fracking inquiry

From: geralyn mccarron [redacted]
Sent: Saturday, 24 February 2018 6:34 PM
To: [redacted] fracking inquiry
Subject: further submission to the Northern Territory fracking Inquiry
Attachments: Critique of Interim Report 23 Feb 2018.pdf; Relevant domestic experience with the unconventional gas industry.pdf; The Human right to a healthy environment.pdf; Moratorium .pdf

Dear [redacted]
I would like to make a further submission to the Scientific Inquiry into Hydraulic Fracturing in the Northern Territory in the form of the attached four documents. Please note that within the document "relevant domestic experience with the unconventional gas industry" I provide links to two videos and a slide show which I request be considered part of my submission. I request that the videos and slide show be uploaded to the Inquiry website.
thank you
Geralyn McCarron

Additional Submission to the Scientific Inquiry into Hydraulic Fracturing

Critique of Interim Report

The interim report has approached the issue of unconventional gas in the Northern Territory in a piece-meal fashion, working on the flawed assumption that the very large number of individual risks can simply be controlled by a very large number of individual, disparate regulations. This is in direct contradiction to the stated intent of the inquiry to assess cumulative and long-term effects, as articulated in TOR 1:

> *"Assess the scientific evidence to determine the nature and extent of the environmental impacts and risks, including the cumulative impacts and risks, associated with hydraulic fracturing of unconventional reservoirs and the Associated Activities in the Northern Territory;" (emphasis added)*

The Inquiry must not only consider simple responses to individual risks but also overarching frameworks that regulate (and, when necessary, actively inhibit) the operation of the unconventional gas industry, especially when *the total impact* of such activities pose an unacceptable risk. The interrelated nature of the hazards posed by potential gas development means that failure (or even partial failure) of multiple risk controls can have catastrophic environmental and human health consequences, a conclusion that is missed in "tit-for-tat" regulatory approaches.

In addition to the above points, it is incongruous that the Inquiry should have actively acquired data on the future economic trajectories for the NT (over an impressive 25 year period, from 2018 to 2043) based on five attractively named development scenarios (still, calm, breeze, wind and gale) when it has summarily failed to assess the cumulative health and environmental risks over the same development scenarios/periods. To restate the obvious, "The Scientific Inquiry into Hydraulic Fracturing in the Northern Territory" has, as its prime directive, the aim of assessing the "*environmental* impacts and risks" of the unconventional gas industry. A broad reading of methodology point 6 ("consider the principles of ecological sustainable development…") could justify the inclusion of economic data, but only alongside a thorough assessment of environmental risk (which has not occurred). How the Inquiry chooses to spend its limited time and money is, of course, at its own discretion. However, it is disturbing that Justice Pepper appears willing to entertain topics effectively outside the remit of the Inquiry, and yet insists on a narrow, black-letter reading of the terms of reference to avoid considering legitimate regulatory measures (such as moratoria) which would mitigate the cumulative environmental and health effects. That the topics being included are typically used to advance the case for unregulated unconventional gas development in other jurisdictions is also troubling, with such conduct preempting the findings of the investigation and undermining the essential purpose of the Inquiry. Lastly as Dr Schultz has elegantly noted, the development scenario is not wind power but gas and more appropriate labels for both the economic and environmental circumstances would therefore be whiff, smell, stench, and asphyxia.

In the Interim report, the Inquiry considers individual regulations as the solution to risk management, without considering the ultimate regulation that would ban the industry. However if the Inquiry does indeed consider regulation to be the solution to risk management, regulation itself must be assessed for risk especially in terms of compliance and adequacy. This necessarily follows from the Inquiries directive to assess the *cumulative* risks associated with unconventional gas development. Regulatory risks (and responses to such risks) that should be explicitly considered include:

- Regulatory capture,
- Undue influence and corruption,
- Regulatory uncertainty,
- Under resourcing of regulatory bodies,
- Inadequacy of reporting, monitoring and enforcement.

The contemplation of such scenarios is not alarmist; the risks posed by unconventional gas development are uniquely complex, geographically widespread and enduring to the point of permanency. Furthermore, the assessment of the risk of corruption and regulatory failure is commonplace in other spheres of public and corporate life, though perhaps assessment of the risk of corruption and regulatory failure is conspicuous by its absence in the unconventional gas industry. The short-term political cycle is ill-equipped to handle such profoundly difficult problems, and so it is essential for the Inquiry to not only consider effective regulations but also robust methods of attenuating risk long into the future (interrelated controls which cannot be individually unwound, periodic large-scale inquiries to ensure compliance, etc).

It is my opinion that implicit in the role of the Scientific Inquiry into Hydraulic fracturing in the Northern Territory is the duty to advise on the totality of the risk to people and place both short term and far into the future.

Dr Geralyn McCarron
23rd February 2018

Additional Submission to the Scientific Inquiry into Hydraulic Fracturing

Moratorium

As reported by the ABC[1], Justice Pepper has stated:

> "*It is a matter for the Government to decide whether or not to lift the current moratorium, this report makes no such recommendation and will not do so*,"

This has lead to the interpretation within the press that it is "not the inquiry's role to make a recommendation to the Government on the future of the moratorium."

Implicit within the terms of reference is the directive to assess the viability of the current moratorium, as well as the prospect of implementing new moratoria in the future. The choice to avoid commenting on the current moratorium, while seeming in agreement with the terms of reference (specifically a limited reading of TOR 3 and 4, which beg a piecemeal analysis), fundamentally contradicts the principal TOR 1 ("assess the … cumulative impacts and risks…") when taken in conjunction with methodology, point 6 ("consider the principles of ecological sustainable development and the precautionary principle")

Furthermore, TOR 5 states:

> *"identify any scientific, technical, policy or regulatory requirements or resources that are in addition to the reforms being implemented through the existing environmental reform process that are necessary to reduce environmental risks and impacts associated with the hydraulic fracturing of unconventional reservoirs to acceptable levels" (emphasis added)*

This places the responsibility on the inquiry to explicitly consider a moratorium as a regulatory tool to mitigate environmental and population health risks. Specifically, comprehensive pre-disturbance baseline testing (TOR 2a-d), as well as research to inform critical knowledge gaps should be conducted prior to permitting industry activities.

It is my opinion that Justice Pepper and the Inquiry must consider that to rule out "methods, standards or strategies that can be used to reduce the impact or risk…" to the environment and human health (TOR 4a), especially when the extent and impacts of the risks may be unknown (the critical "knowledge gaps," TOR 2) runs contrary to the stated intent and spirit of the inquiry.

Geralyn McCarron
23rd February 2018

[1] http://www.abc.net.au/news/2017-12-12/nt-fracking-draft-report-handed-down/9252208

Additional Submission to the Scientific Inquiry into Hydraulic Fracturing

Relevant domestic experience with the unconventional gas industry

I appreciate the opportunity I had to speak with some members of Scientific Inquiry Task Force during their fact-finding trip to Queensland last year. However I am aware also of the frustrations of residents of Queensland's gasfields who, due to time limitations inherent in the Task Forces trip to the Darling Downs, did not have an opportunity to show the task force the up close and personal reality of "co-existence" with the gas industry.

Taking into account TOR methodology 5, *("have regard to relevant domestic and international reviews and inquiries regarding the environmental impacts and risks associated with hydraulic fracturing of unconventional reservoirs and the Associated Activities"*) I would like to submit to the Inquiry testimony received by the Australian Tribunal into the Human Right Impacts of Unconventional Gas[1], which in turn feeds into The Permanent Peoples Tribunal[2].

This submission includes two videos consisting of the first-hand accounts of affected landholders detailing the behaviour of Origin and of Santos in Queensland. Concerns include the superposition of heavy industry on previously undeveloped agricultural areas, dishonest negotiation tactics, physical and mental health impacts, environmental/property damage, a disregard for (and flaunting of) regulations, bribery and the falsification of documents. This, in my opinion, is indicative of Origin and Santos's profound contempt for the local people (who, due to the strictures of state legislation, were forced to deal with them) and the rules and regulations the unconventional gas industry professes to abide by.

- Testimony from Brian Monk in peoples' tribunal session 5.

"Sign life away" DMonk (3rd video in testimony)
https://www.peoplestribunalongas.org/session-five/
also on youtube.com at
https://www.youtube.com/watch?v=-b3vq0_KTnk

- Testimony from Mark Doyle

Open for Business -Chinchilla
Also available on youtube.com at
https://www.youtube.com/watch?v=NIEUfQlXGFc

- I also wish to submit a slide show given as testimony to the tribunal by Dr Hugh Barrett. (tribunal session 5)

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[1] https://www.peoplestribunalongas.org/
[2] https://www.tribunalonfracking.org/what-is-this-session-about/

https://get.google.com/albumarchive/112987495314114353710/album/AF1QipPFeGJzIwaj3rsPtSCciHz2LHT2VUfUAYes5jJC?source=pwa&authKey=COjrxdyuqo75Ew

I request that both videos and slide show be uploaded to the Scientific Inquiry website as part of my submission.

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23rd February 2018

Additional Submission to the Scientific Inquiry into Hydraulic Fracturing

The Human right to a healthy environment.

Australia, as a signatory to many international conventions on human rights, implicitly accepts the role of such a legal framework in advancing the health and wellbeing of its citizenry. In this context, there is a gathering movement for environmental democracy in Australia whereby a healthy environment is regarded as an intrinsic human right. Writing in The Conversation, Adjunct Lecturer Meg Good advanced the case, noting:

> *"Last year, the Australian Panel of Experts on Environmental Law recommended that environmental democracy in Australia "must have as a foundation, respect for fundamental human rights and, in particular, an enforceable right to a clean and healthy environment"."*[1]

Furthermore, there is increasingly specific recognition by the international community that the right to a healthy environment is a fundamental human right, and of States' obligation to protect the right to a healthy environment.[2]

I believe the Inquiry should consider and place considerable weight on the recent opinion within the field of environmental law, especially deliberations from the Inter-American Court of Human Rights (published in Spanish). Key points from the report include

- A clean environment is a fundamental right for all humans
- The right to a healthy environment is both an individual and collective right that protects both present and future generations
- States have a duty to respect and protect human rights, which entails an obligation to exercise due diligence so that that their acts and omissions do not cause environmental harm that infringes the human rights of persons and groups outside the State's territorial boundaries
- States have a duty under the American Convention on Human Rights to protect human rights from environmental impacts and damages caused by activities under the jurisdiction or control of the State, even when the harms fall outside their territory.
- This right should accelerate efforts to protect the rights of present and future generations from transboundary harm, including the impacts of climate change.
- States have the obligation to guarantee access to information with respect to activities that may affect the environment, the duty to guarantee the right to public participation in decisions and policies that may affect the

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[1] https://theconversation.com/should-australia-recognise-the-human-right-to-a-healthy-environment-92104?utm_source=facebook&utm_medium=facebookbutton

[2] http://www.ciel.org/news/inter-american-court-human-rights-solidifies-right-healthy-environment-decision-bolsters-access-rights-extraterritorial-obligations-precautionary-principle/

environment, and access to justice with respect to State obligations for the protection of the environment

It is incumbent on the Inquiry to reflect on such matters, given that methodology point 6 states that the body must "consider the principles of ecological sustainable development and the precautionary principle" which neatly encapsulate concepts of "intergenerational equity". Any advice given by the Inquiry with regard to the development of unconventional gas in the Northern Territory will have ramifications which will not only affect the current generation, but also future ones. Considering the potential impacts on water and climate, the outcomes of which are not readily foreseen (or, in the case of catastrophic failure, remediated), the Inquiry would be wise to place considerable weight on the opinion of both the Australian Panel of Experts on Environmental Law and the Inter-American Court of Human Rights.

Geralyn McCarron

23rd February 2018