

THE PERMANENT PEOPLES' TRIBUNAL SESSION ON HUMAN RIGHTS, FRACKING AND CLIMATE CHANGE

Summary and Submission of Australian Evidence

14- 18 May 2018

Oregon State University

ABSTRACT

This submission must be read in conjunction with the evidence hosted at www.peopletribunalongas.org

This Submission establishes that the Australian Government acknowledges the rights that are addressed in this report and summarises the evidence hosted on the website that proves that the Australian Government have failed to uphold these rights as they themselves have detailed. The submission uses the 'Advisory Opinion Questions' outlined in the Petition to the Permanent Peoples' Tribunal as a starting point. It then breaks the issue down into 5 subcases where the evidence is provided as responses to each of the sixteen principles laid out in the new 2018 [Framework Principles on Human Rights and the Environment](#) prepared by John Knox, the UN Special Rapporteur on Human Rights and the Environment. This submission shows that the unconventional gas industry is at the absolute 'coal face' of infringement on our basic rights and the government fails at every turn to set the bar at a standard that balances the perceived benefits from royalties and jobs against the obvious intrusion on basic and essential human rights and freedoms.

We have no rights and no remedies. We need an independent, impartial judiciary, good democratic institutions and democratic processes that are themselves the embodiment of various rights.

Contents

INTRODUCTION	3
CASE STUDY	4
ACCEPTANCE OF HUMAN RIGHTS LAW BY AUSTRALIA	7
Description of the rights as enumerated by the government itself	8
Right to health and a healthy environment	8
BASIS OF THE ARGUMENT	10
EVIDENCE	13
HEALTH	13
Principle 2	13
Summary of evidence provided	13
INFRASTRUCTURE	18
Summary of Evidence Provided	18
Principle 10	18
Principle 8	18
Principle 12	19
CLIMATE AND ENVIRONMENT	20
Summary of Evidence Provided	20
Principle 1	20
Principle 11	20
Principle 16	24
PUBLIC PARTICIPATION / GOVERNMENT SUBSIDISATION	25
Summary of Evidence Provided	25
Principle 4	26
Principle 5	27
Principle 7	27
Principle 9	28
SOCIAL AND CULTURAL	31
Summary of Evidence Provided	31
Principle 3	31
Principle 6	31
Principle 13	32

Principle 14	32
Principle 15	33
ADDENDUM	34

INTRODUCTION

With regards to human rights Australia presents a righteous face internationally; it is signatory to 7 human rights treaties, and has sought and attained a seat on the UN Human Rights Council.

However the evidence submitted on the website and summarised in this document, demonstrates that domestically the Australian government has infringed the basic human rights of Australian residents during the rollout of the unconventional gas industry leaving Australian residents with effectively no rights and no remedies.

Despite the fact that the Australian Government has clearly articulated that *"The right to health is understood as the right to enjoy the highest attainable standard of physical and mental health, and to have access to adequate health care and live in conditions that promote a healthy life (including, for example, safe and healthy working conditions; access to safe drinking water; adequate sanitation; adequate supply of safe food, nutrition and housing; healthy occupational and environmental conditions; and access to health-related education and information"* they have demonstrably failed to ensure a safe, clean, healthy and sustainable environment.

Australian Governments failed to :

- undertake prior assessment of the possible environmental impacts of proposed projects and policies, including their potential effects on the enjoyment of human rights.
- ensure effective enforcement of environmental standards.
- protect the rights of those who are most vulnerable to, or at particular risk from, environmental harm, taking into account their needs, risks and capacities.
- comply with their obligations to indigenous peoples and members of traditional communities, failing to recognise and protect their right, failing to consult with them and obtain free, prior and informed consent, failing to respect and protect traditional knowledge and practices and failing to ensure that they fairly and equitably shared in benefits.
- provide affordable, effective and timely public access to environmental information.
- provide for and facilitate public participation in decision making related to the environment.
- provide a safe and enabling environment, free from threats, harassment, intimidation and violence for those seeking to protect human rights and the environment.
- respect and protect the rights to freedom of expression, association and peaceful assembly in relation to environmental matters.

Importantly in considering the evidence provided and given the 20-40 years of impacts ahead of the existing industry and the impacts still to occur from the rapidly expanding industry, we ask the Judges to *consider potential future harm, and not merely harm committed to date.*

CASE STUDY

In 2009, following extensive public consultations, proposals were made to include rights expressly in a Commonwealth Human Rights Charter, but they were consequently rejected by the Government. Instead, a new “Australian Human Rights Framework” was adopted focusing on human rights education and protection, and a parliamentary Joint Committee on Human Rights was established to provide advisory scrutiny of legislation for compliance with Australia’s international human rights obligations under the ratified United Nations human rights treaties¹.

The Environment Protection and Biodiversity Conservation Amendment (Standing) Bill 2015 (the Bill) was introduced to the House of Representatives on 20 August by the federal Environment Minister, Greg Hunt MP.

The Bill (as described by the Environmental Defenders Office) aims to remove extended standing for community members (including environment groups) to seek judicial review of decisions made under the EPBC Act. Standing would then be restricted to a person ‘whose interests are adversely affected by the decision’.

This is problematic for community members who are seeking to review the legality of decisions in the public interest. This is because ‘the effects of major projects can be felt beyond neighbouring landowners... which implies that broader standing is warranted.’

In addition:[environmental] objectives in bringing litigation – such as to prevent environmental impacts, raise issues for legislative attention and improve decision-making processes – reflect public rather than private concerns, such as protecting property and financial interests².

¹ http://un.org.au/files/2016/10/2016-10-18_Australia_SR-HRD-statement-final-3.docx

² https://d3n8a8pro7vhmx.cloudfront.net/edonsw/pages/2241/attachments/original/1441257613/150903_EPBC_Bill_removing_extended_standing_-_for_website_FINAL_w_header.pdf?1441257613

https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Scrutiny_reports/2016/Thirty-fifth_report_of_the_44th_Parliament

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CASE STUDY

By way of introduction and background, a case study is used to illustrate the single time that Australia had the opportunity to demonstrate its commitment to human rights in defending against the unconventional gas industry and its abject failure. This case study sets the standard by which every decision the government made afterwards was measured by and is the pinnacle of evidence for the tribunal.

In accordance with the Joint Committee on Human Rights rules, a statement of compatibility with Human Rights was required to be provided with the Bill. The Minister for the Environment stated "This Bill is compatible with the human rights and freedoms".

In the 27th report The Joint committee rightly questioned this and quite correctly queried whether the right to health and a healthy environment is engaged by this measure and that where a measure may limit a human right is that the accompanying statement of compatibility provide a reasoned and evidence-based explanation of how the measure supports a legitimate objective for the purposes of international human rights law.

The response provided was discussed in the 35th report of the committee and it heard the response from the minister for the environment who overtly said: the existence of an emerging risk that the extended standing provisions are being used to deliberately disrupt and delay key projects and infrastructure development.

The committee considered that this may be a legitimate objective to justify the limitation on the right to health for the purposes of international human rights law, however, further evidence as to the nature and extent of the emerging risk was required. He then justified the limitation of such human rights by saying that the Environment Act does not limit who can try to have the law enforced, and that making this change to the EPBC Act would therefore only limit the strategy of anti fossil fuel movements "to 'disrupt and delay' key projects and infrastructure while gradually eroding public and political support for the industry and continually building the power of the movement to win more."

The committee stated that the minister's response has not fully explained the link between these campaign strategies and the use of the extended standing provisions in the Environment Act so as to fully justify the provisions in the bill. And stated that the removal of a right of a person or bodies who are committed to environmental protection from seeking to enforce the protections in the Environment Act, may engage and limit the right to a healthy environment. To be capable of justifying a proposed limitation of human rights, a legitimate objective must address a pressing or substantial concern and not simply seek an outcome regarded as desirable or convenient. Additionally, a limitation must be rationally connected to, and a proportionate way to achieve, its legitimate objective in order to be justifiable in international human rights law.

Notwithstanding this logical expression of expectations, the committee suddenly and inexplicably allowed the bill to pass with the statement that 'accordingly, given the existing environmental protections under the Environment Protection and Biodiversity Conservation Act 1999, which seek to protect the right to health, removing the extended standing provisions may be compatible with the right to health.'

As a result the only federal law accessible to those impacted to demonstrate that the industry is putting at risk the health of people and the environment, and attain judicial review of decisions made by the government in the pay of multinationals, was removed.

This is the foundation of the approach the government has taken ever since in whittling away the laws in Australia that suffocate civil society advocacy and punish whistle-blowers and journalists who reveal government wrongdoing.

Many other changes have been made since in state based legislation that have conveniently avoided the only existing human rights federal oversight of the joint human rights committee. Thus state actions have enabled distinct human rights impacts to be incurred. These human rights concerns do not need to be justified nor does recognition need to be fought for. Australia is already signatory and accepts them federally as outlined by Australia's poor answer to a human rights bill, the joint human rights committee.

Therefore with this damning case study as an introduction, the following evidence further demonstrates how Australia is guilty of human rights violations in particular regard to the unconventional gas industry and redress must be demanded by civil society through major changes to Australian law, human rights oversight and judicial review. When measured by the rule of human rights, this industry and the Government's stewardship of it, is a failure.

ACCEPTANCE OF HUMAN RIGHTS LAW BY AUSTRALIA

The following extract from the Human Rights (Parliamentary Scrutiny) Act 2011 provides evidence that Australia has committed to the treaties describing human rights.

Human rights are defined in the Human Rights (Parliamentary Scrutiny) Act 2011 as those contained in following seven human rights treaties to which Australia is a party:

- *International Covenant on Civil and Political Rights (ICCPR);*
- *International Covenant on Economic, Social and Cultural Rights (ICESCR);*
- *International Convention on the Elimination of All Forms of Racial Discrimination (ICERD);*
- *Convention on the Elimination of Discrimination against Women (CEDAW);*
- *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT);*
- *Convention on the Rights of the Child (CRC); and*
- *Convention on the Rights of Persons with Disabilities (CRPD).*

The establishment of the committee builds on the Parliament's established traditions of legislative scrutiny. Accordingly, the committee undertakes its scrutiny function as a technical inquiry relating to Australia's international human rights obligations. The committee does not consider the broader policy merits of legislation. The committee's purpose is to enhance understanding of and respect for human rights in Australia and to ensure appropriate recognition of human rights issues in legislative and policy development. The committee's engagement with proponents of legislation emphasises the importance of maintaining an effective dialogue that contributes to this broader respect for and recognition of human rights in Australia.

Australia has voluntarily accepted obligations under the seven core United Nations (UN) human rights treaties. It is a general principle of international human rights law that the rights protected by the human rights treaties are to be interpreted generously and limitations narrowly. Accordingly, the primary focus of the committee's reports is determining whether any identified limitation of a human right is justifiable.

International human rights law recognises that reasonable limits may be placed on most rights and freedoms—there are very few absolute rights which can never be legitimately limited. All other rights may be limited as long as the limitation meets certain standards. In general, any measure that limits a human right must comply with the following criteria (the limitation criteria):

- *be prescribed by law;*
- *be in pursuit of a legitimate objective;*
- *be rationally connected to its stated objective; and*
- *be a proportionate way to achieve that objective.*

Where a bill or instrument limits a human right, the committee requires that the statement of compatibility provide a detailed and evidence-based assessment of the measures against these limitation criteria.

This extract in itself suggests an objective of the committee is the limiting human rights law in Australia to suit the needs of the legislative assembly, which in itself is a questionable objective when it comes to the upholding of the human rights treaties.

Description of the rights as enumerated by the government itself

The Government have argued and enumerated these rights themselves as the following extract proves³.

Right to health and a healthy environment

The right to health is guaranteed by article 12(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), and is fundamental to the exercise of other human rights. The right to health is understood as the right to enjoy the highest attainable standard of physical and mental health, and to have access to adequate health care and live in conditions that promote a healthy life (including, for example, safe and healthy working conditions; access to safe drinking water; adequate sanitation; adequate supply of safe food, nutrition and housing; healthy occupational and environmental conditions; and access to health-related education and information).

Under article 2(1) of the ICESCR, Australia has certain obligations in relation to the right to health. These include:

- the immediate obligation to satisfy certain minimum aspects of the right;
- the obligation not to unjustifiably take any backwards steps that might affect the right;
- the obligation to ensure the right is made available in a non-discriminatory way; and
- the obligation to take reasonable measures within its available resources to progressively secure broader enjoyment of the right.

Under article 4 of the ICESCR, economic, social and cultural rights may be subject only to such limitations as are determined by law and compatible with the nature of those rights, and solely for the purpose of promoting the general welfare in a democratic society. Such limitations must be proportionate to the achievement of a legitimate objective and must be the least restrictive alternative where several types of limitations are available.

While the text of the ICESCR does not explicitly recognise a human right to a healthy environment, the UN Committee on Economic, Social and Cultural Rights has recognised that the enjoyment of a broad range of economic, social and cultural rights depends on a healthy environment. As the UN Committee emphasized in its recent statement in the context of the Rio+20 Conference, 'the Committee in its dialogue with States parties has regularly stressed the inter-linkages of specific economic, social and cultural rights, as well as the right to development, with the sustainability of environmental protection and development efforts. The UN Committee has recognised that environmental degradation and resource depletion can impede the full enjoyment of the right to health.

³https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Scrutiny_reports/2015/Twenty-seventh_report_of_the_44th_Parliament

The UN Committee has also drawn a direct connection between the pollution of the environment and the resulting negative effects on the right to health, explaining that the right to health is violated by 'the failure to enact or enforce laws to prevent the pollution of water, air and soil by extractive and manufacturing industries.

Therefore we have established that Australia acknowledges the rights that are being violated. The following will be evidence that proves that Australia have failed to uphold these rights as they themselves have detailed. That coal seam gas in particular is at the absolute 'coal face' of infringement on our basic rights and fails at every turn to set the bar at a standard that balances the perceived benefits from royalties and jobs against the obvious intrusion on basic and essential human rights and freedoms.

We have no rights and no remedies. We need an independent, impartial judiciary, good democratic institutions and democratic processes that are themselves the embodiment of various rights.

BASIS OF THE ARGUMENT

The petitioners seek an advisory opinion from the Tribunal on four fundamental legal questions associated with the impacts of fracking and climate change. The following table lays out the basis of the philosophy regarding the arguments that will be provided in this report.

This document summarizes our argument and the evidence gathered, but relies on the Judges to review every individual submission on the web site

www.peopletribunalongas.org .

Fundamental Legal Questions to be answered by Tribunal as outlined in the Petition	Under what circumstances do fracking and other unconventional oil and gas extraction techniques breach substantive and procedural human rights protected by international law as a matter of treaty or custom?	Under what circumstances do fracking and other unconventional oil and gas extraction techniques warrant the issuance of either provisional measures, a judgment enjoining further activity, remediation relief, or damages for causing environmental harm?	What is the extent of responsibility and liability of States and non-state actors for violations of human rights and for environmental and climate harm caused by these oil and gas extraction techniques?	what is the extent of responsibility and liability of States and non-state actors, both legal and moral, for violations of the rights of nature related to environmental and climate harm caused by these unconventional oil and gas extraction techniques?
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Subcases categorising evidence and testimony	The human health case will address the human rights dimensions of adverse impacts on all dimensions of human physical and mental health.	The climate impacts case will address all the human rights and earth rights dimensions, for both present and future generations, of fracking and climate change, including of governments' continued subsidizing of fossil fuels. The environmental, ecosystem, hydrologic and seismicity cases will address the human rights and earth rights dimensions of adverse environmental, ecosystem and wildlife impacts as well as impacts on air, surface water, groundwater and earthquakes.	The public participation case will include the human rights dimensions of public participation (or lack thereof) in decision-making about unconventional oil and gas exploration, extraction and policy-making.	The fuels infrastructure case will address the human rights and earth rights dimensions of exploration, drilling, fracking, extraction and delivery processes as well as of the infrastructure needed for transport, storage and export of product and waste (e.g., pipelines, storage facilities, waste treatment facilities, waste water disposal, LNG terminals, compressor stations, etc).	The social costs case will address the human rights dimensions of social and cultural impacts on individuals, families and communities.
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Framework Principles⁴ applied to the testimony and evidence (they are numbered as they are in the Framework reference document)	2. States do not respect, protect and fulfil human rights in order to ensure a safe, clean, healthy and sustainable environment.	1. States do not ensure a safe, clean, healthy and sustainable environment in order to respect, protect and fulfil human rights.	4. States do not provide a safe and enabling environment in which individuals, groups and organs of society that work on human rights or environmental issues can operate free from threats, harassment, intimidation and violence	10. States do not provide for access to effective remedies for violations of human rights and domestic laws relating to the environment	3. States do not prohibit discrimination and ensure equal and effective protection against discrimination in relation to the enjoyment of a safe, clean, healthy and sustainable environment
		11. States do not establish and maintain substantive environmental standards that are non-discriminatory, non-retrogressive and otherwise respect, protect and fulfil human rights	5. States do not respect and protect the rights to freedom of expression, association and peaceful assembly in relation to environmental matters	8. To avoid undertaking or authorizing actions with environmental impacts that interfere with the full enjoyment of human rights, States do not require the prior assessment of the possible environmental impacts of proposed projects and policies, including their potential effects on the enjoyment of human rights	6. States do not provide for education and public awareness on environmental matters

⁴ <http://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/FrameworkPrinciplesReport.aspx>

		16.States do not respect, protect and fulfil human rights in the actions they take to address environmental challenges and pursue sustainable development	7.States do not provide public access to environmental information by collecting and disseminating information and by providing affordable, effective and timely access to information to any person upon request	12.States do not ensure the effective enforcement of their environmental standards against public and private actors	13.States do not cooperate with each other to establish, maintain and enforce effective international legal frameworks in order to prevent, reduce and remedy transboundary and global environmental harm that interferes with the full enjoyment of human rights
			9.States do not provide for and facilitate public participation in decision-making related to the environment and take the views of the public into account in the decision-making process		14.States do not take additional measures to protect the rights of those who are most vulnerable to, or at particular risk from, environmental harm, taking into account their needs, risks and capacities
					15.States do not ensure that they comply with their obligations to indigenous peoples and members of traditional communities, including by: A. Recognising and protecting their rights; B. consulting with them and obtaining their free, prior and informed consent; C. Respecting and protecting their traditional knowledge and practices; D. Ensuring that they fairly and equitably share the benefits from activities relating to their lands, territories or resources.

EVIDENCE

HEALTH

Principle 2

The Australian Government has failed to respect, protect and fulfil human rights in order to ensure a safe, clean, healthy and sustainable environment.

In failing to do so, the government has allowed the industry impacts to prevent the people impacted from attaining the highest possible standard of physical and mental health.

The evidence provided to address this issue is hosted on the web in [Session 1 – Health Subcase](#).

Summary of evidence provided

In 2001, the United Nations Human Rights Commission (UNHRC) acknowledged that ‘living in a pollution-free world is a basic human right’ and those who pollute violate these rights. They established that, “the fundamental right to life is threatened by exposures to toxic chemicals, hazardous wastes, and contaminated drinking water.”⁵

Citizens, including vulnerable children, in gas fields and around gas infrastructure across Australia, are exposed to toxic chemicals through the unconventional gas (UG) industry’s intentional releases, contaminated dust particles, storage ponds and associated waste water spills, accidents and fugitive emissions.

In 2012, the United Nations Environment Program (UNEP) Global Environmental Alert System has already confirmed that, “UG exploitation and production may have unavoidable environmental impacts. Some risks result if the technology is not used adequately, but others will occur despite proper use of technology. UG production has the potential to generate considerable GHG emissions, can strain water resources, result in water contamination, may have negative impacts on public health (through air and soil contaminants, noise pollution), on biodiversity (through land clearance), food supply (through competition for land and water resources), as well as on soil (pollution, crusting).⁶

Law, Government and Policy:

There is no legal requirement for the government to consider the health impacts of the industry on the people expected to host it.

Multiple state and national inquiries have now documented the range of concerns.

In Australia, the health implications of energy policy are not currently considered in policy decisions regarding the allocation of energy sector subsidies, in plans for Australia’s energy future, in decisions regarding new energy infrastructure projects, nor in energy trade.⁷

⁵ H1.2 NTN (Dr Marion Lloyd-Smith) testimony

⁶ *ibid*

⁷ H1.0 Health Session summary video: Health and Energy Roundtable Briefing Paper February 2013 Health and Energy Policy Prepared by Fiona Armstrong, Elizabeth Haworth, Peter Tait, and Harriet Barker

Consideration is limited to environmental aspects that are arbitrary in nature and in fact contrary to the Environmental Protection laws of the day.

No baseline studies and no health impact assessments were done prior to the Coal Seam Gas production licences being issued, and comprehensive health studies have still not been done. Real time air quality monitoring has never been done. Science has been singularly lacking. There has been no comprehensive assessment of the level of fugitive emissions from the Queensland gas fields. In Queensland there are effectively no limits on emissions from each well or the wider reticulation system. The gas companies can flare or vent 3 million cubic meters of gas from each well during production testing before having to even pay royalties. Emissions from the thousands of vents in the production line are not used in any calculation of emissions.⁸

The Environmental regulation is inadequate in addressing the health needs. “The EIS fails to adequately assess human health risks from this project... [and that] it does not refer to evidence from the now considerable scientific literature on the health impacts of unconventional gas operations elsewhere.”⁹

The risk assessment process used in the EIS process is inadequate.¹⁰

Air pollution is a significant health risk and in the EIS the range of air pollutants assessed is inadequate and relies on theoretical modelling.

The Government is aware of the health issues as demonstrated by internal Victorian Government submission to the inquiry that resulted in a moratorium in the state. The document noted that¹¹

“public health impacts from unconventional gas may arise from exposure to:

- Contaminated land (e.g. from chemical spills and inappropriate disposal of wastes) and secondary contamination of primary produced products (e.g. food crops and livestock)
- Contaminated surface and ground water supplies (e.g. through drinking water, irrigation, recreational use of waterways, and stock and domestic use)
- Pollutants in the air (e.g. due to fugitive gas emissions and dust from contaminated land)
- Chemicals (e.g. both those use in production and those which may be mobilised from geological sources)
- Noise from development operations”.

Experts:

DEA:

- emerging scientific evidence around the potential threats to health from the unconventional gas industry.
- Level of assessment, monitoring and regulation is inadequate to protect the health of current and future generations of Australians (and the ecosystems they rely on).

Dr Wayne Somerville¹²

⁸ Health session summary video: Unconventional Gas Mining Inquiry 2015: Dr Geralyn McCarron Submission 12

⁹ H1.7 DEA Testimony

¹⁰ *ibid*

¹¹ DEA testimony reference - Government of Victoria. Parliamentary Inquiry into unconventional gas in Victoria. Victorian interdepartmental submission July 2015. Available at: https://www.parliament.vic.gov.au/images/stories/committees/EPC/Submission_658__Government_of_Victoria.pdf

- the unconventional gas industry maintains that its operations are safe, even though they have no data to support such claims. Community concerns about the impacts of the industry are based on limited, but nonetheless solid, scientific evidence. These concerns could readily be addressed if regulatory authorities and the industry carried out evidence-based procedures for evaluating the safety of products and processes that expose communities or the environment to risk. There's no easy way to address the industry's avoidance of science-based risk management because they are focussed on making profit.
- There can be no doubt that industrialising previously rural landscapes with vast unconventional gas fields has significant impacts on human, water, air, and soil systems. For this industry, an evidence-based demonstration of safety would once have been a straightforward process. Companies and regulatory authorities had only to collect baseline health and environmental data before drilling began, and compare this to data obtained after the gas fields were operating. And even if they failed to collect baseline measures, they could have obtained data from subsequent years to use for comparison and to correlate with the growth of the gas field. But they never did this. Consequently, they have no evidence that their operations are safe.

NTN (Dr Marion Lloyd-Smith)

- Preliminary testing of children's homes adjacent to south east Queensland gas fields has shown they are exposed to a range of carcinogenic and neurotoxic chemicals associated with the UG industry. Samples of ambient air from around their homes detected many toxic volatile organic compounds (VOCs) including acetone, acrolein, alpha-pinene, benzene, benzothiazole, chloromethane, cyclohexane, dichlorofluoromethane, ethanol, ethyl acetate, ethylbenzene, 2-ethyl-1-hexanol, heptane, hexane, heptadecane, hexadecane, 2methylbutane, methylcyclohexane, methylene chloride, methyl ethyl ketone, 3-methylhexane, 3 methylpentane, naphthalene, pentane, phenol, propene, tetradecane, tetrachlorethylene, 1,2,4,-trimethylbenzene, toluene, vinyl acetate, xylene, ethanol, phenylmaleic anhydride, methyl ethyl ketone.¹³
- An assessment of the impacts from hydraulic fracturing in shale and tight gas on West Australia's drinking water supply areas by the WA Department of Health found there were 96 substances in the flowback fluids of which 28 were listed by regulatory agencies as known or suspected carcinogens.¹³ Published studies from the USA show that even after treatment, flowback water had dangerous levels of bromine and radium-226.
- Community based opportunistic sampling of flowback in Queensland detected dichlorodifluoromethane, a potent chlorofluorocarbon (CFCs), which damages the ozone layer.¹⁵ Samples taken from the top of the wellhead, a day after the well had been 'fracked', found bromodichloromethane, bromoform, chloroform and dibromochloromethane, as well as benzene and chromium, copper, nickel, zinc.¹⁴

¹² H1.2 Dr Wayne Somerville testimony

¹³ H1.2 NTN (Dr Marion Lloyd Smith) Testimony referring See Symptomatology of a gas field, An independent health survey in the Tara rural residential estates and environs - <http://www.ntn.org.au/wp/wp-content/uploads/2013/05/Symptomatology-of-a-gas-field-Anindependent-health-survey-in-the-Tara-rural-residential-estates-and-environs-April-2013.pdf>

¹⁴ H1.2 NTN (Dr Marion Lloyd-Smith) Testimony referring Hydraulic Fracturing for Shale and Tight Gas in Western Australian Drinking Water Supply Areas: Human Health Risk Assessment. Public Health Division, Department of Health WA June 2015 & Valerie J. Brown, Radionuclides in Fracking Wastewater: Managing a Toxic Blend, Environ Health Perspect; DOI:10.1289/ehp.122-A50

- In June 2013, New Zealand milk giant, Fonterra, announced it would no longer accept milk from farms that accept CSG muds and drilling cuttings on their properties, citing both contamination concerns and the extra cost of testing the milk at about \$80,000 per year.¹⁵

Dr GERALYN McCARRON¹⁶

- remarkable increase in hospitalisation of Darling Downs residents between the years of 2007 and 2014
- data available to the government as it was supplied by the Darling Downs Hospital and Health services
- hospitalisation for acute respiratory conditions more than doubled
- hospitalisation for acute circulatory conditions more than doubled
- CSG emissions increased substantially in the same period
- particulate matter up 6000%
- oxides of nitrogen increased 500%
- formaldehyde increased by 160 tonnes
- results demonstrate that the burden of air pollution from the gas industry on the wellbeing of the Darling Downs population is a significant public health concern.
- 2013 Australian Medical Association - Dr Steven Hambleton “ Despite the rapid expansion of CSG Developments, the health impacts have not been adequately researched, and effective regulations that protect public health are not in place.”
- 2013 Queensland Health specifically required documentation of total gasfield emissions and the exposure of the community to those emissions - 5 years later, that data is still not available. Dr McCarron testifies that in personal communication with Darling Downs Health Services indicates that critical health based recommendation was blocked by the regulator (Department of Environment and Heritage Protection). FOI documents confirms this.
- Queensland government issued CSG licences contrary to the requirements of the Environmental Protection Act 1994
- Industry contributes to climate change and there are significant health impacts of climate change
- Dr Meuthen Morgan from the University of New England investigated the mental health impacts of unconventional gas. Dr Morgan wrote: “Farmers are exposed to a unique range of vocational stressors, and while mental health morbidity is similar to their non-rural counterparts, suicide rates in the farming community are higher.” “Farmers in the CSG-Stressed and Globally-Stressed profiles exhibited clinically significant levels of psychological morbidity.” “stress associated with CSG impacts both on-farm (operations, profitability, and personal privacy) and off-farm (health, community and environmental) were assessed as severe”¹⁷

¹⁵ H1.2 NTN (Dr Marion Lloyd-Smith) <http://www.stuff.co.nz/taranaki-daily-news/news/8813978/Fonterra-rejects-new-landfarm-milk>

¹⁶ H1.3 Dr GERALYN McCARRON testimony

¹⁷ H1.3 Dr GERALYN McCARRON Testimony reference Morgan M, “Fracked: Coal seam gas extraction and farmers’ mental health” Journal of Environmental Psychology April 2016.

<http://www.sciencedirect.com/science/article/pii/S0272494416300317>

Simone Marsh¹⁸

- Baseline data was missing, as confirmed by independent specialists. Hence environmental and human health impacts cannot be readily quantified. This was a breach of the information requirements of the Environmental Protection Act 1994 (Queensland).
- Environmental authority conditions did not provide limits for a range of aspects (with potential for impacts) and did not provide limits for, nor require monitoring of, a range of parameters of environment and human health concern.
- impact within and beyond the boundaries of the activities themselves

People:

Various personal testimony provided show:

- Failure of the government to identify the health risks
- failure to assess the health risks in association with the impacts on the environment
- failure to properly assess the environmental impact and therefore integrate the environmental assessment with well known associated health impacts
- Failure to monitor and measure the impact on the health risks
- Failure to act to protect people when people have raised concerns with the government regarding the experiencing of health impacts

¹⁸ G4.13 Simone Marsh Testimony

INFRASTRUCTURE

The Evidence provided to address this subcase is hosted at the website: [Session 2 - Infrastructure](#)

Summary of Evidence Provided

The vast infrastructure and the way it is pock marked across the landscape industrialising the rural amenity¹⁹ has adverse physical and economic impacts on property and property values attributable to activities and exposures associated with unconventional gas.

Principle 10

States should provide for access to effective remedies for violations of human rights and domestic laws relating to the environment

- Loss of property value attributable to impacts of the industry and practices and is not in any way addressed by “compensation”. Dr Oswald Marinoni of CSIRO identified that Farmers are losing an average of \$2.17 million due to the mining of coal seam gas. That the value in their land is lost over a 20 year period where CSG activity occurs. Most significantly due to loss of agricultural production from access tracks and infrastructure lease areas.²⁰
- Infrastructure and associated noise, dust, light, traffic, loss of privacy , impact to economic viability, impact on business methods, encroachment on time, compromise families ability to enjoy the use of their property²¹
- Lack of baseline testing, industry exclusive access to data, and inequitable position of the landholder means that pursuing remedy for impact post signing a CCA is nearly impossible and cost prohibitive.

Principle 8

To avoid undertaking or authorizing actions with environmental impacts that interfere with the full enjoyment of human rights, States should require the prior assessment of the possible environmental impacts of proposed projects and policies, including their potential effects on the enjoyment of human rights

- the timber cleared for the 40 to 60 metre corridor cut through the scrub for pipeline Right-Of-Ways is simply pushed to each side hard up against the scrub forming an impenetrable wall meaning rural fire services cannot get through. The long straight open areas form a wind channel that will increase the speed of any fire along its edge. At the same time the backfill covering the pipelines is not compacted meaning heavy rural fire trucks cannot cross them. Rural fire officers have had trucks sink into this covering in fine dry weather. The rural landscape area is literally criss-crossed with these pipelines.²²
- In the United States of America rural fire fighters are equipped with personal gas detectors to enable them to escape potentially lethal areas. Here rural fire services officers are

¹⁹ I2.2 Heather Geary Testimony

²⁰ C5.8 Karen Auty Testimony refers to Marinoni & Navarro Garcia, 2016. A novel model to estimate the impact of Coal Seam Gas extraction on agro-economic returns. *Land Use Policy*, 59, pp.351–365

²¹ I2.0 Shay Dougall Testimony

²² I2.1 Peter McGowan Testimony

expected to send crews into the gas fields with no detection equipment and no training in this field.²³

- Because of the lack of mitigation of the impact of the infrastructure, the inability of the industry to coexist with the original land users results in vast amounts of land being purchased by foreign companies and the major land use being changed from agriculture to industrial.²⁴ This has a consequential effect on the social fabric of the community (See Session 5)
- CSG Activities authorised in an existing and evolving unconventional gas contamination zone²⁵

Principle 12

States should ensure the effective enforcement of their environmental standards against public and private actors

Lack of risk assessment, design and cost margins means that infrastructure is not designed to the standard that addresses the impacts, ie no valves in 90km of pipework, high point valves designed to leak CSG water and unmeasured gas.

Using Noise impacts as an example of the impact of infrastructure²⁶

- failed to enforce environmental standards, undertake prior assessment of the impact and provide access to adequate remedies
 - Noise levels dictated in Environmental Authorities are arbitrarily established with no acknowledgement of the pre existing conditions for the landholder
 - the standard set for compliance is already beyond what is acceptable for the landholder
 - no baseline is taken for the landholder to demonstrate resultant impact
 - there is no satisfactory standard to address the cumulative impacts of multiple company activities and impacts from nearby landholder and low frequency noise
 - noise modelling used by industry is only 'modelling' real time data is not used and is not available to landholders when seeking remedy
 - noise modelling data is not made available to landholder prior to signing CCA
 - Landholder required to source own experts to establish impact
 - procedure for making complaints to the the regulator are complicated and must be proven as a valid complaint to be accepted
 - regulator communicates with industry regarding complaints excluding the landholder
 - regulator asks industry to investigate themselves over complaints
 - regulator does not undertake testing in response to complaints in a timely manner
 - any breaches pursued by the regulator are undertaken independently of the landholder meaning the landholder does not receive any remedy from the complaint or breach.

²³ ibid

²⁴ I2.0 Shay Dougall Testimony

²⁵ G4.2 Shay Dougall Testimony

²⁶ I2.3 Nothdurft Testimony

- Landholder requires to enter Freedom of information processes to gain data relating to their own circumstances

The geospatial dispersion of the industry makes the impacts of the infrastructure more insidious as it effectively results as an industrialisation of the landscape and is a petroleum industry operating literally in peoples backyards.

CLIMATE AND ENVIRONMENT

The Evidence provided to address this subcase is hosted at the website: [Session 3 - Environment and Climate Change](#)

Summary of Evidence Provided

Principle 1

States did not ensure a safe, clean, healthy and sustainable environment in order to respect, protect and fulfil human rights.

The Scale of the industry and its footprint rolling across ground water dependant ecosystems, agricultural land and peoples homes does not ensure a safe, clean, health and sustainable environment.²⁷

Failure of the precautionary approach: It is anything but a precautionary approach being taken to coal seam gas development in Australia: the technology is novel, not yet standardised, and poorly understood; the uncertainty about consequences is huge and the worst-case potential for harm is enormous; and the scale of planned development is so large that cumulative impacts are not even part of the permitting process. Surely the definition of human and earth rights impacts.

The government lacks vision and planning in allowing unconventional gas to have primacy over land and water use in areas of high agricultural value and puts under further duress an already stressed ecological system. It is vitally important that priority land and water use is protected for the long term and not diluted in favour of unsustainable fossil fuel resource access in the short term. Protecting our most productive agricultural land (a combination of soil fertility, climate and availability of high quality water from aquifers) for future generations is critically important, as well as providing security for the farming community.²⁸

Principle 11

States did not establish and maintain substantive environmental standards that are non-discriminatory, non-retrogressive and otherwise respect, protect and fulfil human rights

Approvals Process

- The planned scale and scope of the development makes the whole question of impact more complex - the projects are licenced in a piecemeal method but cumulative impacts are not

²⁷ E3.0 Shay Dougall Testimony referring to <https://youtu.be/1w1o1JCXeU>

²⁸ E3.3 John Standley Testimony

predictable and potentially more systemic when environmental systems are subjected to disturbance on such a scale²⁹

- Even if the Government was to convince the tribunal that concerns regarding climate change matched the community's and they referred to the Environmental Impact Assessment process as evidence of the rigour to which the industry was held, and the impact managed, they would still fail in this regard.
- Simone Marsh³⁰ pre-empted these failures in her multiple whistleblower submissions (which the government has received and read) and provides in her submissions evidence of a list of lack of baseline data, scientific rigour and star chamber protective behaviour to the fatally flawed 'adaptive management' matra that the government hangs its hat on as permission for allowing csg to be rolled out.
- That EIA process addresses individual projects may produce a number of constraints, BUT EIA are site-specific, temporally constrained and limited in coverage of cumulative environmental effects. The current method fails to identify the aggregate of environmental effects may be greater than the sum of the individual effects.
- Strategic environmental assessment in Australasia, identifies that EIA misses regional impacts, cumulative impacts of multiple projects over time, and may allow environmental death by a thousand small cuts.³¹
- Dr Gavin Mudd, Monash University School of Engineering, says: "Claims are made that things are safe or that it's very low risk, but often that's based on assumption, that's not based on good field data and long term monitoring of existing coal seam gas projects. ... there are big issues that the industry and science hasn't really addressed yet... There's a whole bunch of things in the research field where we would like to see extensive data to back up various claims, are really missing at the moment so I think that's a big weakness." ³²
- Queensland coal seams targeted for CSG extraction are located at a shallow depth of approximately 300m (although can be less).¹⁹ Up to 40% of the more than 40,000 gas wells planned for Queensland are likely to be hydraulically fractured. Various papers report on the height of upward propagating hydraulic fractures. Davies et. al (2013) reported that "it has long been known that fracture systems of 1000 m extent occur in sedimentary rocks", and stimulated hydraulic fractures may extend for 600m vertically. Despite the likelihood of induced fractures extending vertically, there appears to be no limits on the vertical distance between the location at which hydraulic fracturing activities are occurring within coal seams and the overlying surface waters or groundwater resources.³³

²⁹ E3.0 Shay Dougall Testimony referring to Professor Alan Randall

<https://www.smh.com.au/politics/federal/is-coal-seam-gas-worth-the-risk-20110819-1j20j.html>

³⁰ H4.13 Simone Marsh testimony

³¹ H3.0 Shay Dougall testimony referring to

-Marsden and Dovers (2002) Marsden, S. & Dovers, S. (2002) Strategic environmental assessment in Australasia, Federation Press, Annandale.

-Vickas, M., McManus, P., Dey, C. (2015) From Seam to Stove GHG Assessment and the CSG Industry in Australia

-R T Drinkwater, 2015, Understanding Environmental Risks Associated With Unconventional Gas in Australia. Master of Science (Engineering) Thesis, Department of Civil Engineering, Monash University, Clayton, VIC, Australia, July 2015, 115 pages.

-Navi, M. et al (2014)Coal Seam Gas Water: Potential Hazard and Exposure Pathways in Qld

³² G4.13 Simone Marsh Testimony refers to Dr Gavin Mudd, as quoted by Joan Shoe bridge, ABC North Coast (8 November 2012). Clear science or muddy waters? Academic questions CSG Research. Retrieved from

<http://www.abc.net.au/local/stories/2012/11/08/3628589.htm>

³³ H4.13 Simone Marsh Testimony

- The 'Final Advice' regarding QGC's Queensland Curtis LNG Project EIS, from the Queensland Department of Natural Resource Management (DNRM) to The Coordinator-General on 2 June 2010, is found within Right To Information document 12-330, File C, Part 1. It notes: "...there are aspects of the QCLNG Project where insufficient information has been provided in the EIS and SEIS for DERM to assess the potential environmental impacts..." The advice provides a detailed and substantial list of outstanding information.³⁴

Ecological impact

Approvals were awarded to the CSG industry in Queensland and by the Commonwealth without prior adequate knowledge of ecological impacts on terrestrial, groundwater and marine environments. This has had a number of serious flow-on consequences for the ecology of the region³⁵:

- Assessments were undertaken using largely unverified site data and without consideration of indirect (offsite) or cumulative impacts.
- Assessments undertaken by industry and government indicate high risk for (a) impacts on groundwater from gasfield and transmission line development and (b) impact on the marine environment from the extensive harbour development.
- Growing anecdotal evidence suggests that 'unintended' impacts have and are still occurring, particularly on the marine animals of Gladstone Harbour, part of the GBRMP; from surface gas seepage and water table drops and their impacts on natural and human users particularly in the Condamine area; and from the extent of habitat fragmentation and local surface water contamination throughout the gasfields.
- Offsets have not taken into account these indirect, marine and unintended impacts, though could have been through an identification of a spatial impact and by using a precautionary approach. These impacts are likely to be considerable but remain unquantified. Offsets which were enforced on companies are based on poor information. Their requirement is now contested by the companies involved. As a result, impacts on sensitive (including IUCN-listed) matters remain unresolved many years later and consequently have failed the 'no net loss' test.
- The intended expansion of gas fields by all companies will further exacerbate the existing issues on a regional scale in a bioregion already widely recognised as being under stress. Long-term consequences remain unknown.
- The key issue of impacts on groundwater and its ecological consequences could never have been assessed properly due to the lack of detail provided by the companies. Recognition of many of these short-comings by the Independent Expert Scientific Committee in December 2014, along with other consent anomalies, should throw into question the legitimacy of the original approvals.
- Given these circumstances, a judicial review of the way the development of the unconventional gas industry was conducted by Queensland and Commonwealth authorities is urgently required.

Discriminatory

- Australia is already being called out by our neighbours as turning our back on those who are to be the first to be effected by the government / industry decisions to not keep fossil fuels in the ground.³⁶

³⁴ H4.13 Simone Marsh Testimony

³⁵ E3.4 David Paul Testimony

³⁶ E3.0 Shay Dougall Testimony referring to

Principle 16

States did not respect, protect and fulfil human rights in the actions they take to address environmental challenges and pursue sustainable development

The government made a series of choices that selected fossil fuels over renewables and the creation of a gas industry in particular that challenges sustainable development and climate change.

- From inception, this industry has not been founded on any principle concerned with human rights or with sustainable development but with corruption - see whistleblowers testimony regarding official misconduct / misfeasance of legislated approvals process
- the government made the decision to pursue this industry despite environmental and human rights concerns by legislating a portion of electricity production be from gas to having productivity commissions into the easing of red and green tape for the industry (see Session 4 also)³⁷
- The Government were even so lead by the desires of multinationals instead of the good of the country that in their dash to create an export industry for gas they destroyed the supply and demand basis for pricing and eliminated the domestic supply that had previously been legislated.³⁸
- Exploiting shale oil and gas is completely incompatible with the steps we need to avoid climate change impacts.³⁹
- Australia's carbon budget and commitments under the Paris agreement to limit warming to less than 2 degrees. It has been calculated that two thirds of existing fossil fuel reserves need to remain in the ground in order to have even a 50% avoid 2 degrees warming. Despite this, the Draft Report of the Scientific Inquiry into Hydraulic Fracturing in the Northern Territory examines a gas production scenario that could result in an increase of 5% of Australia's national emissions. A submission from the Northern Territory Department of Primary Industries and Resources presents an oil and gas production scenario that would represent an increase of over 20% of Australia's total annual emissions. Incredibly, the draft report lists the consequences of these changes in emissions as "low" and the risk as "medium".⁴⁰
- In terms of impact on the environment and climate and resultant impacts on human rights, the production of unconventional oil and gas can lead to very high emissions of methane, a powerful greenhouse gas. See evidence contributed detailing that the industry must minimise methane emissions, and also that methane emissions are not appropriately regulated, monitored and reported. Work by the University of Melbourne shows that the

³⁷ E3.0 Shay Dougall Testimony

³⁸ G4.13 Simone Marsh Testimony refers to Michael West publication <https://www.michaelwest.com.au/shell-plays-australian-gas-customers-for-mugs/>

³⁹ G4.13 Simone March Testimony refers to TAI publication <http://www.tai.org.au/content/cooked-gas>

⁴⁰ G4.13 Simone Marsh Testimony refers to TAI publication <http://www.tai.org.au/content/cooked-gas>

-McGlade and Ekins (2015) The geographical distribution of fossil fuels unused when limiting global warming to 2 °C, accessed 15/3/18, <https://www.nature.com/articles/nature14016>

-Scientific Inquiry into Hydraulic Fracturing in the Northern Territory (2017) Draft Final Report, <https://frackinginquiry.nt.gov.au/inquiry-reports/draft-final-report>

current reporting of methane emissions by the Australian unconventional oil and gas industry and by the Australian Government is inadequate.⁴¹

PUBLIC PARTICIPATION / GOVERNMENT SUBSIDISATION

The Evidence provided to address this subcase is hosted at the website: [Session 4 - Government Subsidies](#)

Summary of Evidence Provided

“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)

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.⁴²

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; and
- Avoidance of investing in alternative energy industry.

Legislative bias exhibited by the government is show through:

- 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

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.

⁴¹ E3.1 Tim Forcey Testimony

⁴² G4.0 Shay Dougall Testimony referring to The Australian Institute Report: Too Close for Comfort

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".⁴³

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.

Principle 4

States did not provide a safe and enabling environment in which individuals, groups and organs of society that work on human rights or environmental issues can operate free from threats, harassment, intimidation and violence

The government licences a multinational to access gas that is under the properties of families.⁴⁴

- The multinational companies must access your private property and place infrastructure on your property in order to access the gas
- 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.
- 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

⁴³ G4.0 Shay Dougall Testimony referring to Submission 70 from Doctors for the Environment Australia Inc. David Shearman, Hon Secretary

⁴⁴ G4.0 Shay Dougall Testimony

Principle 5

States did not respect and protect the rights to freedom of expression, association and peaceful assembly in relation to environmental matters

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. ⁴⁵

Principle 7

States did not provide public access to environmental information by collecting and disseminating information and by providing affordable, effective and timely access to information to any person upon request

- 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.
- there is a significant amount of documentation that the landholder must personally request by reviewing and understanding complex Environmental Authorities just to 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 the 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
- 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 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 arrangement agreements

- 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)

⁴⁵ G4.0 Shay Dougall Testimony referring to Hugh de Kretser- <http://www.smh.com.au/comment/nsw-antiprotest-laws-are-partof-a-corrosive-national-trend-20160321-gno10h.html>

- 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?
- In November 2014 DDEC⁴⁶, at a face to face meeting of the Minister and the Environment Department, I asked the following question on behalf of Western Downs Alliance about monitoring and testing of CSG – “We are assured that this is a highly monitored and regulated industry yet anyone that wants the actual data of the monitoring or testing that has been done cannot access the data they need. Water use (both extraction and disposal) by the CSG industry seems to be largely self-regulated, poorly monitored and lacks transparency. Why? Will the Department publish or make available results from monitoring of the CSG Industry in Qld.”
I also asked “Is there a comprehensive plan to deal with the 450 000 tonnes (lowest estimate) of salt brine this industry currently produces per annum?”
These same questions were asked again in February 2015, August 2015, March 2016, November 2016, April 2017 and October 2017 at face to face meetings with the Ministers of the day and Departmental officials.
To date, despite reassurance that the answers would be available after each occasion, the only official responses we have received have directed me to the relevant legislation only, and not to the data. This, in our view, is an impediment to any individual or group seeking to protect themselves or the environment from harm. A copy of their initial reply to our questions is appended to this submission.
- CSG Activities authorised in an existing and evolving unconventional gas contamination zone⁴⁷

Principle 9

States did not provide for and facilitate public participation in decision-making related to the environment and take the views of the public into account in the decision-making process

Social Licence

- Nearly 23,000 submissions were received responding to Santos’ Environmental Impact Statement (EIS), smashing all previous records for development projects in Australia. Submitters had to state at the outset of their submission whether they supported or opposed the project. Only 300 (1.3 per cent) supported the project, with 98.7 per cent opposed. Even in the local area (Narrabri, Wee Waa and Boggabri postcodes), 319 opposed the project, versus 180 supportive.⁴⁸ And yet, the government is still pursuing the project and additional pipelines to service it.

⁴⁶ G4.10 DDEC Testimony

⁴⁷ G4.2 Shay Dougall Testimony

⁴⁸ G4.14 People 4 the Plains Testimony

- 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.⁴⁹
- 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.⁵⁰
- The adaptive management theory upon which the entire industry is premised is implemented in a flawed manner.
 - It does not have 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.⁵¹

Dr GERALYN McCARRON⁵²

- In Queensland there has been an abject failure of public participation in decision making. Legislation was rapidly changed to facilitate the gas industry with no meaningful opportunity for the public to participate during the decision-making and legislative process
- As an example, the The Mines Legislation (Streamlining) Amendment Bill 2012 was introduced into Queensland Parliament on 2nd August 2012. It was closed to written public submissions on 8th August 2012. That was 6 days for public input – over a long weekend and during the Olympics
- The Mines Legislation (Streamlining) Amendment Bill 2012 amended
 - the Acquisition of Land Act 1967,
 - the Geothermal Energy Act 2010,
 - the Environmental Protection Act 1994,

⁴⁹ G4.13 Simone Marsh Testimony referring to The Australian Institute Report: Too Close for Comfort and Michaelwest.com.au article CSG Lobbyists: Untangling the web of influence peddlers

⁵⁰ G4.0 Shay Dougall Testimony referring to Submission 56 Unconventional Gas Mining Inquiry 2013: EDO Australia

⁵¹ G4.0 Shay Dougall Testimony referring to "Regulating Coal Seam Gas in Queensland: Lessons in an Adaptive Environmental Management Approach" by Dr Nicola Swayne

⁵² H1.3 Dr GERALYN McCARRON Testimony

- the Geothermal Energy Act 2010,
- the Greenhouse Gas Storage Act 2009,
- the Mineral Resources Act 1989,
- the Petroleum Act 1923,
- the Petroleum and Gas (Production and Safety) Act 2004 and
- the Work Health and Safety Act 2011 and to make consequential amendments of
- the Aboriginal Cultural Heritage Act 2003, the City of Brisbane Act 2010,
- the Land Court Act 2000,
- the Local Government Act 2009,
- the State Development and Public Works Organisation Act 1971,
- the Torres Strait Islander Cultural Heritage Act 2003 and
- the Wild Rivers Act 2005.

SOCIAL AND CULTURAL

The evidence provided to address this issue is hosted on the web in [Session 5 – Social and Cultural subcase](#).

The unconventional gas industry represents a highly complex set of problems, marked by competing interests and incomplete knowledge of consequences. These challenges are sometimes termed ‘wicked problems’.⁵³

Summary of Evidence Provided

Principle 3

States should prohibit discrimination and ensure equal and effective protection against discrimination in relation to the enjoyment of a safe, clean, healthy and sustainable environment

The transformation of rural landscapes into industrialised gas fields profoundly changes the lives of the people who live there. But the gas experience is not necessarily stressful, and is not seen as undesirable by everyone. It depends on your perspective, and whether you are a gas field winner or loser.⁵⁴

- People who profit from gas mining tend to consider it a good thing. If they profit enormously, they think it is a very good thing. Company executives, shareholders, and employees see gas mining as their livelihood. The economic benefits ripple out to contractors, hoteliers, accommodation providers, sex industry workers, drug dealers, some property owners, and others who benefit financially.
- The people threatened by, or who suffer losses or injuries from, gas field development are most at risk of developing symptoms of emotional distress and physical ill-health.
- “We have been forced away from our family life, our recreational life, our businesses and our farms as we have been forced to educate and inform ourselves about an industry forced upon us. We have been under unrelenting stress for the past three years and it has taken a toll. All members of my immediate family have found it difficult to reconcile our desire for our future in the area with the thought that if this industry proceeds we will be living in an industrialised wasteland. We have been faced with the heart wrenching prospects of our young adult children making the unthinkable decision of setting up homes away from this area. We are faced with the stress of not being able to make future financial plans for our farming enterprise and having to put on hold any agricultural development we had planned for. We are faced with the prospect of our farm being de valued and discussions with local real estate agents have supported this.”⁵⁵

Principle 6

States should provide for education and public awareness on environmental matters

Not only is the government failing to be honest with the public about this industry and climate change but it is failing to be honest in the education system, the industry has been given unfettered

⁵³ C5.0 Shay Dougall Testimony referring to (Rittel and Webber, 1973; Head, 2008a) and Prioritising indicators of cumulative socio-economic impacts to characterise rapid development of onshore gas resources Vikki Uhlmann, Will Rifkin, Jo-Anne Everingham, Brian Head, Kylie May 2014

⁵⁴ H1.1 Dr Wayne Somerville B.A.(Hons.), M.Clin.Psych., D.Psy.Clinical Psychologist

⁵⁵ G4.6 Boultons testimony

access to high school student curriculum by providing a unit in year 11 and 12 biology. This is based on the Environmental impact statement process and given the previous evidence given regarding the failure of the system, it is questionable as to the value and relevance of this indoctrination.⁵⁶

Principle 13

States should cooperate with each other to establish, maintain and enforce effective international legal frameworks in order to prevent, reduce and remedy transboundary and global environmental harm that interferes with the full enjoyment of human rights

Australia has failed to learn from the devastating experience of unconventional gas in America.

Australian companies are undertaking the same activities with the same impacts in Latin America.⁵⁷

Australia's Pacific Islander neighbours will be the first to experience climate change impacts as a result of the government's failure to manage the emissions from this industry.

Principle 14

States should take additional measures to protect the rights of those who are most vulnerable to, or at particular risk from, environmental harm, taking into account their needs, risks and capacities

In order to attempt to arrest the rising discontent the Queensland Government undertook the only study they did in ten years in 2015, Review of socioeconomic impacts of CSG in Queensland.

The conclusion of the report was the same as it began, (the gratuitous picture of the industry on the cover tells it all) it was all about how the 'benefits' of the industry must far outweigh any impacts. There were no concrete steps to address or acknowledge the real impacts. And outrageously the report was prefaced with the following statement: "[we] made a conscious decision not to meet with local landholders and community groups."⁵⁸

In fact government principles and policy in the last 10 years has demonstrated Social Impact Assessment processes has been portrayed as an obstacle to the expansion of the resource industry.⁵⁹

There was insufficient communication between the Unconventional Gas Industry, Local Government and the business investors on the timeframes for the development of the coal seam gas infrastructure and hence the development phase was completed well before the expectations of investors were realised. These towns are now experiencing a significant downturn in business, businesses are either collapsing or closing down and as a result there is a significant level of social

⁵⁶ qmea.org.au

⁵⁷ E3.5 Juan Olssen Testimony

⁵⁸ C5.0 Shay Dougall Testimony and H1.3 Dr Geralyn McCarron Testimony

⁵⁹ C5.0 Shay Dougall Testimony referring to Journal of Economic and Social Policy Volume 15 Issue 3 Special Edition: The Economic and Social Policy Implications of Coal Seam Gas Mining (CSG) in Australia 2013, Kim de Rijke, The University of Queensland

disruption. This “boom & bust cycle” has left a significant financial and social cost in these small communities.⁶⁰

Principle 15

States should ensure that they comply with their obligations to indigenous peoples and members of traditional communities, including by:

A. Recognising and protecting their rights;

B. consulting with them and obtaining their free, prior and informed consent;

C. Respecting and protecting their traditional knowledge and practices;

D. Ensuring that they fairly and equitably share the benefits from activities relating to their lands, territories or resources.

Mining, coal seam gas (CSG) production and associated developments have a range of impacts on Traditional Owners’ country, native title rights and interests and cultural heritage which are often irreversible. Despite this, Traditional Owners have been consistently unrepresented and under-acknowledged in development assessment and approval processes...Effective and genuinely representative involvement in these approval processes is vital to maintaining, strengthening, and transmitting to future generations Traditional Owners’ history, beliefs and their traditional laws and customs, in the spirit of the people.⁶¹

⁶⁰ C5.0 Shay Dougall Testimony and C5.8 Karen Auty Testimony

⁶¹ G4.1 Daniel Tapp testimony and C1.13 Sharon Lohse testimony

ADDENDUM

Catalogue of Testimony: Spreadsheet of testimony submitted