



OzEnvironmental Pty Pastoral (representing North Star Pastoral) – Hearing Transcript

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Speaker: Warwick Giblin

Warwick Giblin: Namely those who have to live in the world created by the privileged and the elite are punished at the ballot box. On the matter of listening, the inquiry panel is to be congratulated for its efforts in seeking the views of interested parties, with the goal hopefully being of collaborative problem solving. North Star Pastoral will prosecute the case today; their consideration of the social sciences is even more important than the natural science aspects of shale gas development. Giving priority to the social sciences is crucial if all the parties are to co-design what sort of future they desire. For co-design to occur, first business and government need to give up some of their power and share it with the stakeholders and the communities to be impacted. Without the sharing of the power to allow a deliberative approach, it is unlikely there can be a lasting resolution of the shale gas debate in the Northern Territory. Your Honour, if I may suggest, you have a great opportunity to chart a landmark course for how contentious resource management issues in Australia are resolved in the future. North Star Pastoral wishes you well.

So today I'd like to touch on a few matters in our presentation. Firstly, why and how the playing field should be leveled. Secondly, why and how community engagement should be improved. Thirdly, natural science issues. Fourth, the reforms that we believe are necessary in environmental impact assessment process. And lastly, some comment on project approvals and compliance management.

The first point to make, Your Honour, is that the playing field is unlevelled. There is a power imbalance, unequivocally, and this is the root cause of the angst. I really can't say it more plainly than that, but this is the fundamental issue that the broader community and broader society has. And in the case of pastoralists, but at the same goes for all stakeholders, we don't have the time, the technical knowledge, the economic capacity, or the political clout compared to the gas companies. You know, we're up to our eyeballs in crocodiles running our business, never mind finding time to go and meet with gas companies, read documents, go to meetings. And of course we don't have the technical knowledge either to understand exactly what's been contemplated. And then the big shots, of course, economic capacity, political influence, again, we're not in the same race as the big companies.



So we would urge that pastoralists be given the right to say no to gas companies coming onto their land.

I table as evidence, Your Honour, on the issue of power imbalance, two pieces of evidence. Firstly, the Productivity Commission of 2013 report "Mineral and Energy Resource Exploration." In it, the Productivity Commission says that in terms of land access, rural land holders are disadvantaged on three counts -- one, limited experience in undertaking such negotiations, certainly compared to the gas company; secondly, the asymmetry of information regarding potential impacts; and thirdly, the imbalance of power because in most cases the land holder is legally required to allow explorers onto their land.

The then Human Rights Commissioner, Tim Wilson, in July 2015 is my second piece of evidence. He weighed in to this debate, and he said that Australian governments must give farmers more rights regarding gas companies negotiating access. And he writes a very good point. He said the issue is not with the miner so much, the miner is only doing what the law allows them to do. The issue is that the law doesn't properly respect the surface property rights of the farmer. And because of the way the laws are written. He went on to say the access effectively is not done on the basis of consent and respect for the farmer. That's when you get conflict, and he said these words, "I would argue a human rights violation."

When it comes to looking at what activities might be occurring on the surface of the land, these are the sort of things that can and do occur, and it's worth reflecting. It's more than just the odd well hit. You have the clearing of the land for seismic survey and for construction of roads and tracks. You have wells, production wells, exploration wells. You obviously have pipelines for gas. You may have pipelines for clean water, dirty water. You have power lines. Dams for clean water, dirty water. You may have a reverse osmosis plant if you're treating the water. Gas compression stations. Brine encapsulation facilities. Offices. Flares. And a key thing from the pastoralist industry is you got to have more access points onto their properties. And we have a very real concern here around unauthorised entry, weeds and pests, and the attendant bio security aspects.

We need to understand that in terms of our business, the quality of our product is paramount. And we're exporting massive numbers of cattle overseas. And of course the increased access points raise the issue of increased prospect of cattle theft. I think it's also worth acknowledging that there may well be activities that the pastoralist would normally undertake which will now require prior approval from the gas company because given the gas company's on your land, they want to know what you're planning to do as well on other matters. For example, the fine print around some of these access agreements is that the construction of buildings, yards, dams, drains, troughs, and tanks may well require the prior approval of the gas company.



And a big issue is about the weight of vehicles that you're allowed to drive over the pipeline. Certainly we've seen evidence where if a vehicle exceeds 10 tonnes then there's issues. And what if you want to construct your own track over a pipeline? All these things will require engagement and dialogue and negotiation with the company. So this is an added layer of complexity to your business and it may well impact on your agribusiness plans.

I table, Your Honour, as the next piece of evidence, a solution to the power imbalance. One is that the Agreed Principles of Land Access that was a document signed in March 2014 by Santos and AGL in New South Wales with New South Wales farmer representatives. That document in part says any land holder is at liberty to say yes or no to the conduct of gas operations on their land. We would commend that agreement to you, I have a copy of it here for your consideration.

Hon. Justice
Rachel Pepper:

Thank you.

Warwick Giblin:

Another solution around the power imbalance is unequivocally we really need the gas company to pay the pastoralist's cost associated with his or her time. Again, it's not just an hour or two here or there. This is profound, fundamental stuff. And similarly, I don't have the technical knowledge and horsepower around these things, and the companies need to be, if they're prepared to back what they're saying, then the pastoralists need to be able to have the financial capacity provided so that the pastoralists can engage the technical expertise they need. And legal support.

And on dispute resolution, yes, usually there are some funds acknowledged to be made available, but again, they're minimalist, and it does compromise the capacity of the pastoralist to fully pursue the protection of his or her rights. We seek robust compensation terms and conditions, and there's big issues of course around make good provisions, and by our security, water, and land risk, we bring those to your attention.

Moving on to looking at the different sciences. The natural and engineering science aspects, arguably it's quite quantitative in terms of hydra geology and well construction, but even hydra geology there's some predictions and assumptions obviously that have to be made. But it is not just about the natural sciences in terms of trying to resolve these complex land management issues. We argue that the human and cultural aspects, the social sciences, are even more important because you're dealing with people. The values and aspirations of communities must override the natural science. And it's based on these very human things of trust and respect, etc. And it's aggravated by the fact that the social science assessment is usually poorly done.

Sorry for the scale of the next slide, it doesn't show, but if you look in the middle, three, four, and five, this is where typically the stakeholder engagement levels are at. Three is informing, four is consultation, five is precaution. Essentially in a word, the community engagement exercise is typically tokenistic. It's like an add-on to a process which is effectively



skewed towards development. What we are saying here is this system effectively is broken. We have to rebuild the system, and I'll talk in a moment about reforms by the New South Wales government which recognises that there's a radical need for some change.

What might genuine community engagement look like? It would mean the gas company would co-design the project with key stakeholders. Effectively, you'd have a blank-canvas approach which fosters a collegiate and partnership mentality. The plans are designed together. And equally what's crucial here is getting a handle on an understanding and appreciation of stakeholders' intangibles. This is a very complex issue, but for people it's about their hearts and minds about where they live, the sense of place is really, really, really important. How do I define that? That's really about the natural and built landscape and how that affects a resident's sense of identity and that level of satisfaction with their surrounds. To put it another way, the things that give meaning to life. And I really encourage you, Your Honour, and the panel to think very carefully about that matter.

So what are some solutions to this? A table as the first piece of evidence some terrific work that the Department of Planning and Environment is doing in New South Wales. There's some terrific reform coming through based on 15 years of some of experience of major projects. There's a draught guidelines on social impact assessment, and this is the wording in the document, "It's to drive better social outcomes to give communities a stronger voice from project design through to post-approval." I commend that to you.

Natural science issues, obviously for us water for fracking is a key concern. What are the sources of this water? What are the quantities? What are the impacts on existing uses? And for production water management, post fracking, what's going to happen to that water? Is it to be treated or disposed? On the issue of disposal, we have grave concerns about a typical approach which is called aquifer re-injection. To be honest, that's got whiskers on it for us. Generally speaking, the hydra geology's not very well understood. If you're going to re-inject, where are you going to re-inject? Is it intended to re-inject way down at three kilometres from where the gas came from or are you going to re-inject up near the surface? And if you're going to re-inject near the surface, nature being what it is, if you start to change the pressure differentials there, you will get movement in water, etc. What are the fracture lines, fault lines, how will that interfere?

Fugitive methane emissions. Your Honour, I believe this is one of the sleepers, one of the elephants in the room about this industry. In the U.S. shale fracking, they're talking about fugitive emissions from the production of gas being somewhere between 2% to 17%. My understanding is, and I can stand corrected, but if the percentage of emissions is say, more than 4% of the amount produced, then the carbon footprint of the gas industry is no cleaner than coal. And I'll add that sooner or later there's going to be a price on carbon. With leaks of greater than 4%, will this therefore make gas uneconomic, and will you end up with stranded assets?



To bring this to a point, for us, sustainable ground water and surface water supplies are vital. We're also concerned about what happens on the land. North Star Pastoral has little confidence that the gas industry will protect our interests, therefore, Your Honour, we feel at this point we have no option but to adopt the precautionary principle, and we support a ban on unconventional exploration and development as per this week's Victorian government decision.

Looking at the EIA reform process, Your Honour, I just table again a discussion paper of 2016 EIA Improvement. Building confidence is what the state government recognises is essential. I'd also encourage the panel to consider amending the Northern Territory Assessment law so that it mandates ecologically sustainable development approach, and we plead that approvals not be allowed to occur on the basis of in the public interest. In the public interest is simply code for short term economic development, and in this day and age it no longer has relevance.

Approvals and compliance, just briefly. Clearly any consent conditions need to be explicit and performance-based with no wriggle room. The government always says oh, we'll have tough conditions and they'll be regulated and compliance will be tough. Well, I'm sorry, generally speaking staffing levels are generally inadequate, and it's rare for regulators to be able to do their job effectively and as required by the community. We need heavy penalties for non-compliance and performance and rehabilitation bonds.

So to conclude, we encourage you, Your Honour, and your panel members to level the playing field. We must allow a voice for all, and for the power to be balanced so that key players like pastoralists get a fair go. There needs to be priority given to the social sciences. Social well-being is such a key element. Given where we sit today, essentially we have little trust in the rigor and robustness and fairness of the system, and given that scenario, I'm afraid we have to say that we support a ban. The EIA process, in our view, needs to be reformed. Again, EISes are simply advocacy documents and the community needs to be able to ... we're not going to build confidence in the system whilst ever they are seen as advocacy documents promoting the proponent's side.

And lastly, I wish to talk about, and briefly, there is no gas crisis. I'll repeat this. There is no gas supply crisis in Australia. What we do have is a decision by governments and companies have made a choice to send overseas our gas instead of providing an adequate supply for the domestic market. The problem about this, and this perceived gas shortage, the problem is the result, is of the making of governments and companies. It is no excuse for therefore imposing and putting pressure on pastoralists to say you need to allow unconventional gas activity on your land. We need a domestic gas quota on LNG projects. Thank you, Your Honour, and your panel, for your patience.



- Rachel Pepper: Thank you very much, Mr. Giblin. Now I ask the panel if they have any questions? Yes, Ms. Coram.
- Ms. Jane Coram: Thank you, Mr. Giblin. Are you aware of any efforts in the Northern Territory of where people like the pastoralist industry have attempted to negotiate terms with industry similar to the ones that you outlined in New South Wales?
- Warwick Giblin: Personally, I'm not aware. There may well have been. But I'm sorry, I don't know.
- Hon. Justice
Rachel Pepper: Mr. Beck. Sorry, Dr. Beck.
- Dr. Vaughan Beck: I think your concerns are very comprehensive, clearly they are, I don't think they are, they're quite comprehensive. They fall into two categories which you've characterised, social and technical, and you've outlined some possible solutions. If in an ideal world your wishes as articulated here were in place, and assuming that some of the technical issues that you've also raised were demonstrated to be satisfactory to you and the community, what would be the attitude of your pastoral company under those circumstances in that ideal world?
- Warwick Giblin: It's like a relationship between two people. It needs to be built and respect and trust and report and openness. I mean, if you can do that, then, and you've got a level playing field, then you're going to have people having a greater propensity to consider things a bit differently. But when you feel you're under the pump all the time, then inevitably people adopt a precautionary position on it. So I think our passion really is about reforming the process so that it engenders greater robustness, fairness, transparency, accountability, and gives us a fair go. At the moment it's one-way traffic.
- Hon. Justice
Rachel Pepper: Let's assume we could make that two-way traffic, and let's assume that you had a right of veto, and let's assume that we had a sufficiently robust regulatory framework, and I realise that is almost a hackneyed phrase now. Let's assume all those things. Would your position still be to maintain the ban?
- Warwick Giblin: We would consider everything on its merits. All we can deal with is what we've got here and now.
- Hon. Justice
Rachel Pepper: I appreciate that.
- Warwick Giblin: So absolutely.
- Hon. Justice
Rachel Pepper: We're looking to the future.
- Warwick Giblin: Yeah, we'll be very balanced and considered and thoroughly professional in our examination of all aspects. So if the playing field is level then we can look at it in a less pressure position. If it's co-designed, and as you would



know, the former minister for planning in New South Wales, Minister Rob Stokes, he was passionate about this issue of co-design. And that's where I think we have to get to rather than this government and companies saying this is what needs to do and then you batten down the hatches and crash or crash through. So if you can change that approach, then I think you'll see an attitudinal change with all the parties.

Hon. Justice

Rachel Pepper:

Yes.

Dr. Vaughan Beck:

Thank you for your submission. Can I just test your statement there about we should, you believe, that the human and cultural, the social sciences you say, should override the physical. I'm intrigued by that because the normal decision making process is triple bottom line, social, environmental, and economic, so is it true you're suggesting that we should not take a balanced approach, but put the social and cultural higher?

Warwick Giblin:

In my view, in accord with the principles of ecologically sustainable development, it's a ranking order. Firstly, it's environmental, then social, the economic. But what I would say is, and if we need an illustration of how the social takes precedence over hard science, heaven forbid if we were just going to embrace the hard science we would have started action on climate change mitigation 20 years ago. So if ever you need a case where in fact in the real world the social tends to take precedence, I rest my case on that. Because that's the world dynamic in which we live, it's about people and how they interpret and the geopolitical situation.

Hon. Justice

Rachel Pepper:

Any further questions? Mr. Giblin, thank you very much for your presentation today. Appreciate it.

Warwick Giblin:

Thank you, Your Honour. Thank you panellist.

Hon. Justice

Rachel Pepper:

Thank you. I know we're running.

Warwick Giblin:

I've got some documents to table with you.

Hon. Justice

Rachel Pepper:

Yes, all right, thank you very much.

Warwick Giblin:

Is that okay?

Hon. Justice

Rachel Pepper:

Yes.

Warwick Giblin:

Do you want me to declare what they are or just hand them in?

Hon. Justice

Rachel Pepper:

If you could just read out what they are that would be useful.



Warwick Giblin: One is the Agreed Principles of Land Access between New South Wales. Another is the Australia Institute report from the University of Melbourne, Melbourne Energy Institute. They talk about methane emissions from Australian unconventional oil and gas production. An article yesterday gas prices, Business Reporter, ABC news. And lastly, the advertisement that North Star Pastoral was instrumental in placing in the newspapers back in August last year about the shale gas debate in Northern Territory.

Hon. Justice
Rachel Pepper: I'm probably not to be trusted with documents at this stage of the week, if you just give those to one of the members of the task force I'd very much appreciate it. And thank you again, Mr. Giblin, for coming today.

Warwick Giblin: Thank you.

Hon. Justice
Rachel Pepper: Appreciate it.