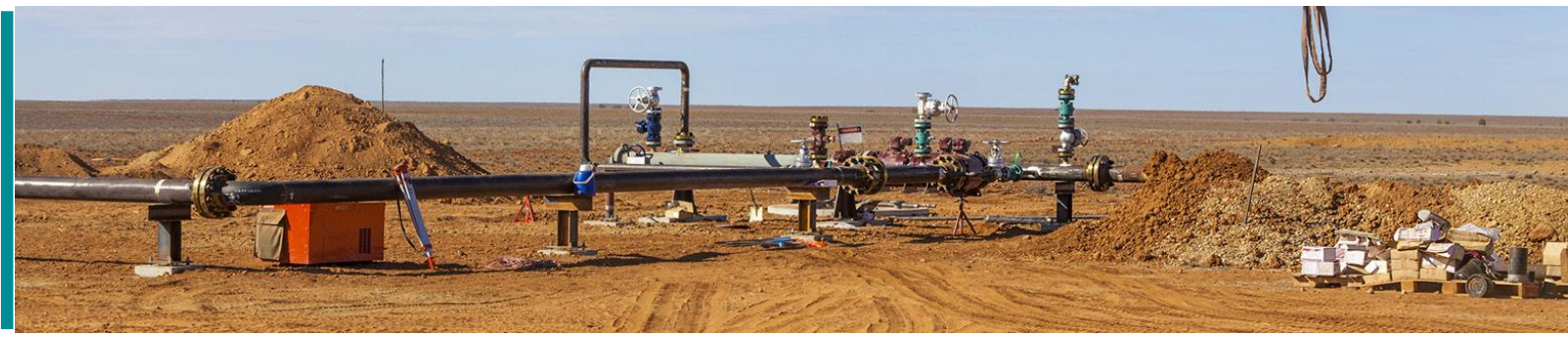
Thynne Macartney

Agribusiness Update

December 2021



Independent assessment identifies water and subsidence impacts of coal seam gas developments

Ari McCamley
Partner

The next wave of coal seam gas (**CSG**) well development is almost upon Queensland, according to the Office of Groundwater Impact Assessment's recently released 'consultation draft' Underground Water Impact Report (**UWIR**) for 2021.

Approximately 8,600 CSG wells are already in place in the Surat Cumulative Management Area (that stretches from Emerald to St George and east to Toowoomba) but the predicted total number to be reached over the next 15 to 20 years is now 22,000 wells.

When finalised, the report will trigger the need for "make good" arrangements for an additional 108 water bores that have been newly identified as 'Immediately Affected Area' bores, being predicted to suffer a decline in water level of five metres for consolidated aquifers (such as sandstone) or two metres for unconsolidated aquifers (such as alluvium) by 2024. Arrow Energy is responsible for follow-up impairment assessment and make good arrangements in respect of most of these bores.

With the additional 108, a total of 341 water bores have been identified as 'Immediately Affected Area' bores since 2011. Of the 233 bores identified before this year, make good agreements have been reached for 134 bores and the agreed fate of 117 of them is decommissioning.

For the first time in a UWIR, the 2021 consultation draft includes an assessment of land subsidence impacts that have occurred or are likely to occur because of CSG activities and may result in changes to land slope.

Existing satellite data indicates that up to approximately 90 mm of CSG-induced subsidence has occurred since 2015 within mature gas field areas near the Condamine Alluvium. The Office of Groundwater Impact Assessment's modelling predicts the initially high rate of subsidence will stabilise in the three to seven years following initial CSG development, with most of the cropping area likely to experience less than 100 mm of subsidence by the end of 2060.

A landowner presented with a make good agreement should consider it carefully, ensure it addresses both expected and unexpected consequences, and remember that gas companies are obliged to pay a landowner's reasonable and necessary costs of legal, accounting, hydrogeology and valuation assistance in connection with the proposed agreement.

Landowners who have or continue to host CSG activities on their land should check their existing conduct and compensation agreements to assess their rights in the event of unexpected subsidence. Landowners outside the immediate area of CSG activities who suffer subsidence will likely not have existing conduct and compensation agreements or legislative remedies as Queensland's resources legislation continues to protect neighbours poorly (I wrote in 2019 about the latest legislative erosion of neighbours' rights). Neighbours though might have claims under the general law.

Thynne + Macartney specialises in acting for landowners, not resource companies.

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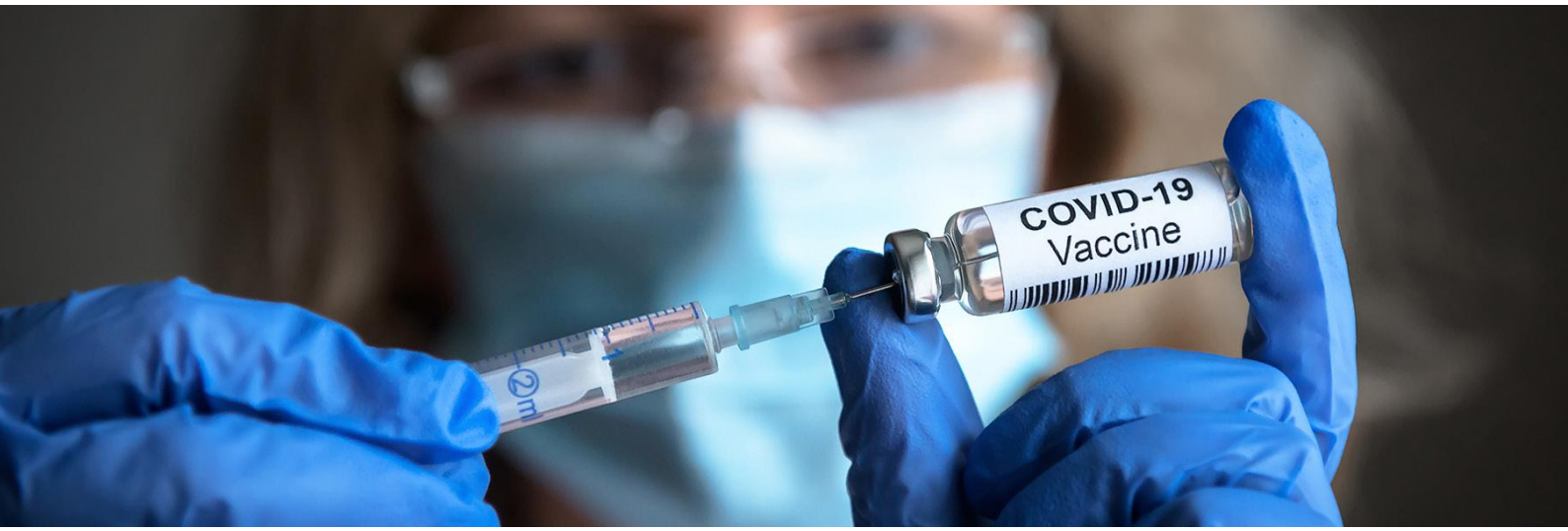


COVID-19 is coming: Is your business ready?

Emily Harvey
Partner

So far, Queensland has experienced comparatively few COVID-19 cases and related restrictions. This position is likely to change on 13 December 2021, when Queensland reopens its borders to both domestic and international travellers, who are expected to bring COVID-19 into our communities.

It is a good time for businesses to consider how they will manage the risk that increased transmission poses to the health and safety of workers, as well as to business operations and continuity. Businesses should consider the likely impacts of any confirmed cases (including potential closures and/or isolation requirements) and how these will be managed.

Reconsider safety measures

Businesses have obligations under WHS legislation to ensure the health and safety of workers, as far as reasonably practicable. What is reasonably practicable depends on the circumstances, including the risk of exposure, the severity of the disease and the availability and cost of control measures.

While most businesses already have control measures in place, such as cleaning and hygiene protocols, social distancing and mask wearing, vaccination is another measure that may be taken to keep workers safe. Vaccination is generally considered to be a superior measure that significantly reduces the risk of death and hospitalisation from contracting COVID-19, as well as reducing the risk of transmission to others.

Can my business mandate employee vaccination?

Employers can direct employees to be vaccinated if the direction is lawful and reasonable.[1] In most cases, such a direction is likely to be lawful, provided there are no contrary terms in an employee's contract or enterprise agreement.

Whether the direction is reasonable will depend on various factors including:

- levels of community transmission;
- working conditions (for example, certain environments favour transmission);
- role requirements including the ability to socially distance and work from home;
- the availability and effectiveness of other control measures; and
- the business impacts of a confirmed case (for example, site closure).

Considering these factors, the legal risk may differ between business locations and even work groups at the same location. Advice should be taken on the particular circumstances.

If a direction is given, businesses should ensure that:

- it is introduced on a reasonable period of notice, to allow time for compliance (noting the timing for two doses) and for objections to be raised;
- appropriate exemptions are permitted, including to comply with anti-discrimination laws; and
- consideration is given to privacy law requirements.

Businesses should also ensure that they comply with consultation obligations (to meet obligations under the WHS legislation and any applicable enterprise agreements/modern awards), as this is a basis on which challenges are being made.

Plan for challenges

Mandatory vaccination is likely to be opposed by some individuals, and it is recommended that businesses build in a process for considering and addressing exemptions on a case-by-case basis. This will mitigate legal risk, by ensuring that issues are resolved where possible and that the business is taking a reasonable approach in individual cases.

Plan for business impacts

The landscape is likely to evolve as transmission occurs and cases increase. Businesses should develop a protocol for what will happen in the event a case is confirmed on site.

They should also develop plans to address potential impacts, which may include:

- site closures or disruptions to operations, in the event of confirmed cases;
- reduced operational capability (where workers are directed to quarantine/isolate as close contacts);
- an increase in working from home arrangements or requests;
- the possibility of public health orders requiring vaccination of certain workers;
- union right of entry on safety grounds; and
- workers' compensation claims.

Appropriate contingency plans may involve replacement staff, flexible leave arrangements, working from home arrangements and other arrangements.

How can we help?

We can provide advice on your specific circumstances, including:

- whether you can require workers to be vaccinated;
- whether you can ask workers about their vaccination status;
- how to manage COVID-related employment issues, such unpaid leave, working from home and vaccination challenges;
- compliance with safety obligations; and
- compliance with other laws such as discrimination and privacy laws.

Please contact Employment Partner, Emily Harvey, if you would like assistance.

[1] Note: There are public health orders in place requiring certain categories of workers to be vaccinated, including in health care, residential aged care, and quarantine facilities. Employers must comply with these orders.

Do you have a family company or a corporate trustee for your self-managed superfund?

Peter Kenny
Partner

If you are a director of an Australian company, even if it is a private family company or the trustee of your self-managed superannuation fund, you will need to verify your identity on the new Director Identification Number (**DIN**) platform. This requirement came into force on 1 November 2021.

If you were appointed a director of a company on or before 31 October 2021, you must submit your DIN application by 30 November 2022. Directors appointed between 1 November 2021 and 4 April 2022 must submit their applications within 28 days of appointment. From 5 April 2022 onwards, a DIN application must be submitted before a director is appointed.

So why has the Commonwealth Government decided to impose this obligation which appears at first glance to be just another bureaucratic piece of red tape on so many Australians? The Government's response is that the DIN program has been introduced to eliminate the risk of false or fraudulent director identities, particularly in the context of phoenix companies continuing to carry on the same business as that previously carried on by insolvent companies. A DIN is a unique identifier that a director applies for once and keeps indefinitely, and which will be used to trace individual directors' relationships to companies over time.

So how do you apply for a DIN? All applications must be made through the **Australian Business Registry Services** website. An application for a DIN must be made by directors themselves as they will need to individually verify their own identities – it won't be possible for someone else to submit an application on behalf of the director. All applicants for a DIN will be required to provide the following information:

- their residential address as recorded with the Australian Taxation Office;
- answers to two personal questions in relation to any of the following:
    (i) superannuation account details;
    (ii) a pay as you go (PAYG) summary; or
    (iii) bank account details.

So what consequences will you face if you fail to comply with the new DIN requirements? The Government is taking this new legislation very seriously and has charged the Australian Securities and Investments Commission (**ASIC**) with the responsibility of enforcing the requirements of the DIN program. The maximum penalty for failing to hold a DIN is 60 penalty units (or $13,320 at the current penalty rate of $222 per unit) and one year's imprisonment. The Government has indicated that non-compliance or breaches of the requirements by directors will lead to infringement notices being issued and possible civil and/or criminal prosecution.

The very strong message we want to convey to our clients who are company directors is that it would be prudent to apply for your DIN now while this new requirement is attracting so much media and corporate coverage.

Sunflower selfies cause biosecurity risk

Alex Ramsey
Partner

Grain farmers are on the front line of a new biosecurity threat as members of the public cross boundary fences into private farmland – all in the pursuit of social media content.

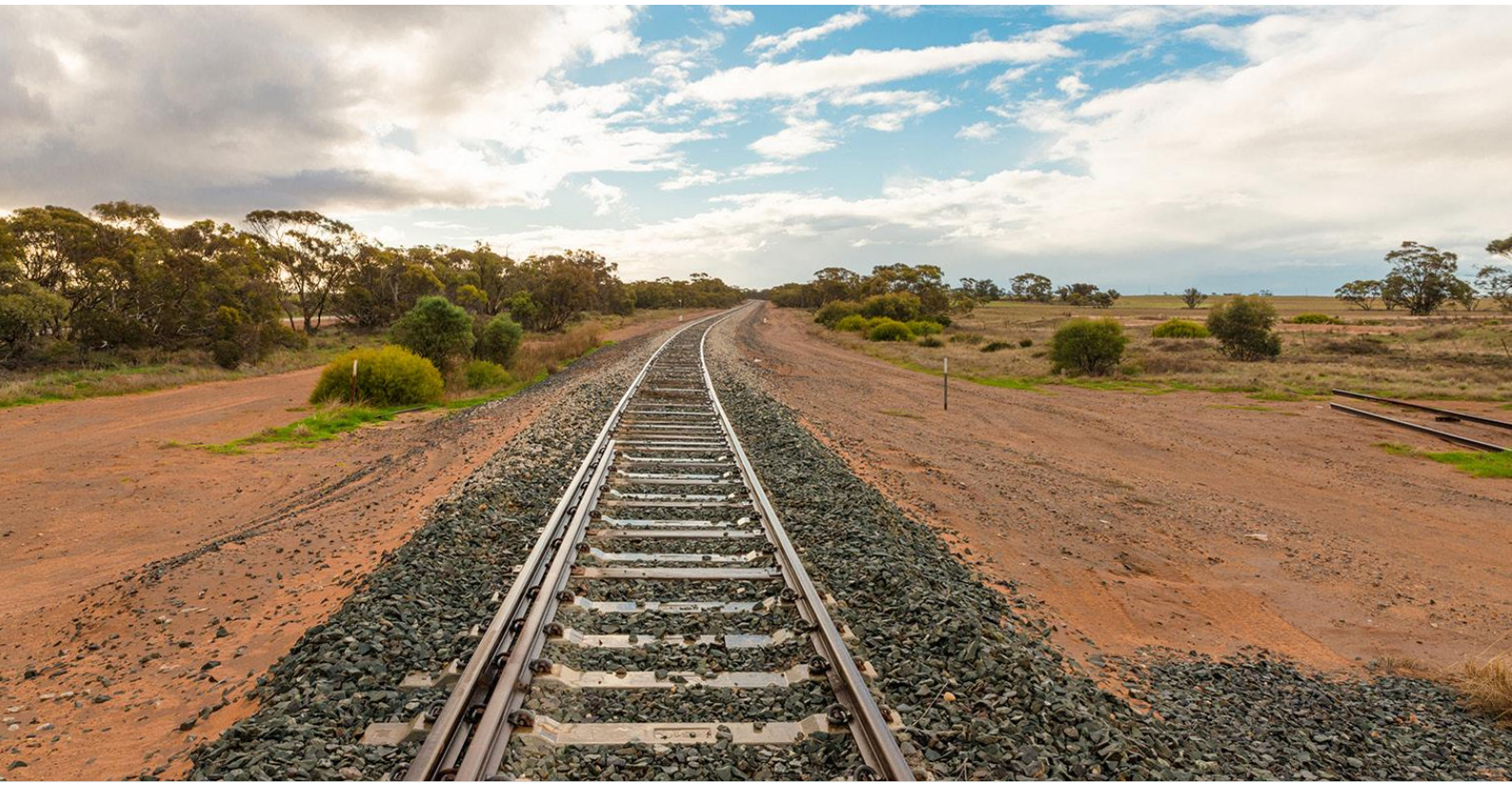
A farmer with a sunflower crop on the Darling Downs recently found five individuals wandering through a grown crop of sunflowers taking photographs of each other to post on social media platforms such as Instagram and Facebook.

While the breach of the boundary fence by these trespassers only caused minor damage to the crop, the real risk is in the breach of the biosecurity protocols for the farm.

In an organic crop or food standard accredited facility, such a breach could disqualify the produce from accreditation for sale in certain markets or processing standards and greatly devalue the crop.

Biosecurity Queensland and AgForce are alert to these challenges and have developed biosecurity risk and management kits which include signage templates, risk management plans and farming protocols to deal with the trespassing public and other risks.

More information from Biosecurity Queensland can be found here and AgForce members can obtain resources from AgForce.



Inland Rail Losing Steam

Harriet Adcock
Lawyer

A year ago, the Inland Rail project seemed to be full steam ahead. However, the Australian Rail Transport Corporation's (**ARTC**) progress has been slower than expected.

The project, which is set to connect Melbourne and Brisbane via 1,700 km of railway track, travels largely through regional towns and is causing headaches for landowners who feel the ARTC is not adequately consulting with landowners and ignoring the potential environmental impacts of the project. Some landowners are even reportedly "shutting the gate" on preliminary investigations as much as possible, in an attempt to force ARTC's hand when it comes to negotiating what many consider to be sensible and obvious compromises.

Earlier in the year, the public was able to make submissions to the coordinator-General to be considered alongside the ARTC Environmental Impact Statements (**EIS**) for the Calvert to Kagaru portion of the corridor. An EIS provides an analysis of the existing environment in the project area, the potential impacts of the project on the environment and the proposals to avoid, minimise, mitigate or offset those impacts.

Despite the ongoing EIS process, the ARTC is working with the Queensland Government to fast track its planning approvals and "lock in" the route. Once finalised, landowners will lose any hope of negotiating a realignment that reduces the impact on their land. This will essentially mark the commencement of the compulsory acquisition process and we expect that shortly after a Queensland Government authority will be appointed to facilitate and negotiate land resumptions, including by issuing notices of intention to resume.

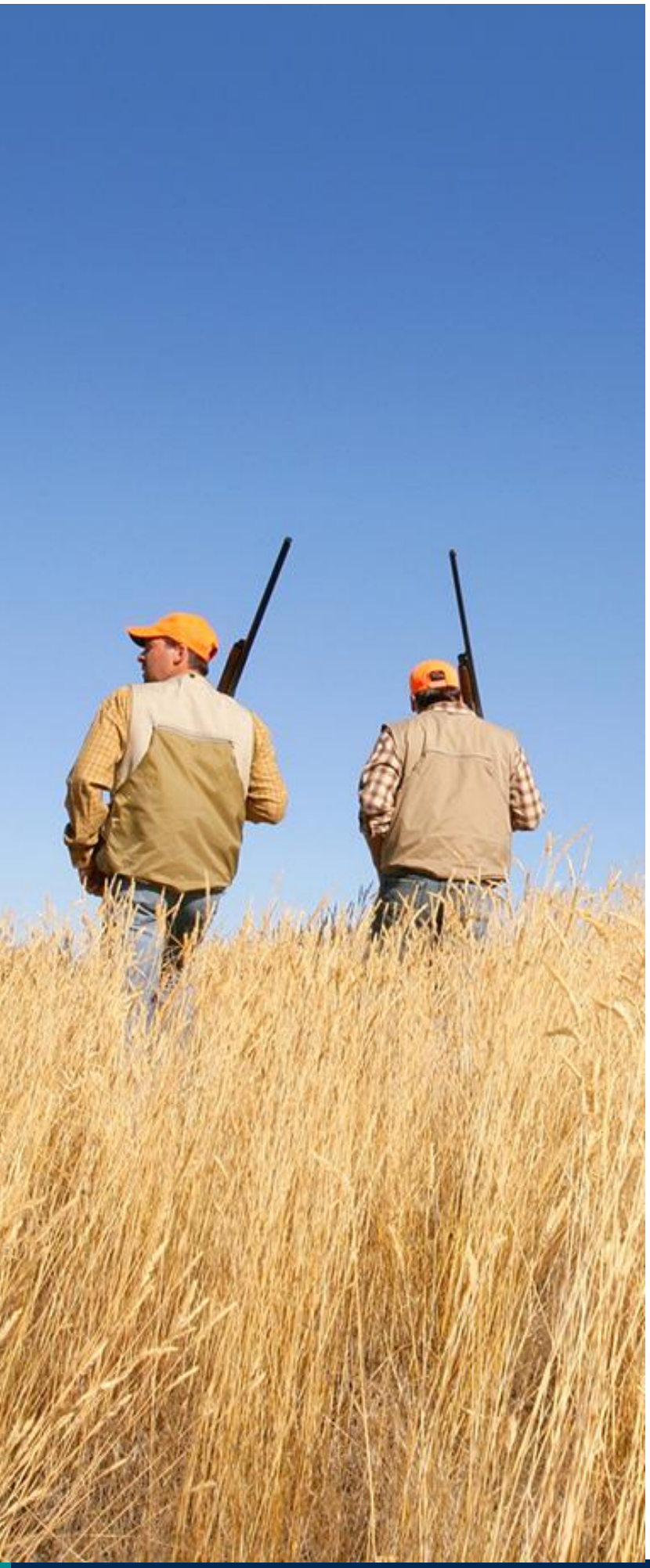
Following the receipt of a notice of intention to resume, landowners will be able to either:

- agree to the acquisition and proceed with the preparation and submission of their compensation claim; or
- prepare a written objection within 30 days and try to contest the resumption.

Landowners are entitled to reasonable costs for the preparation and filing of their compensation claims. We strongly suggest that those affected by the project begin engaging professionals to assist them to assess their compensation entitlements and to progress their claims.

How can we help?

Thynne + Macartney prides itself on its advocacy for landowners and in recent years has assisted with resumptions for powerlines and railways.



New amnesty for unauthorised weapons

Alex Ramsey
Partner

Since 1 July 2021, the National Firearms Amnesty has operated in Queensland to give weapons holders an opportunity to surrender unregistered firearms or armaments without penalty or prosecution.

Adopting a similar format to the 1996-1997 gun surrender regime (but without compensation), any holder of a weapon can present items to a licenced firearms dealer or at a Queensland Police Station for destruction.

Designed to catch weapons which were unidentified in the earlier surrender campaigns, the new amnesty targets weapons which have been inherited by beneficiaries of estates, passed on by older or retired sportsmen or still held by weapons licence holders who are not licenced for the category of firearm in their possession.

More information on the Amnesty can be found here.

Thynne Macartney

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Ally Law
Beyond Boundaries

Thynne Macartney

Meet the Agribusiness team

Thynne + Macartney has one of Australia's leading practices in agribusiness. Multiple generations of farmers and graziers have drawn on our experience to help them reach robust business agreements promptly – from sales and purchases of rural properties to plans for the future.

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Upcoming regional visits for 2022

	LOCATION		LOCATION
9-10 MARCH	Roma	**15-16 JUNE**	Charleville / Roma
11 MARCH	Emerald	**24-25 JUNE**	Emerald
14-15 APRIL	Goondiwindi / Narrabri / Moree	**27-28 OCTOBER**	Emerald / Clermont
13 MAY	Rockhampton	**29 OCTOBER**	Cloncurry
17-18 MAY	Alpha	**3-4 NOVEMBER**	Longreach
3-4 JUNE	Longreach / Muttaburra	**18-19 NOVEMBER**	Roma

Appointments can be made by phoning (07) 3231 8747