



Australian Government
Department of Industry and Science

Committee Secretary
Senate Standing Committees on Environment and Communications
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Committee Secretary

Thank you for the invitation to provide a submission in relation to the committee's inquiry into the *Landholder's Right to Refuse (Gas and Coal) Bill 2015*.

The Department of Industry and Science's vision is to enable growth and productivity for globally competitive industries. To realise this vision, the department has four key objectives: supporting science and commercialisation, growing business investment and improving business capability, streamlining regulation and building a high performance organisation.

In relation to the coal and gas issues which are the subject of the bill, the department provides policy advice to government on resource and energy policy, drawing on the expertise of its science agencies. It also works collaboratively with the state and territory governments through the Council of Australian Governments' (COAG) Energy Council, which is chaired by the Commonwealth Minister for Industry and Science.

Coal is Australia's largest energy export earner and Australia is projected to be the world's largest exporter of liquefied natural gas (LNG) by 2020. Growth in eastern Australian gas production will come almost entirely from coal seam gas (CSG) fields to support three LNG projects under construction in Queensland. The coal, LNG and unconventional (CSG, shale and tight) gas industries are contributors to many towns and remote and regional communities.

The department considers there are sufficient jurisdictional statutory and policy provisions already in place for the minerals and energy industry to negotiate land access arrangements with landholders. Consistent with the *Energy White Paper*, the department considers that working with the states and territories on reforms is the most appropriate way to respond to community concerns and encourage investment in energy resources development.

As discussed in the attachment, the department considers all levels of Australian governments recognise the importance of sustaining community support for resource development. State and territory governments have the primary regulatory responsibility onshore. There is also a substantial body of work underway to enhance community confidence in resource development.

The department would be pleased to provide further information on this submission as required.

Yours sincerely

John Ryan
Associate Secretary
29 May 2015

Overview

The department understands that the bill proposes to make gas or coal mining activities undertaken without prior written authorisation from landholders unlawful, and would ban corporations from engaging in hydraulic fracturing operations for CSG, shale gas and tight gas.

Specifically, the bill would:

- provide Australian landholders the right to refuse gas and coal mining activities by corporations on their land without prior written authorisation
- set out the requirements of a prior written authorisation
- provide for relief which a court may grant to a land owner when prior written authorisation is not provided
- prohibit hydraulic fracturing for coal seam gas, shale gas and tight gas by constitutional corporations
- provide for civil penalties.

The department considers this area of policy is already subject to a range of regulatory mechanisms and policy reforms. A summary of these is provided below for the committee's consideration.

Jurisdictional roles and COAG Energy Council reforms

State and territory governments have primary responsibility for regulating onshore minerals and petroleum exploration and production, including onshore gas and coal land access arrangements. The Australian Government has a regulatory role where an activity is likely to have a significant impact on a matter of national environmental significance under the *Environment Protection and Biodiversity Conservation Act 1999* (the EPBC Act). This includes impacts on water resources where the development activity is coal seam gas extraction or a large coal mining development (the 'water trigger').

The department considers that despite not having a direct constitutional role in onshore gas and coal development, the Australian Government has a leadership role to play in relation to the COAG Energy Council's resource development and energy agendas. In particular, the department considers the ability of governments collectively to sustain community confidence in the way these extractive industries are regulated is of significant importance to the economy. The COAG Energy Council is the principal mechanism by which the Australian Government and the department engage with states and territories on resources regulatory issues.

At the December 2014 meeting of the COAG Energy Council, all ministers agreed to take a leadership role in promoting community confidence and engagement in the extraction of energy resources and minerals, with a strong focus on:

- improving local community engagement, including through the promotion of leading practice approaches
- transparency of regulatory processes and data sharing
- facilitating the coexistence of resources and energy development and other land uses to encourage the growth of multi-industry regional communities, and
- improving public communications to address misinformation around the risks and impacts associated with resource development.

Work programs to support these commitments are currently being developed, which will build on previous regulatory reforms by the COAG Energy Council and its predecessors. This includes the following initiatives of relevance to onshore gas and coal mining - the Multiple Land Use

Framework, the National Harmonised Regulatory Framework for Natural Gas from Coal Seams, the Gas Market Vision and update of the Australian Gas Market Development Plan. These are expanded upon below.

Multiple Land Use Framework¹ (MLUF) - December 2013

The MLUF supports a balanced approach to multiple and sequential land access including negotiating access arrangements in good faith. It focuses on the overall principle that to maximise the social and economic benefit of land use for present and future generations, land should not be put to a single use purpose without considering other potential land uses.

The MLUF supports local and regional communities and governments to maximise land use in a flexible and environmentally sustainable manner over time. It enables communities, industries and governments to effectively meet land access challenges, expectations and opportunities, and advance Australia's sustainable development aspirations in agricultural production, mineral resource development, biodiversity and heritage conservation.

The MLUF is designed to operate within established regulatory and policy frameworks relating to land ownership, usage and access. Each jurisdiction is implementing the MLUF in its own manner, to sit comfortably alongside existing processes and land rights.

The department notes that state and territory approaches to implementing access arrangements vary, but broadly cover COAG Energy Council endorsed principles and include the following common features:

- the negotiation of an access agreement between the landholder and explorer determining the terms and conditions of access
- a requirement to notify the landholder prior to the commencement of activities
- compensation payable by the mining or exploration company for any loss arising from the activities
- mechanisms for arbitration and review.

National Harmonised Regulatory Framework for Natural Gas from Coal Seams² (Harmonised Framework) - May 2013

The Harmonised Framework delivers on a commitment by states and territories to put in place a suite of leading practice principles to guide regulators in the management of natural gas from coal seams. The Harmonised Framework focuses on four key areas of operations which cover the life cycle of development: well integrity, water management and monitoring, hydraulic fracturing and chemical use. The Framework identifies 18 leading practices to mitigate the potential risks of CSG activities. This is intended to provide assurance for communities that any concerns in relation to protecting and managing underground and surface water resources are being addressed.

The department considers the annual reports provided by states and territories in implementing the Harmonised Framework provide evidence that the necessary regulatory frameworks are largely already in place at state and territory level. The identified regulatory instruments in relation to unconventional gas address:

- the impacts of unconventional gas development on ground water and aquifers
- the treatment and management of produced water from CSG production
- co-existence of unconventional gas projects with existing activities such as agriculture

¹ <https://scer.govspace.gov.au/workstreams/land-access/mluf/>

² <http://scer.govspace.gov.au/files/2013/06/National-Harmonised-Regulatory-Framework-for-Natural-Gas-from-Coal-Seams.pdf>

- the chemicals used in the hydraulic fracturing process and their potential impact
- environmental impact statements for each project, which assess the potential risk to the existing environment and mitigation measures for each of those risks if required.

*Gas Market Vision and Australian Gas Market Development Plan*³ - December 2014

The Gas Market Vision for Australia's future gas market recognises the significant transformation occurring in our market and the need for governments to guide gas market development and provide certainty for all stakeholders. Under the vision, the COAG Energy Council has updated its Australian Gas Market Development plan and is pursuing a number of actions including market reforms and cooperation on the development of a gas supply strategy, which informs communities and facilitates the responsible development of gas resources.

Australian Government Policy

The Australian Government supports the responsible development of the resources sector, which includes unconventional gas and coal resources. As two of the most significant industries contributing to Australia's exports, and with the potential to contribute substantially more, the Australian Government is determined to see this potential maximised.

The *Energy White Paper*⁴ enunciates the Australian Government's energy policy framework. It sets out the policy framework which will deliver competitively priced and reliable energy supplies by promoting competition in energy markets, increasing energy productivity and facilitating investment in energy and resources development. Securing long term domestic energy needs, maintaining international competitiveness, and growing Australia's export base are fundamental to a strong economy. The *Energy White Paper* was developed via an extensive consultation process that included consultation in response to the *Issues Paper* and *Energy Green Paper*.

On gas issues, the *Energy White Paper* was informed by the department's *Eastern Australian Domestic Gas Market Study*⁵, which was released last year and which has been the basis for subsequent policy consultations with industry and community stakeholders. A component of this policy development process pointed to the need for specific reforms in relation to removing unnecessary impediments to responsible unconventional gas development. The recently released *Domestic Gas Strategy*⁶ is the next stage in this work.

The *Domestic Gas Strategy* articulates the Australian Government's role and science capabilities, and expectations of state and territory governments and industry. There is a role for governments to provide robust and transparent information so communities can take confidence in the evidence base being used in decision making. The Australian Government is assisting in this regard through the work of national science institutions such as the CSIRO, Geoscience Australia, and the Bureau of Meteorology. These activities, which take place across the Australian Government, are coordinated by the department as part of the implementation of the *Domestic Gas Strategy*.

The Department of the Environment also has specific portfolio responsibilities in relation to strengthening our understanding of the impacts of coal and coal seam gas developments on water resources and water-related assets, including through support for the Independent Expert

³ <https://scer.govspace.gov.au/workstreams/energy-market-reform/gas-market-development/>

⁴ <http://ewp.industry.gov.au/sites/test.ewp.industry.gov.au/files/EnergyWhitePaper.pdf>

⁵

<http://industry.gov.au/Energy/EnergyMarkets/GasMarketDevelopment/Pages/EasternAustralianDomesticGasMarketStudy.aspx>

⁶ <http://www.industry.gov.au/domesticgasstrategy>

Scientific Committee on Coal Seam Gas and Large Coal Mining Development (IESC), and funding the bioregional assessments and other priority research.

The *Domestic Gas Strategy* also notes the Australian Government's commitment to continue to support farmers' right through the Agricultural Competitiveness White Paper so that co-existence remains a fundamental aspect of gas development. The *Agricultural Competitiveness Green Paper* articulates three co-existence principles for onshore gas development⁷. The *Domestic Gas Strategy* is also being used as the basis for engagement with state and territory governments to develop the COAG Energy Council's gas supply strategy, which is part of the Australian Gas Market Development Plan noted above.

Responses to Community Concerns on Unconventional Gas

The Australian Government acknowledges that there are concerns in some sections of the community about unconventional gas development. Coal seam and shale gas are found in different types of geological systems, and have different implications for water resources and surface impacts⁸. The department notes that many communities have benefited from CSG development. A review of the actual economic impacts of CSG in Queensland has shown that the industry provides a clear positive net benefit to Australia, Queensland and affected regions⁹. In particular, the department considers the Queensland experience shows it is possible to address landholder concerns and achieve co-existence through rigorous application of appropriate regulatory models. This position is presented in more detail in the *Domestic Gas Strategy*.

The department is concerned that community concerns have been exacerbated by lack of accessible information on the nature of the activities being undertaken, existing regulatory protections, and responses underway at all levels of government. The department considers there is unnecessary confusion about coal seam and shale gas, and that international experiences of best practice can help inform Australia's regulatory frameworks.

In particular, the department considers the goal of achieving mutually beneficial outcomes has been complicated by hydraulic fracturing or "fracking" becoming an unnecessarily emotive topic. Hydraulic fracturing is a process which may occur after drilling a gas well, which typically involves injecting fluid made up of water, sand and chemical additives under high pressure into a cased well. The pressure caused by the injection typically creates a fracture in the coal seam where the well is perforated. After the fracturing is complete, most of the hydraulic fracturing fluid is, over time, brought back to the surface and treated¹⁰. In Australia, the hydraulic fracturing technique is used in approximately 20-40 per cent of CSG wells¹¹.

The department notes that hydraulic fracturing has been used in Australia by the oil and gas industry for over 40 years. The technique was used to enhance flows from both conventional and unconventional reservoirs with no observed or reportable adverse consequences¹². The department considers that this experience suggests the technical risks can be managed through a well-designed regulatory regime, underpinned by effective monitoring and enforcement of compliance where activities are permitted. Unconventional gas operations are regulated by international standards, national and state legislations, guidelines and codes of practice.

⁷ <https://agriculturalcompetitiveness.dpmc.gov.au>

⁸ <http://www.gisera.org.au/publications/faq/faq-csg-general.pdf>

<http://www.gisera.org.au/publications/factsheets/shale-gas-australia.pdf>

⁹ <http://www.industry.gov.au/industry/Office-of-the-Chief-Economist/Publications/Pages/Gas-market-report.aspx>

¹⁰ <http://www.csiro.au/en/Research/Energy/Hydraulic-fracturing/a-What-is-hydraulic-fracturing>

¹¹ <http://www.csiro.au/en/Research/Energy/Hydraulic-fracturing/a-What-is-hydraulic-fracturing>

¹² <http://www.statedevelopment.sa.gov.au/resources/the-facts/fracture-stimulation-in-south-australia;>
<http://www.dmp.wa.gov.au/15136.aspx>

The department notes a number of inquiries and reviews have recently been completed, or are underway, to inform jurisdictional policy and regulatory regimes in relation to unconventional gas development and the use of hydraulic fracturing. Key recent reviews include:

- in September 2014, the NSW Chief Scientist & Engineer published the *Final Report of the Independent Review of Coal Seam Gas Activities in NSW*¹³. Drawing on information from a large number of experts and extensive consultation, the review concluded that the technical challenges and risks of the CSG industry can be in general managed through: careful designation of areas appropriate for CSG extraction, high standards of engineering and professionalism in CSG companies, creation of a State Whole-of-Environment Data Repository, comprehensive monitoring of CSG operations with ongoing scrutiny of collected data, a well-trained and certified workforce, and applying new technologies as they become available. The NSW Government has accepted all of the NSW Chief Scientist & Engineer's recommendations and is progressing implementation through its *NSW Gas Plan*¹⁴.
- in February 2015, the Northern Territory Government accepted and released an independent inquiry into hydraulic fracturing.¹⁵ The Inquiry found that there is no justification for a hydraulic fracturing moratorium in the NT¹⁶. The NT Government is undertaking further work to address policy issues identified in this review.
- the Western Australian Legislative Council has commenced an inquiry into the implications for Western Australia of hydraulic fracturing for unconventional gas¹⁷.
- the Parliament of South Australia Natural Resources Committee is currently undertaking an inquiry into potential risks and impacts in the use of hydraulic fracture simulation to produce gas in the south-east of South Australia.¹⁸ Further information on how the South Australian government regulates hydraulic fracturing activities is available on its new "*The facts about fracture simulation in South Australia*" website¹⁹.
- Victoria and Tasmania currently have moratoria in place that prevent onshore gas development. The Victorian Government has extended its ban on CSG exploration and hydraulic fracturing, pending the completion of a Parliamentary inquiry into onshore gas development. The Tasmanian Government has extended its moratorium on hydraulic fracturing for a further five years until March 2020²⁰.

¹³ http://www.chiefscientist.nsw.gov.au/__data/assets/pdf_file/0005/56912/140930-CSG-Final-Report.pdf

¹⁴ <http://www.resourcesandenergy.nsw.gov.au/energy-supply-industry/legislation-and-policy/nsw-gas-plan>

¹⁵ http://www.nt.gov.au/d/Minerals_Energy/onshoregas/

¹⁶ <http://www.hydraulicfracturinginquiry.nt.gov.au/docs/report-inquiry-into-hydraulic-fracturing-nt.pdf>

¹⁷ <http://www.parliament.wa.gov.au>

¹⁸ <https://www.parliament.sa.gov.au/Committees/Pages/Committees.aspx?CTId=5&CIId=175>

¹⁹ <http://www.statedevelopment.sa.gov.au/resources/the-facts/fracture-stimulation-in-south-australia>

²⁰ [http://dpiwwe.tas.gov.au/about-the-department/government-policy-on-hydraulic-fracturing-\(fracking\)-in-tasmania](http://dpiwwe.tas.gov.au/about-the-department/government-policy-on-hydraulic-fracturing-(fracking)-in-tasmania)