

HUMAN RIGHTS IMPACTS OF UNCONVENTIONAL GAS

AUSTRALIAN
SESSION –
SUBCASE 4

SUBCASES

Right to Health
Health impacts

Right to food, water, housing
Infrastructure impacts

Right to safe, healthy, sustainable environment
Climate change impacts

Right to participation
Government subsidised pursuit of fossil fuels

Right to cultural heritage, land, resources, social
Cultural and social impacts

SUBCASE 4 – PARTICIPATION AND GOV'T SUBSIDY

The public participation subcase will examine:

- the lack of opportunities for, and sometimes obstruction of, public participation in decision-making about fracking.

TESTIMONY INVITED

- The following is a selection of the issues associated with this subcase.
- You are invited to provide testimony or witness statements supporting this subcase.

States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises.

This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.

This is a significant failure of the Australian Government in relation to the unconventional gas industry.

By not ensuring that human rights are incorporated into the judicially enforceable legislative frameworks back up by comprehensible implementation policy it has enabled industry to manipulate decision-making processes and outcomes in a manner that basic human rights are ignored and breaches are not subject to adequate corrective measures, monitoring or reporting.(AHRC)

OVERVIEW

- The importance of impartiality and accountability in management over the state's resources is hard to overstate. Mining licenses represent among the largest transfer of assets from public to private hands. Mining companies stand to gain hundreds of millions of dollars from decisions to approve mines and gas fields, with no public representation in the decision making, but there are also many negative economic impacts on non-mining industries, communities and the environment.
- These impacts can be devastating and they are not accounted for in any appropriate way in the legislation or by the government or by the industry

FAILURE TO ADDRESS OR CONSIDER IMPACTS

- It is this issue that lies at the heart of the fundamental failure of the Australian Government to its people. It is not just that they failed in their duty to protect and represent and facilitate full public participation, but that they chose not to by siding with private merchants from other countries.

Despite the will of the people, the government has deliberately and relentlessly pursued

- **Creation of a gas industry;**
- **the removal of red and green tape;**
- **Rejection of any precautionary approach**
- **Avoidance of investing in alternative energy industry**

LACK OF PARTICIPATION AT EVERY LEVEL

- Legislative bias
- Number of enquiries and outcomes ignoring the will of the people
- Lack of right to say no
- Lobbying and revolving door
- Regulatory failure
- Failure of compensation arrangements
- Right to information
- Unconscionable conduct
- Failure to investigate incidents
- Failure to adequately prepare for industry related emergency in the community
- Burden of proof of impact is on individuals
- Anti protest laws

GOVERNMENT INQUIRIES

- One only needs to look at the number of inquiries that have been held by the commonwealth and the states into the industry then read the government's own submissions in contrast to those from the public, even the tone of the subsequent reports and the dismissive attitude of ministers and senators for the ultimate example of the public opinion being prevented from participating in decision making.

Commonwealth	State
<ul style="list-style-type: none"> Senate Rural Affairs and Transport References Committee, Management of the Murray Darling Basin Interim report: the impact of mining coal seam gas on the management of the Murray Darling Basin (2011). Standing Council on Energy and Resources (now COAG Energy Council), National Harmonised Regulatory Framework for Natural Gas from Coal Seams (2013). Productivity Commission, Mineral and Energy Resource Exploration (2014). Senate Select Committee into Certain Aspects of Queensland Government Administration related to Commonwealth Government Affairs (2015). EPBC Water Trigger Review 	<p>New South Wales:</p> <ul style="list-style-type: none"> 2012 inquiry into coal seam gas 2014, the NSW Chief Scientist and Engineer, Professor Mary O'Kane, conducted an independent review of CSG activities 2014, Mr Bret Walker SC completed an independent review of the process for arbitrating land access arrangements for mining and petroleum exploration. <p>Victoria:</p> <ul style="list-style-type: none"> 2015, inquiry into unconventional gas 2013, the Hon Peter Reith AM chaired a Victorian Gas Market Taskforce inquiry that considered gas supply issues. 2012, an inquiry into greenfields mineral exploration and project development in Victoria. <p>Queensland</p> <ul style="list-style-type: none"> 2014, the Queensland Competition Authority has reviewed the regulation of the CSG industry <p>Western Australia</p> <ul style="list-style-type: none"> 2013 the implications for Western Australia of hydraulic fracturing for unconventional gas. <p>South Australia</p> <ul style="list-style-type: none"> 2015, an inquiry into the potential risks and impacts in the use of fracking to produce gas <p>Tasmania</p> <ul style="list-style-type: none"> 2015, a review of hydraulic fracturing. <p>Northern Territory</p> <ul style="list-style-type: none"> 2014, inquiry into hydraulic fracturing 2016 the independent Scientific Inquiry into Hydraulic Fracturing of Onshore Unconventional Reservoirs

RIGHT TO REFUSE: THE ULTIMATE PARTICIPATION - DENIED

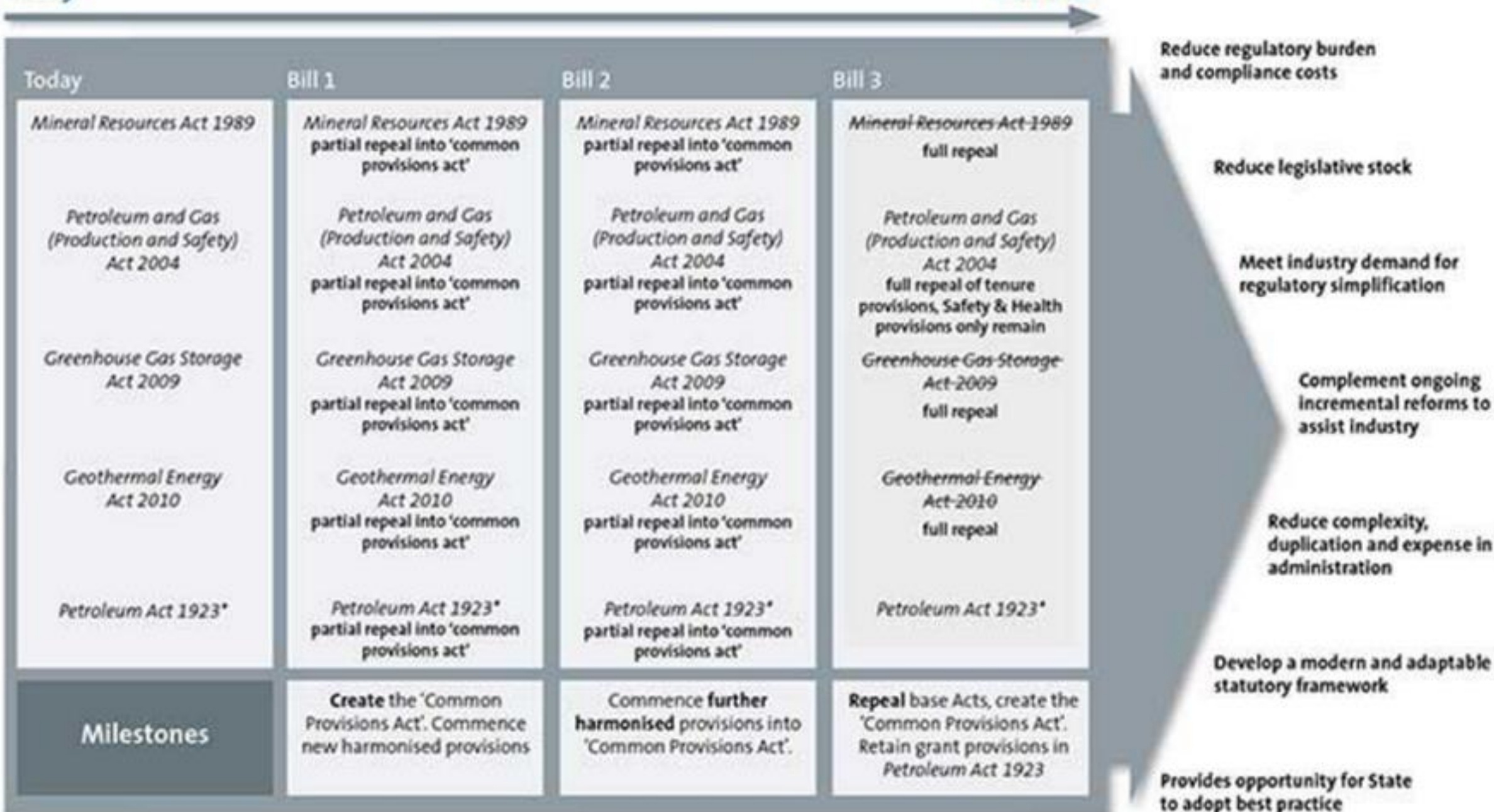
- The inquiry into the Bill for the Landholder's Right to Refuse (Gas and Coal) was an perfect example of the people requesting the right to protect their lands and homes if the government was not going to do it.
- The insulting result of the bill was an outrageously slippery manoeuvre on behalf of the committee to renig on a technicality.
- They espoused how they “support the principle that an agricultural landholder should have the right to determine who can enter and undertake gas or coal mining activities on their land.”... but since they saw problems with the detail in the bill, their one and only recommendation after hearing moving personal testimony from almost 100 individuals was:

The committee recommends that the Senate not pass the bill.



LEGISLATIVE BIAS

- It was government policy established in 2000 to ensure that up to 15% of energy was produced using gas as a means of actively reducing climate change.
- It was the Queensland Gas Scheme that was developed specifically to promote the state's gas industry
- It was in 2010 the Productivity Commission (and friends at the policy transition group) that created the 'razor gang' to remove all the green and red tape that was discouraging the interest in the 'dash for gas'
- **Ultimately the Productivity Commission Review was the embodiment of a fatal flaw of judgement and demonstrates the failure of the government in considering the" focus on how regulatory processes that impose unnecessary burdens on explorers can be reformed, instead of considering how current regulations may be insufficient and how they can be enhanced and improved".**



Underpinned by a robust cross agency/industry governance framework and a bona fide stakeholder engagement plan

BIAS

- **It is also demonstrated as how a skewed perspective from the government to the industry colours every aspect of the governments subsidising of the industry.**
- **The Qld Government Submission to the Productivity Commission inquiry lays these arguments out clearly, here the Qld Gov congratulates themselves on their 'removal of red and green tape' and holds their changes up for the federal review as a shining example.**
- **Furthermore, the leader of this Fossil Fuel regulation razor gang in the Qld Gov Minister Cripps states in his cover letter for the submission:**

"The Qld Government would also like to take this opportunity to comment on the Australian Government's intention to amend the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) to include 'water resources significantly impacted by coal seam gas and large coal mining developments' as a matter of national environmental significance. The Queensland Government believes the proposed amendments to the EPBC Act will increase the regulatory burden and create further duplication and delays to the approval process for large coal and coal seam gas projects. It is the view of the Queensland government that this will be a significant disincentive to investment in these projects, which will have a major negative impact on this state."

health and social costs of these projects are never properly addressed

Make a strong moral and public interest case for leaving those resources in the ground, given the widespread impacts of climate change for Australia and the rest of the world.

does not mention that the water resources are irreplaceable, that many industries and indeed communities rely upon that water

IMAGINE



- It has been a fundamental choice of successive governments to support the fossil fuel industry and multinationals uber profiteering companies.
- Just imagine if this effort and subsidisation was implemented in the name of sustainable and renewable energy.

LOBBYING AND REVOLVING DOOR

- The cosy relationship between the senior government representatives in Queensland and the resource industry is at odds with the fundamental principle that all interested parties are treated equally in the decision-making process. It also undermines the ability of Queenslanders to negotiate the best deal for the one-off exploitation of their non-renewable resources, and the protection of the community against the negative impacts of the states ever expanding resource industry.

The Australian Institute Report: Too Close for Comfort



CSG lobbyists: untangling the web of influence peddlers

Posted by Sandi Keane | Oct 13, 2017 | Energy, Government

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REGULATORY FAILURE

- CSG projects are pushed through using broad regulatory tools such as the multiple land use framework and broad and lengthy conditioning.
- As the projects develop there is alteration of a project's environmental conditions when new information becomes available.
- This has resulted in the development of generic, weak conditions that lack definition being attached to CSG approvals under State legislation in Queensland.
- In practice the framework is used to defer most environmental risk assessment (particularly in relation to groundwater) to post-approval through the use of adaptive management conditioning.
- This prevents the public from participating in the environmental impact assessment (EIA) of projects.

REGULATORY FAILURE - ADAPTIVE MANAGEMENT

Adaptive Management

- The adaptive management theory upon which the entire industry is premised is implemented in a flawed manner.
- without clear objectives, performance indicators or criteria for evaluation or response
- It is not integrated into statutory provisions for the approval and management of CSG projects
- There is no appropriate decision-making framework against which the Queensland regulatory approach could be tested and amended
- statutory regime lacks the sufficient flexibility to enable changes to be made to the regulatory framework in response to the improved knowledge and understanding of the impacts of these CSG projects
- Lacks the ability to embrace the hard decisions that go with “learning by doing” including the ultimate decision of ceasing CSG activities in Queensland in the face of significant information gaps and/or an unacceptably high risk of cumulative adverse impacts.

PRACTICAL OUTCOME OF THE REGULATION = MEANINGLESS & INCONSISTENCY

- As demonstrated in the Subcase 3 for the Climate, studies into the variation between environmental impact assessments and environmental authorities across projects reveals the inadequate legislative, regulation, oversight, consistency, meaningfulness of the system, that comes from Government facilitating the development of the industry over the development of good science and good decision with people and environment in mind vs businesses and profit.

CONDUCT AND COMPENSATION AGREEMENTS

- The government licences a multinational to access gas that is under the properties of families.
- The multinational companies must access your private property and place infrastructure on your property in order to access the gas
- The government refuses to give you permission to deny access to the companies
- Compensation under the legislation is constrained to a limited pool of issues that do not in any way represent the realities of the impacts that the landholders suffer
- The government forces individuals to deal with multinational companies and sign 'contracts' giving such access.
- The government gives no assistance to the individual, leaves them to enter into long term contracts with no information, rights or data.
- The government drafts a sample contract for use in this process. This sample contract is heavily biased in the direction of the multinational gas companies.



A FAIR AND BALANCED APPROACH TO LAND ACCESS AND COMPENSATION ISSUES?

- The contract must be signed (if 'agreement' is not reached the company can gain access to your property via court)
- The contract lacks requirements for disclosure of important information from the company reinforcing the gas company tactic of avoiding detailed information to be provided
- The contract requires the individual to provide full disclosure on what their plans are for their own property
- It lacks any helpful information to advise the individual of what types of additional conduct requirements they are able to demand, which is advantageous to the company
- Encourages confidentiality which is not in the best interest of the individual, but does support the company tactic of dividing communities
- Fails to even encourage basic contractual payment terms regarding implications for non payment that would protect the landholder
- Places undue burden on the landholder to 'protect' the companies infrastructure
- Proves the government knows about the poor insurance arrangements in terms of the landholder and enshrines this failure in the clauses relating to insurance in their sample contract

RIGHT TO INFORMATION

- The average landholder gets access to a handful of information and industry centric propaganda prior to being expected to sign a contract to provide access to their property.
- The next slide is an excerpt of the type of documentation that must be requested from the companies to just begin to understand the impact in and around your property
- The suite of such documents are not listed anywhere, but must be identified and specifically requested by individuals
- Then company has to be relentlessly pursued in order to actually provide to data and often refuses This information, if ever received then needs to be understood by average landholders

“EASY, PROMPT, EFFECTIVE AND PRACTICAL ACCESS” TO INFORMATION

While the gas company was pursuing a landholder for access and for an alternative arrangement agreement, the landholder requested a copy of the following documentation:

- the current plan of operations
- preclearance surveys or other surveys
- annual environmental report and
- contingency plan
- noise monitoring management plan
- emission monitoring sheds etc
- risk assessments etc in relation to the existing Underground Coal Gasification Contamination Investigation and the concurrent undertaking of CSG activities
- land release management plan relevant to the area

“we do not consider it would be useful to get bogged down in reams of paperwork”



BURDEN OF PROOF IS ON LANDHOLDERS

- Individual landholders are required to undertake noise surveys, atmospheric monitoring, water testing, weed auditing, overland flow assessments etc in order to establish their own baseline and then to prove that impact has been caused - Prohibitive
- Important contributory data is the domain of the companies and the government which is not available to individuals, or is very difficult and expensive to find through RTI search
- Landholder must make 'approved' complaints in order for there to be any recorded action

NEIGHBOURS

- Neighbours are not included in any of the processes
- Most recent legislative change rules out neighbours being able to claim compensation due to impacts from activities near them.

ALTERNATIVE AGREEMENT ARRANGEMENTS

- Companies pursue AAA with individuals within a community
- AAAs are effectively a means of coming to an arrangement between the company and an individual regarding allowing exceedances of the EA
- These AAA enable the company to breach their requirements under their environmental authority with regard to the specific impact on the individual (ie noise)
- If a few people in the area do not sign a AAA they have become the last man standing and any complaints regarding breaches to the EA and impacts are able to be coloured as vexatious because ‘no one else is complaining’
- Slippery slope enabling breaches to become the norm and a loophole for compliance, what is the point of the regulatory constraints to being with?

ANTI PROTEST LAWS

Governments across Australia have been using a range of changes to legislation to suppress public participation through protest including:

- harsher penalties, excessive police powers and the prioritisation of business interests (particularly mining and forestry operations) over the rights of Australians to gather together and protest
- Restricting NGOs including gag clauses, targeted funding cuts and threats to the ability of environmental organisations to receive tax deductible donations from supporters – a tax status which is often critical to financial sustainability.

Hugh de Kretser- <http://www.smh.com.au/comment/nsw-antiprotest-laws-are-part-of-a-corrosive-national-trend-20160321-gno10h.html>

TESTIMONY INVITED

- This has been a brief summary of the basics of the impacts that this industry has public participation.
- Please contact us to provide your testimony regarding the impact of the industry on you.

CONTACT US

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