



## ***Darwin – Justin Tutty***

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**Speaker: Justin Tutty**

Justin Tutty: Yeah, good day. My name's Justin Tutty.

Hon. Justice Pepper: Again, Mr. Tutty, if you can just either move the bit microphone a bit closer, just ... excellent, thank you.

Justin Tutty: This is the third time we've met. Thanks again for all your work. I don't endorse your report. I don't in-particular the chapter addressing the heavy carbon burden of this industry, which I identified originally as an outright disqualification. It does not seem to have benefited much from public participation. I find it deficient and sloppy.

Rather than going over a second time my objections, I'm going to take on the distasteful task of looking at your recommendations and trying to tune them up a bit. I can see a lot of very useful recommendations if this is to go ahead. I can see a number of others, which could be a bit better with a little bit of...

Hon. Justice Pepper: That's what we're really keen to hear about is, where the improvements can be made or where there are things that you disagree with.

Justin Tutty: I do refer you to our previous conversations, and I do commend the previous two witnesses. A couple of really obvious, but missing recommendations ... I note that the inquiry hasn't recommended that the NT government institute carbon emission reduction in targets. It's a disgrace that the NT has abolished the carbon targets. Most other jurisdictions have targets. It really ... Sorry, one second.

The other obvious recommendation that's missing is regarding offsets. There's some discussion about carbon offsets because in the recommendations. It alludes to the ... what is it? NGR, safeguard mechanism. We're told it's likely that any new unconventional shale gas facilities will be covered by the safeguard mechanism. Offsets should be a certainty not just a likelihood, given uncertainty about field-wide future of emissions, noting recommendations for monitoring. The NGR appears inadequate, because it allows producers to nominate a standard bottom up factor that really allows them to choose the weakest estimate for their project to offset, and we know we can do better.



We're also told that the mechanism is its financial incentives to encourage companies to find their own least cost and effective emission reductions approaches. I don't think that that should be our objective. We should consider the NT's good experience of multiple benefit offset activities such as habitat management and bush fire abatement.

We should pursue, for example, specific offset commitments that represent a net carbon saving and also empower traditional owners to work on country and provide compounded environmental benefits like habitat protection. So, I come upon the inquiry to make a clear, ambitious recommendation that ties generous, multi-benefit offset actions to top-down measurements of the industry's pollution.

If there was just one piece of wise improvement that I'd like to see to your set of recommendations, that would be diligent, explicit recognition of the significance of pre-production impacts and then I was pleased to hear you've already heard a bit on that today. I think it was the fellow from AFANT describing it quite well.

Many good recommendations are made with a qualifier along the lines of by or before production. There's a few good recommendations that don't specify any good sequence, where we should specify before any further activities, including exploration, and including on existing leases. Natural gases, particularly higher risk and impact from pre-production activities than other resource exploitation activities do. This is one of the reasons the existing regime for resources is inadequate for addressing the peculiar hazards and harms that this new industrial practice presents. It's essential that implementation of baseline monitoring and new management framework are achieved before any further activity, rather than merely before production. I mean, in some places, to some extent it's already too late because there's already been activity. But, let's draw the line.

Just quickly, 5.6 doesn't specify, recommendation 7.1 about the Water Act. It says, "before production". Let just see ... 7.3 doesn't specify the guidelines for risk assessment a SREBA. It's a bit sloppy. We have recommendation 7.4, which first identifies this SREBA says before any production licences are granted in the Beetaloo. Then, 8.1 says SREBA must inform any decision to release any land for exploration. Then, 15.1 says SREBA be undertaken prior production licence. So I think these need to be tidied up. Regarding carbon, 9.2, 9.3 both say, "before production". Well that's not good enough. 11.8 about cultural impacts that talks about production, too. Putting 14.16 ... 14.32 ... Those are the ones I found. I think you should audit all your recommendations with that perspective.

I see good recommendations around water, which is quite appropriate knowing that we have not been able to make a definitive assessment of the risk of unsustainable ground water use. Unacceptable contamination of ground waters or unacceptable impact on aquatic ecosystems. Let's look at 5.4, regarding well integrity. That's something I don't know much about, but I think you've heard about it today maybe? It references a well barrier plan, containing program, performance standards, with specific reference to



protection measures for beneficial use aquifers. I draw your attention to the lax state of water planning in this jurisdiction. Even, just the declaration of control districts moves very slowly. So, the presence of defined beneficial use is no real measure of relative value of a resource. We should not look to the current poor regime as any indicator of priority. Rather, we should apply the highest standard to protection of all water resources. Recommendation 5.6, regarding waste water ... I just thought it could be a bit more prescriptive. Develop a waste water management framework. That made me think of the Waste Management Pollution Control Act, which is a taken fake licencing scam, which it's usually applied as a formality post-approval. You fill in your form and pay a fee, and get your licence. That kind of fits that very loose recommendation. I urge you to define at least some fundamental features of a robust management framework. The absence of any treatment and disposal features be addressed as a matter of priority. What does that mean? Addressed? Priority? The inquiry believes that the treatment and disposal facilities are a necessity, and let's be specific and make that a pre-requisite. Again, ahead of any future works, not just a priority.

Condition 7.1 to form the Water Act, requiring fee-based extraction licences. Again, water planning in the NT is quite immature. This could have a selling licence to extracting aquifer without planning or controls without limits. So, 7.6 is important. I find there is some good solid recommendations. They're welcome. I understand to be as the requiring the allocation plan is covering the area targeted by the industry in the Beetaloo. I'm sure that existing water users in the region will welcome the opportunity to engage in a deliberative process to determine shared objectives and conservation of natural and cultural values associated with their resources. Again, this important welcome recommendation must be specified as a pre-requisite for any further activity. This is just as relevant for exploration as for exploitation. And, quality's just as important as limits. 7.2 ... Request/amend the EPBC act to apply the water trigger. Gee, that sounds good. I'm going to proceed on the assumption that we want a better outcome than having our request dually noted. Obviously, what this would mean, it'd be triggering Federal oversight of assessment. This inquiry truly believes that Federal oversight of assessment is required, and I certainly do, let's not make this a requested amendment. Let's be careful to recommend what we really want.

I've got a bunch of queries. It's a bit open-ended. How's this compatible with the recommendations about regulatory reforms? Do we envision an MOU or a new bi-lateral agreement? Does this inquiry believe that the arrangements in other jurisdictions? I think it's the independent, expert, scientific committee has the same expertise that we need in the NT. So, yeah, that one sounds good, but it needs a bit of work.

Then, to your welcome recommendations ... 12.16. Establish or enhance an independent authoritative body, an independent regulator. And, 14.3, too. Let the government develop and implement reforms that ... the reform options you've proposed. I strongly support this direction. Our problems are two-fold: the regulator has neither an inclination or capacity to actively monitor and enforce environmental requirements of authorisation. First of all, capacity for monitoring ... Well, for example, ranger uranium mine, they



do irregular routine check sampling of ground water. As things have changed on site, with major rehabilitation works, we've started to wonder about shallow water movement. And, so, maybe NT government should be cross-checking that data as well. They've come back and said, well we have to drop something if we want to pick something up.

I think maybe this panel's heard this recent news out of McArthur River where a large volume of waste was placed somewhere onsite ... totally not authorised ... was all dealt with verbally, demonstrating real disinclination to act upon breaches of authorisation. It's all very rough of the EPA to reply that they're disinclined to play this independent role, which you've identified. That doesn't mean NT government alone has capacity for it. I think we need to do a bit more work to scope out the required increase to capacity. From your options, option 1 looks good to me. But, there's currently there's an environmental law reform agenda, and a way which we wouldn't want to interfere with, and so you might want to think about how your recommendations might interfere with that.

I've got ... 14.26 ... Government considered developing and implementing a tiered regulatory model. I strongly opposed that.

Hon. Justice Pepper: I'm sorry, can you just lift your voice please, Mr. Tutty. Again, you're hard to ... you've got a lovely soft voice, and I'm, for one, at least partially hard of hearing.

Justin Tutty: I'm strongly opposed to your recommendation 14.26.

Hon. Justice Pepper: Thank you.

Justin Tutty: Philosophically, I get it. And, it might be alright in a well-defined and experienced problem domain. But, we're only beginning to think about how we might regulate this new industrial threat, and it's way too soon to be looking for opportunities proficiently allocated regulatory resources. That's all I've got for you.

Hon. Justice Pepper: Thank you. Thank you very much.

Alright, well, I have one question in relation to 14.2.6.1. Why do you strongly oppose it? That's not quite clear to me. And, I'll probably overly generalise my summarisation. So, forgive me in advance. But, the way this South Australian model works as effectively as a sliding scale. If you're a good operator, you slide down the scale in terms of oversight. If you are a bad operator, you slide up the scale in terms of oversight. That has implications for reporting fees and so on. That has proved to be quite effective in South Australia, in terms of encouraging compliance. Very effective. Everybody starts off, I should say, under the assumption that they are a bad operator, and starts off with the high levels of compliance.

Justin Tutty: I would expect that it would encourage gamification. Let's think about it in 10 years. We don't have the experience to be able to decide that someone's a good operator and that some people need less screening.



- Hon. Justice Pepper: Okay. Thank you. Yes, Professor Hart?
- Prof. Barry Hart: I just had a point of clarification on the recommendation 7.2. It's the one to do with the EPBC act. You, I think, took offence at our use of the word "request". I should remind you that this inquiry is reporting to the NT government. That's a Commonwealth act. There's nothing more than requesting that the NT could do.
- Justin Tutty: I think if you're after an outcome, let's specify what that outcome is.
- Prof. Barry Hart: We have.
- Justin Tutty: Perhaps, the first act. Well, if all you're after is requests, that has no material.
- Prof. Barry Hart: No, we're ...
- Justin Tutty: I would suggest that what we might be after would be federal oversight. Because if the request was granted, that'd be what we get. And, so I encourage you to beef up that recommendation to be more substantial and to more directive towards that outcome.
- Hon. Justice Pepper: Okay, I think it might be a matter of semantics. But, I think, in fact, we're all on the same page in respect of what we want the objective to be, which is, yes, that the water trigger apply to shale as well as coal seam gas, we've certainty written to the minister, suggesting that consideration ought to be given to that.
- Justin Tutty: So, let's specify whether that would engage the IESC. Let's specify the mechanism by which that would happen.
- Hon. Justice Pepper: Understood. I understand that submission. Any further questions? Yes, Dr. Beck?
- Dr. Vaughan Beck: Thank you for your comments and observations, and acknowledge that you have a long-standing and passionate concern for greenhouse gas emissions and associated temperature warming associated with our global warming. You also made some suggestions as to how this could be some policy initiatives, I think one was recommending that the NT government introduce carbon reduction targets. And, you also mentioned potential carbon offsets and the program and some of the problems and how it might be improved. Just to, firstly, thank you for your on-going passion, but also to note that in terms of the terms of reference that the panel is operating under, we're constrained to the issue of shale gas operations, and are not in a position to make recommendations that go beyond that. But, your observations are noted.
- Justin Tutty: Okay. So, I imagine that would apply to a recommendation for targets. But, not offsets. Am I following you?



Dr. Vaughan Beck: Sorry, what I'm saying is both those propositions that you're putting are beyond the scope of this inquiry.

Justin Tutty: Really? You do not feel empowered to recommend the nature of carbon offsets for this industry? Wow.

Hon. Justice Pepper: We'll look again at the terms of reference. But, that's my reading of it. I think the points you've raised are very good ones. And, we'll, yes, look again at the terms of reference because I do think they're good points. Any further questions?

Alright, thank you once again, Mr. Tutty, for a thoughtful and considered presentation. Certainly, the panel appreciates your engagement with it.