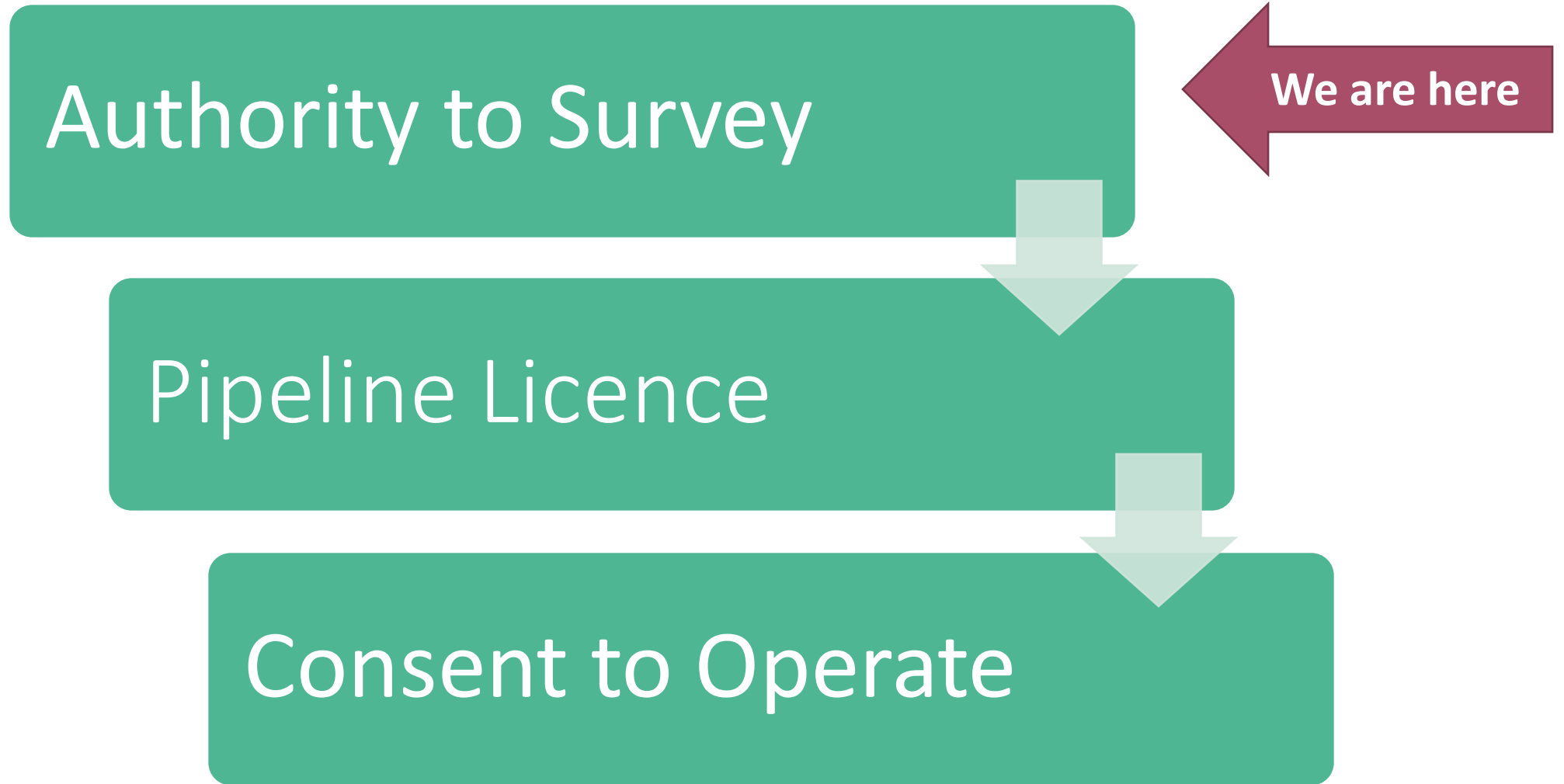


# What is the Queensland HGP?

- 825km of underground steel pipeline to transport high-pressure natural gas from a transmission hub in Wallumbilla (south-east Qld) to north of Newcastle bypassing the Narrabri Gas Project.
- Project approval (CSSI) granted in February 2009 (200m wide corridor)
- Extension to project approval lapse date approved October 2019, with the new lapse date now being **15 October 2024**.
- Project must have **physically commenced** before that date for the project approval to remain valid.
- Need to access private land to finalise the 30 m wide route for the pipeline



# Pipeline Approval Process under the *Pipeline Act 1967*





# What is an ATS?

An ATS gives the holder the right to:

- Enter lands (without landholder consent)
- Carry out surveys to determine the pipeline route and the location of apparatus/works
- Take samples from the land for testing



# ATS is an instrument of last resort

- Even though an ATS has been issued, Santos must still try and negotiate a **Land Survey Entry Agreement** or **Pipeline Survey Agreement** with you.
- Santos can only rely on the ATS if it fails to reach agreement with you after making reasonable attempts to do so.



# Reasonable attempts?

"Reasonable negotiation in relation to the ATS will require evidence of regular attempts at negotiating reasonable terms for a survey access agreement"

Or

"Regular attempts to establish contact using multiple forms of communication over at least a couple of months."

# If the ATS is activated...

- If Santos seeks to access your property using the ATS, you can lock your gate and/or block entry to your property and you will not be committing an offence
- Take care not to threaten or intimidate Santos employees or contractors

Santos:	“We have an ATS and can access your land.”
Landholder:	“No, I won’t be opening my gate/moving these obstructions.”



# What will happen if you deny entry?

- You will NOT be committing an offence simply by denying entry to your property - but Santos may:
  1. Call the police
  2. Force entry/jump the gate
  3. Seek a court order



# The police show up, what now?

- Police shouldn't need to get involved because you have not committed an offence by denying access.
- EDO will write to area command to let them know that there is no offence so no justifiable reason for police to force entry or compel you to grant access.
- If police think you're breaching the peace, or are about to, they may decide to intervene.
- Stay calm and polite when dealing with Santos and keep your distance from workers - Film your interactions!.



# Santos forces entry or jumps the fence, now what?

- If Santos workers jump your gate or force entry – it's best not to resist.
- Instead, film their actions – and contact EDO or your lawyer for advice on your options.
- If your property is damaged (fences, vehicles etc), then you should call the police and also make a complaint to OECC.
- The media may also be interested in your footage and your story – as this behaviour is relevant to Santos' social licence to operate in the area.



# Santos is taking me to Court, now what?

- If Santos decides to seek a Court order to compel you to grant entry, contact EDO for advice.
- It may be possible to successfully argue that a Court should not order you to grant access.
- If Santos is forced into Court every time a landholder denies entry, it will be very time consuming and costly.



# If Santos doesn't comply with ATS conditions, they are likely trespassing

Landholder:	“You are not complying with x condition(s), so you are trespassing. Please leave or I will call the police and take civil legal action myself.”
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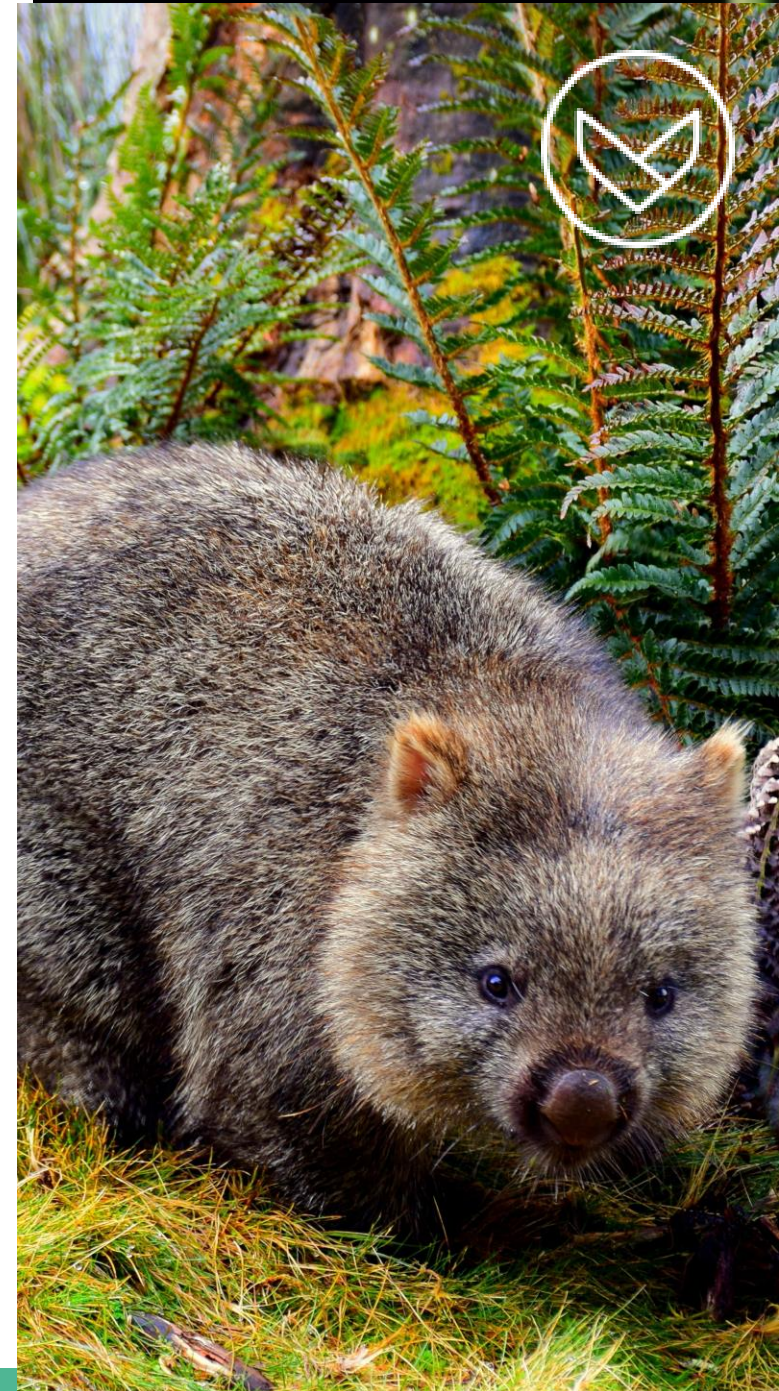


Important conditions in the ATS



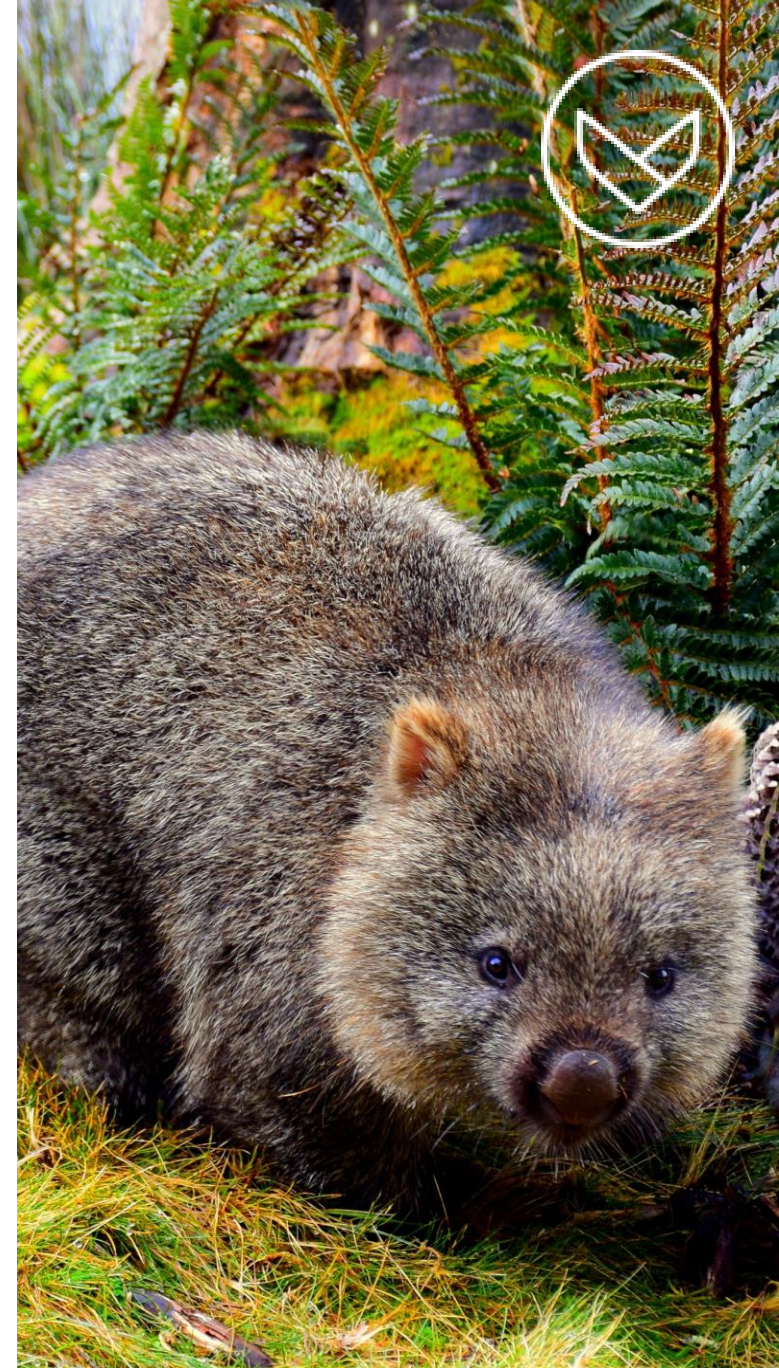
# Important conditions

- Vehicular access through standing crops or paddocks with nursing young is not permitted
- Santos must not interfere with any fence
  - Electric fences could be used to cordon off areas of your land
- Santos must not cut, destroy, ringbark or remove any growing vegetation without landholder consent
- Santos must not cause or aggravate soil erosion



# Important conditions

- Santos must avoid driving through cropped paddocks
- Santos must ensure any personnel entering your land is required to sign onto and adhere to your biosecurity plan and logbook. Santos must also show vehicle washdown certificates upon request
- All Santos contractors must provide evidence of a Police Check at the landholder's request
- Santos must give you 14 days' notice before they access your land using the ATS. At that time, they must ask you for your specific and reasonable entry requirements.



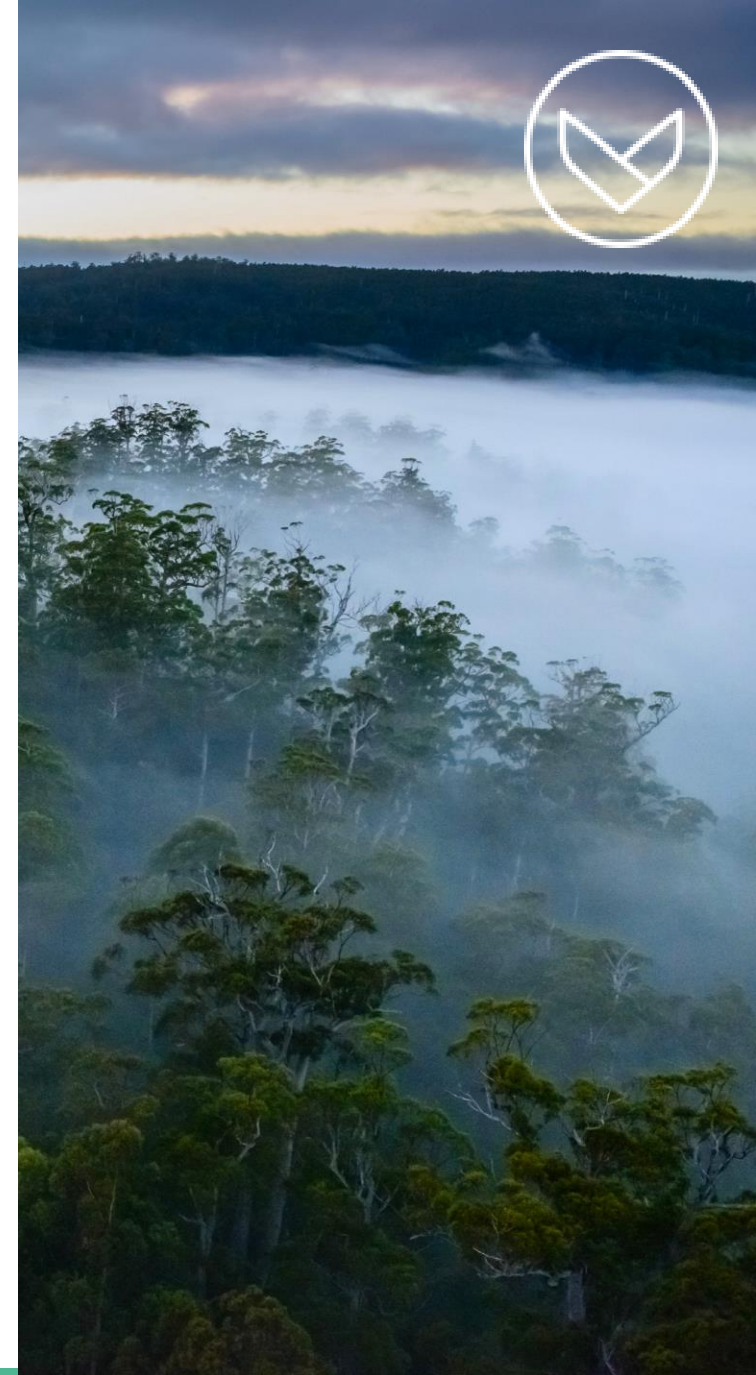
A lush tropical forest with a river flowing through it. The scene is filled with dense green foliage, including various types of trees and large-leafed plants. A river or stream flows through the lower part of the image, reflecting the surrounding greenery. The lighting is dappled, with sunlight filtering through the canopy.

Specific and reasonable entry requirements



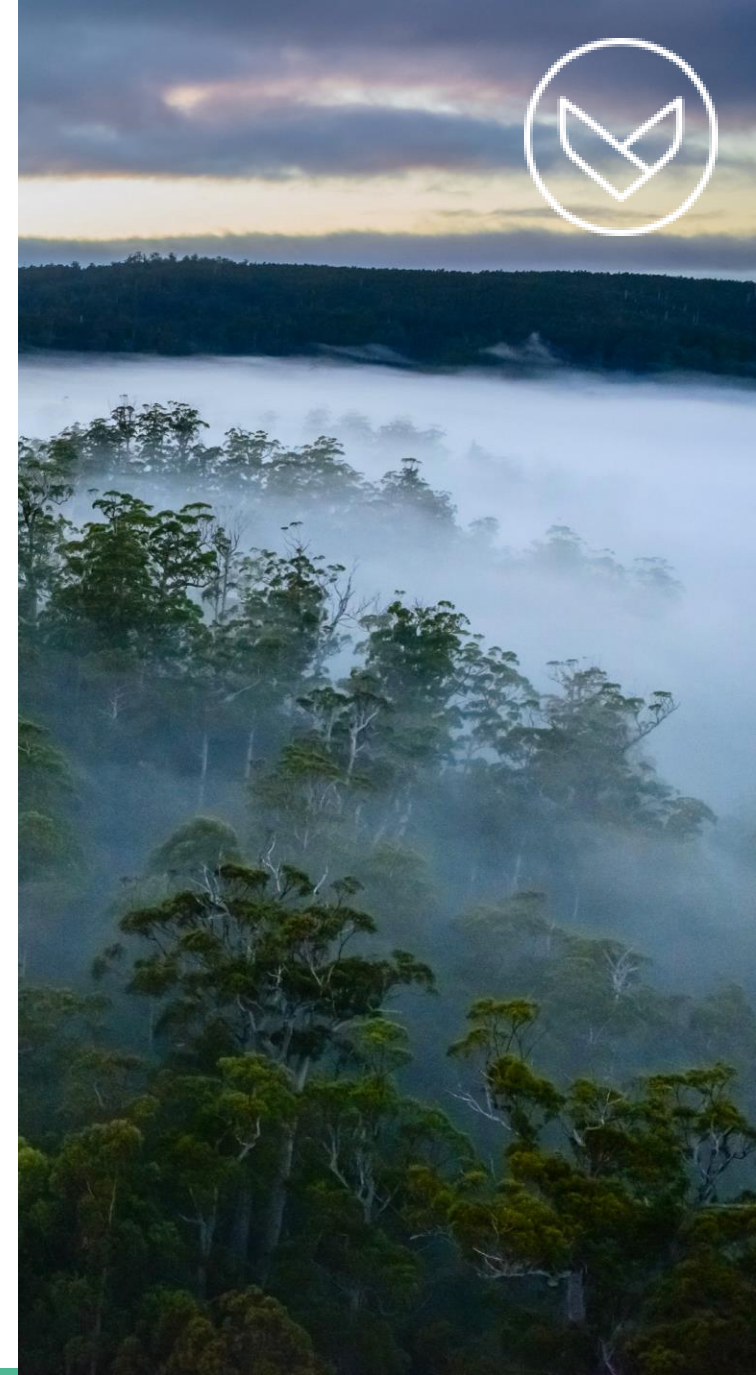
# Specific and reasonable entry requirements


- Santos to pay for baseline studies
- Restrict areas to be surveyed to a specified study area – and exclude those that are mapped as fire or flood prone
- Santos to specify what activities will take place and how they comply with the Regulation
- Specify speed limits
- Specify access points and routes
- Limit the personnel on site and number of vehicle movements allowed per day
- No crossing streams in vehicles



# Specific and reasonable entry requirements

- Santos must immediately inform you of any damage caused
- Santos must compensate you for any harm that cannot be made good
- Santos must pay you a security bond
- Set your own dispute resolution process
- Santos and its contractors/agents etc to leave your property if a dispute arises and not return until it is resolved
- Santos to pay your legal costs
- Establish how Santos communicates with you- via email, phone calls or post etc



A close-up photograph of a koala and its joey clinging to a tree trunk. The koala is in the foreground, looking directly at the camera with its large, dark nose and brown eyes. Its fur is a mix of brown and grey. The joey is partially visible behind it, also looking towards the camera. The tree trunk has a rough, textured bark. A dark, semi-transparent banner is overlaid on the lower half of the image, containing white text. In the bottom right corner, there is a circular logo with a stylized white 'V' shape inside.

# Dispute resolution process under ATS



# Dispute resolution under the ATS

Condition 8 requires Santos to make all reasonable attempts to resolve the dispute before triggering the dispute resolution process.

The dispute must relate to compliance with conditions of the ATS.



# Examples of disputes

- Santos fails to give you notice prior to surveying
- Santos fails to request verbal or written details of specific and reasonable entry requirements
- Santos does not agree with or comply with your reasonable entry requirements
- Santos unduly interferes with your activities or your stock
- Santos causes or aggravates soil erosion
- Santos fails to make good any damage to your property



# Dispute resolution process

- If a resolution can't be reached, either side can ask the 'Department' to determine the validity of the dispute.
- If the Department forms the view the dispute is valid, they will make directions for its resolution.
- At this stage it is unclear who the Department is and how they would determine validity.



# Dispute resolution process

- If a dispute about compliance with the conditions of the ATS arises, Santos should leave your property and not return until the dispute is resolved.
- You can seek legal advice and representation if a dispute arises.



The background of the slide is a photograph of a riverbank. The upper portion shows a steep, rocky cliff face with horizontal layers of reddish-brown sedimentary rock. The lower portion shows the river's surface, which is calm and reflects the surrounding rocks and sky. A dark, semi-transparent rectangular box is centered over the middle of the image, containing white text.

Wherever possible film or record your  
interactions with Santos





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# What's next? The pipeline licence

# Staging

- Santos was recently given permission to stage the project with regards to studies, plans etc. required to be prepared under its CSSI approval

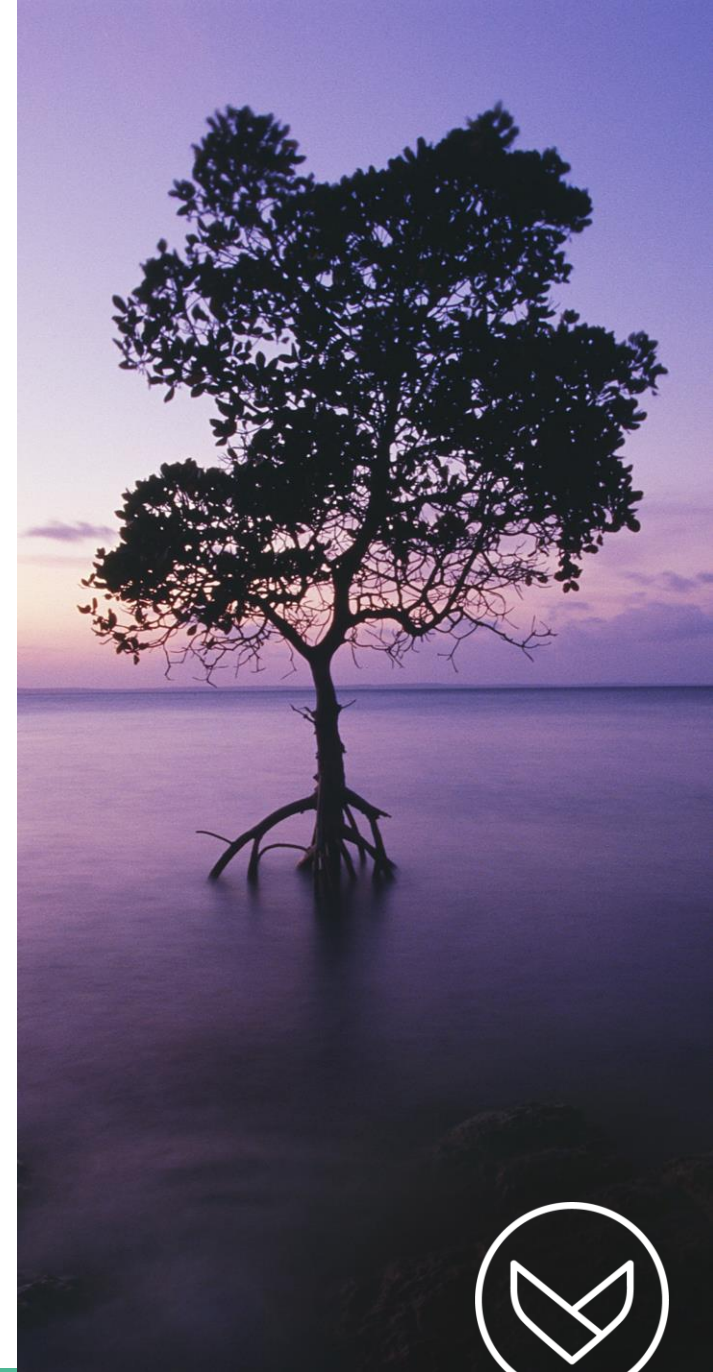
## **Stage 1: Commencement of works – starting Q4 2023**

Project early works involving construction of temporary laydown yards at multiple locations along the pipeline alignment. To be used to securely store equipment and materials and site offices.

## **Stage 2: Construction and operation of the Narrabri to Newcastle section – starting in 2024**

Physical construction and operation of the Hunter Gas Pipeline between Narrabri and Newcastle

## **Stage 3: Construction and operation of the Wallumbilla to Narrabri section of the pipeline.**



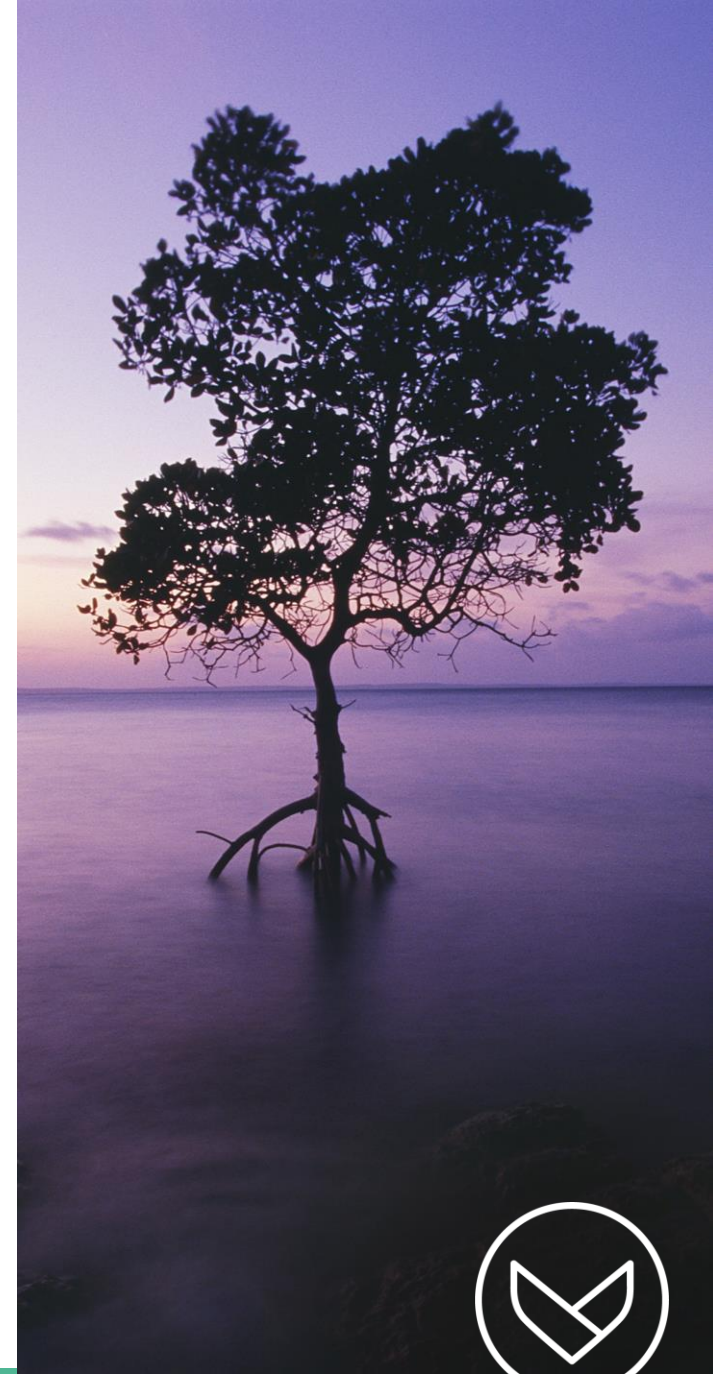
# Do Stage 1 works meet the physical commencement test?

It's likely that stage 1 works will meet the test for physical commencement because it's a very low threshold.

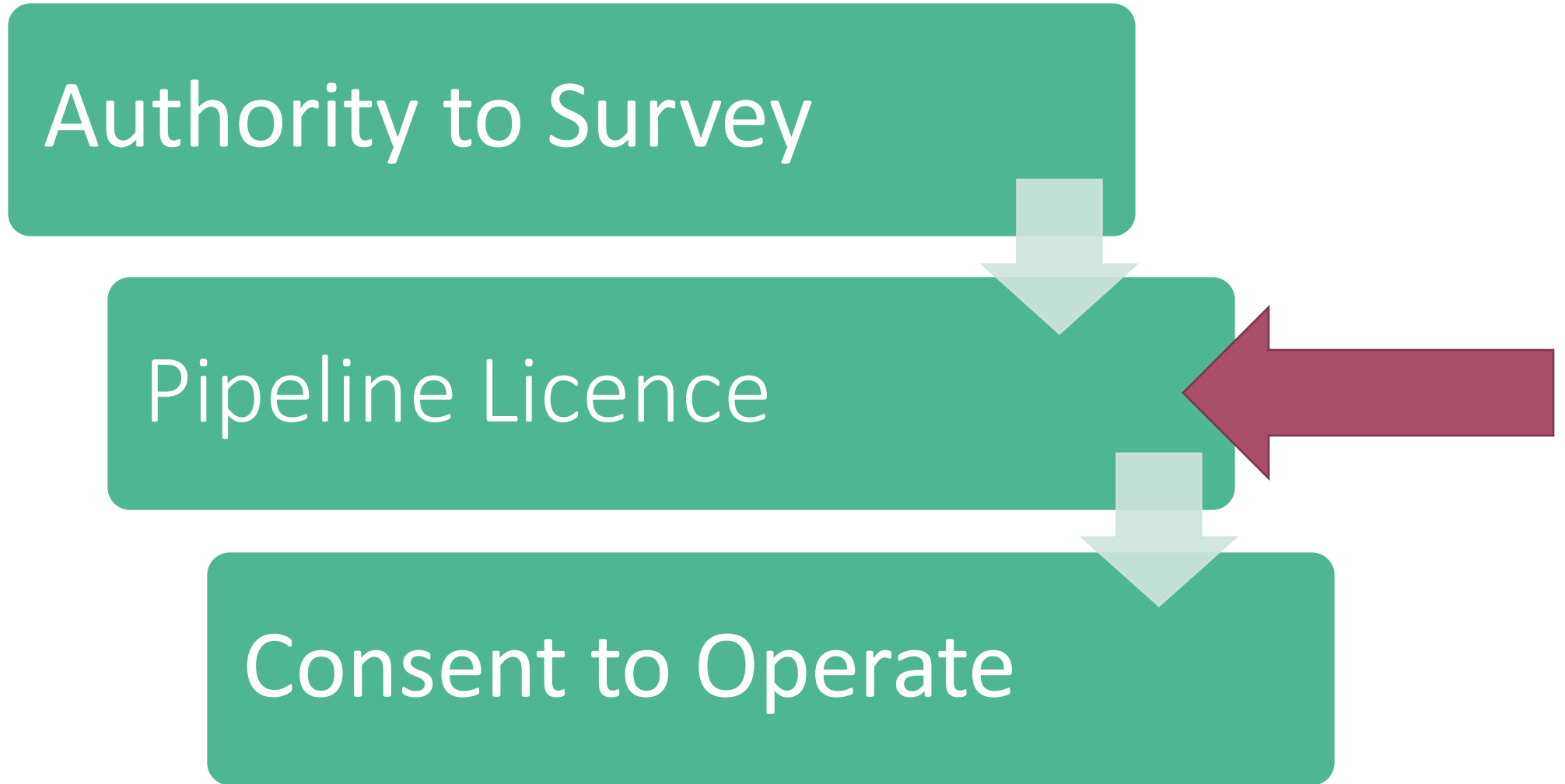
**BUT**

Stage 1 works may also require a pipeline licence before they can be carried out.

We may be able to argue that Stage 1 cannot commence until a pipeline licence is in place. We're working on this now.



# Pipeline Approval Process under the *Pipeline Act 1967*



# What to expect

Application for a pipeline  
licence



Grant of the pipeline  
licence



Order vesting lands in  
Santos

# Santos needs to apply for a Pipeline Licence

- A Pipeline Licence is required to commence (start) construction of a pipeline
- Application is made to the Minister for Energy – Penny Sharpe
- **Minister cannot refuse the Pipeline Licence so long as it is validly made.**
- **She must grant it consistently with the CSSI approval.**



# What's in the application?

- The application needs to be accompanied by a plan showing the location of the:
  - Proposed route
  - Location of proposed apparatus and works
  - Lands to be used to gain access to the pipeline or the apparatus/works
- The application must identify:
  - **Lands and easements required for the pipeline (construction and access)**
- The application must include:
  - Details of agreements entered into (or proposed to be entered into) for the acquisition of land or easements over land



# Santos needs to know what lands and easements it will need

- In its application, Santos needs to provide details of:
  - The lands and easements it needs for the pipeline
  - The lands and easements it has already acquired or reached agreement to acquire
  - The lands and easements it **has not** reached agreement to acquire

**Acquire = Santos will own the land**

**Easement = Santos will have rights to access and use the land but the landholder continues to own it**



# You don't have to make this easy for Santos

- Santos will need to survey land to finalise the route:
  - You can refuse to sign an entry agreement
  - You can refuse access if they rely on the ATS
- Santos needs to show what lands it has acquired or reached agreement to acquire (including easements):
  - If there are 400 landholders and Santos has only reached agreement with 30, that undermines Santos' social licence
  - Santos cannot claim to have broad landholder support
  - **It won't stop the pipeline being approved – but it will send a clear message that landholders are opposed**



# Granting a Pipeline Licence

- Before she can grant the Pipeline Licence, the Minister must be satisfied that the application meets the legal requirements (validly made)
  - Potential legal challenge if Minister grants an application that DOES NOT meet the legal requirements
- Minister must also be satisfied that the lands and easements specified in the application are:
  - Already vested in Santos (acquired by agreement) OR
  - Available for compulsory acquisition
- Minister cannot refuse the application if it is validly made (CSSI) but can add conditions
- Minister can grant the licence in relation to the lands specified in the application OR other lands



# Compulsory acquisition follows

- As soon as practicable AFTER granting the Pipeline Licence, the Minister must publish a notice in the Gazette declaring:
  - That lands and easements specified in the Notice are vested in Santos
  - Any restrictions as to user regarding easements
- **One Fell Swoop** -All lands and easements listed in the notice will vest in Santos when the Minister publishes the notice.



# Landholders should get a say

- The Pipelines Act doesn't give landholders a say as to whether their land 'vests' in Santos **BUT**
- See condition 12 of the Authority to Survey:
  - HGP, as holder of the authority (or their agents), must not inform the owner or occupier of Lands that their land may be subject to compulsory acquisition, **UNLESS** the owner or occupier is informed at the same time that acquisition must be approved by the Minister and the owner or occupier will be able to state their case opposing acquisition, before the Minister will make any decision on the matter.
- Landholders now have a 'legitimate expectation' that they will be able to state their case before the Minister makes a decision that their land is to be compulsorily acquired.
- If landholders are not given a say, we could argue they have been denied procedural fairness – which could invalidate the pipeline licence



# Landholders are entitled to compensation

- If your land is vested in Santos (through compulsory acquisition), you will be entitled to compensation from Santos
- Compensation is calculated under the Land Acquisition (Just Terms Compensation) Act
- Factors relevant to compensation:
  - The market value of the land on the date of acquisition
  - Any special value of the land to the landholder
  - Any loss attributable to severance of land (e.g. loss of production)
  - Any loss attributable to disturbance
  - The disadvantage resulting from the need to relocate



# Looking ahead - Enforcement

- Minister has power to issue a range of directions to the holder of a pipeline licence. It's an offence not to comply – Max Penalty - \$250K
- Minister can order an inquiry into any matter relating to the design, construction, operation or maintenance of a pipeline – undertaken by the Secretary
  - Not clear whether public can give evidence but public can encourage Minister to order an inquiry
- Minister can cancel the pipeline licence, including for breach of conditions



# The bottom line

- Santos still has a long way to go – and the CSSI approval lapses in October next year (although it can be extended)
- Landholders should not make Santos' job easy. The time pressure is on Santos, not the landholders
- EDO lawyers are giving regular advice and guidance to core clients on legal strategy
  - Recently wrote to Minister requesting that she cancel the ATS
- There is still potential for legal challenges ahead
- Continue to keep informed, and stick together

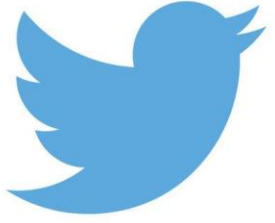


Questions?



# Evaluation Form





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