

Australian Greens' Dissenting Report

1.1 Over the last decade Australia has witnessed a huge community campaign of resistance against coal, coal seam gas (CSG), shale gas and other unconventional gas which has united city and country, farmers, environmentalists, scientists and Indigenous Australians. The Lock the Gate movement and many other local groups and individuals have resisted the destruction of our land, water and climate in the public interest. The Australian Greens wish to place on record our support and admiration for this grassroots movement. Very few predicted its success, but the campaign has upended the old certainties to challenge the fossil fuel industry and shown that organised people can defeat organised money. It is in their honour that the Australian Greens introduced the Landholders' Right to Refuse (Gas and Coal) Bill 2015 (the Bill).

1.2 The purpose of the Bill is twofold—to allow all landholders including farmers, graziers, residents, local councils and native title holders to say "no" to unconventional gas and coal mining on their land and to ban hydraulic fracturing (or "fracking") for unconventional gas, because of the extraordinary risk to our land, water, climate and healthy rural communities from this industry and extraction method.

1.3 Right now, the balance between multinational mining companies and landholders is hopelessly skewed towards big coal and gas. The Bill would give landholders the right to say "no" to coal mining and unconventional gas, including CSG, shale gas, tight gas and underground coal gasification. This would include both exploration and production, and would apply to any land where activity has not already commenced.

1.4 The Australian Greens believe that Australia must rapidly transition away from polluting fossil fuels like coal and gas towards clean energy. We therefore do not support any new coal or unconventional gas approvals.

1.5 One step in the right direction would be giving landholders the right to say "no" to coal and gas mining on their land, and to immediately ban the dangerous process of fracking. That is why the Australian Greens introduced this Bill for the third time. Last time this Bill was introduced, it was voted down by the Liberal, National and Labor parties in the Senate on 6 March 2014.

1.6 The community supports this Bill. The Committee heard from 377 individuals and organisations, with around 95% of those supporting the Bill. The Australian Greens would like to thank all those who made a submission and appeared at public hearings.

Giving landholders the right to say "no" to coal and gas

1.7 During the inquiry the Committee heard extensive evidence at public hearings and in written submissions that the current system of land access arrangements created by the States is failing landholders and local communities. The chronic power imbalance between landholders and wealthy multinational coal and gas companies underpins every interaction, and hopelessly disadvantages landholders.

1.8 Landholders must be given the legal right to decide that they would prefer to be able to keep farming or living on their land, and for their children and grandchildren to have that option, rather than be forced to negotiate merely the price of entry with big coal and gas companies. Without the right to say no, this David and Goliath situation forced upon families and communities across Australia is even more weighted in favour of big coal and gas.

1.9 Farmers and community groups from every State where coal and unconventional gas activity is occurring or proposed have supported this Bill. These include landholders struggling to deal with the toxic CSG industry in Queensland, Lock the Gate, SOS Liverpool Plains, Groundswell Gloucester and others in NSW, the Limestone Coast Protection Alliance and Livestock SA from South Australia, No Fracking WAy, Frack Free Tas and many other groups and individuals.

1.10 Drew Hutton from the Lock the Gate Alliance said:

The first assumption is that there is some sort of equality in the negotiation that goes on between mining companies and farmers. In fact, as far as we are concerned, there is no equality. It is negotiation with a gun at the head of the landowner.¹

1.11 Lynette Nicholson from the Basin Sustainability Alliance summed up the situation well:

...the claims by industry and government that the 4,500 to 5,000 [land access agreements] already signed by landholders and the fact that very few landholders have utilised courts were somehow evidence that landholders were happily coexisting with the resource companies. Nothing could be further from the truth. Landholders are compelled to sign the CCA. There is nothing voluntary about the process.²

1.12 Rosemary Nankivell from SOS Liverpool Plains said:

...the bill uses the term 'agreement'. I can tell you unequivocally that, when dealing with a resource company, there is no such thing as an agreement. In some cases, perhaps, a painful type of coexistence results, but it is the farming community that does the giving.³

1 Mr Drew Hutton, Lock the Gate, *Committee Hansard*, 27 July 2015, p. 9.

2 Miss Lyn Nicholson, Basin Sustainability Alliance, *Committee Hansard*, 27 July 2015, p. 17.

3 Ms Rosemary Nankivell, SOS Liverpool Plains, *Committee Hansard*, 25 August 2015, p. 2.

1.13 Kirsty Kelly from People for the Plains said:

All the power lies with the coal and gas companies; the landholders' only position is to accept or go to legal challenge. There is much discussion about coexistence between coal and gas and agriculture. But how can you have coexistence when all the power lies with one party?⁴

1.14 Lestar Manning from P&E Law who has represented landholders in land access negotiations said:

That comes from a lack of ability by many farmers to actually understand the information that is being put before them and the quantity of information that is being put before them...The clients get left in the position that they have to trawl through these documents to try to work out what information is there, what is relevant to their land, without the expertise that the companies have. If you put yourself into the position of a farmer, he is running a business; his business is operating his farm. He is given this material, and the party on the other side has myriad experts to assist, facilitate and explain. That is a significant imbalance of power.⁵

1.15 The Committee's report starts out by saying that:

The committee supports the principle that an agricultural landholder should have the right to determine who can enter and undertake gas or coal mining activities on their land.⁶

1.16 After making what sounds like a bold statement of principle, the Committee then fails to make any recommendations to actually implement that principle. It applauds the voluntary arrangements such as the Agreed Principles of Land Access and the wholly ineffective COAG process being carried out through the COAG Energy Council. In other words, the Committee is endorsing the Liberal-National government's headlong rush to expand the unconventional gas industry even further. It is clear which side the Liberal-National government has chosen—the gas companies.

1.17 Rather than supporting the Greens' Bill, or proposing any other solution which would actually grant landholders the rights which it claims to support, the Committee recommends that the Bill be rejected.

1.18 The Greens will continue to push for landholders and local communities to be given the right to refuse coal and unconventional gas on their land, and will continue to support communities who stand up for their land, water and a safe climate.

4 Ms Kirsty Kelly, People for the Plains, *Committee Hansard*, 25 August 2015, p. 16.

5 Mr Lestar Manning, P&E Law, *Committee Hansard*, 27 July 2015, p. 17.

6 Chair's report, chapter 4, paragraph 4.1.

Banning fracking

1.19 The Bill also bans fracking for unconventional gas, including CSG, shale gas and tight gas. This ban is warranted due to both the unprecedented level of risk and scientific uncertainty associated with fracking and due to the groundswell of community concern in the face of those risks. Fracking presents an unprecedented risk to surface water, ground water, clean air and a safe climate. The evidence from across Australia and around the world has been mounting over recent years.

1.20 Threats to water resources from fracking are not adequately understood, but the evidence is building that they are severe and have potentially devastating consequences. Huge coal seam gas projects in Queensland were approved with minimal baseline data and hopelessly inadequate groundwater monitoring. Both of the major parties have approved huge fracking operations without adequate scientific certainty about their impacts. Even though federal approvals for the Santos and British Gas Group gasfields were given in 2010, and further approvals were given to Arrow Energy in 2013, the scientific work to assess the risks of those projects has not been done. The CSIRO, the National Industrial Chemicals Notification and Assessment Scheme (NICNAS) and the Environment Department's Office of Water Science have not even commenced scientific work on the impacts of fracking chemicals on deep aquifers.

1.21 The current round of studies will not establish with any certainty the risks associated with mobilising naturally occurring BTEX carcinogens. Officials from the agencies concerned freely admit that the work on those risks is 'preliminary'.

1.22 Risks associated with aquifer contamination, fracture growth, leaks from well casings and earthquakes caused by fracking are all poorly understood but potentially very grave.

1.23 During this inquiry, the Committee heard evidence from CSIRO and the federal Department of Environment confirming that these studies are in their infancy.

1.24 Alarming, the human health impacts of fracking are also very poorly understood although mounting evidence shows that they can be severe. Gas leaks caused by faulty equipment and fissures in the earth, as well as contaminated drinking water are unacceptable risks for our rural communities to endure. In the gasfields of Queensland, at Tara and Chinchilla, residents have reported headaches, nose bleeds, skin rashes and nausea amongst children. During the inquiry, the Committee heard directly from landholders affected by the CSG industry. Shay Dougall and Narelle Nothdurft from the Hopeland Community Sustainability Group provided powerful evidence:

Narelle's family have got documented problems with eyes, nose and throat. They have problems with chronic headaches and migraines.⁷

7 Ms Shay Dougall, *Committee Hansard*, 27 July 2015, p. 26.

My seven yr old boy[...] has been suffering fast onsetting headaches for a few years now. They are so severe he bangs his head into the wall the floor anything to make them stop.⁸

1.25 The Committee heard that that Queensland Department of Health investigation recommended that further studies be conducted including air quality monitoring, but that they were discontinued for no discernible reason and no such studies were carried out.⁹ Two years later those residents are still waiting. Evidence like this ought to ring warning bells.

1.26 Studies in the USA have shown that the fugitive emissions of greenhouse gas from fracked shale gas are vastly higher than for conventional gas. The claims of the gas industry that CSG, shale and tight gas are low-emissions alternatives to coal simply are not supported by robust Australian studies.

1.27 The CSIRO's preliminary study of fugitive emissions from CSG found that further work was required. During this inquiry, the CSIRO confirmed that no investigation is planned to examine fugitive emissions from fracked shale and tight gas, even though exploration permits have already been granted for these activities by reckless State governments. The CSIRO also confirmed that even after its current small scale and preliminary studies are complete, fugitive emissions from several major stages of production including water treatment, gas processing and gas compression will still be totally unknown.¹⁰

1.28 The precautionary principle, to which Australia has committed and which is written into our national environment laws, demands that where an action presents a risk of harm to the public or the environment, the absence of scientific consensus is not an excuse for regulators to do nothing.

1.29 Unfortunately the Committee has adopted a deeply flawed interpretation of the precautionary principle.

The committee also does not consider that it was provided with sufficient credible scientific evidence during the inquiry to justify a ban on hydraulic fracturing.¹¹

1.30 This is precisely the wrong approach. The EDOs of Australia argued that, 'at a minimum', a moratorium on hydraulic fracturing should be implemented nationally 'until such time as the significant list of knowledge gaps highlighted in reports and

8 Ms Narelle Northdurft, *Submission 96*, p. 5.

9 Dr Geralyn McCarron, *Committee Hansard*, 27 July 2015, p. 60.

10 CSIRO, answers to questions on notice, question 5.

11 Chair's report, chapter 4, paragraph 4.6.

peer-reviewed literature have been properly addressed.¹² This Bill properly implements the precautionary principle to ban fracking.

1.31 Moratoriums on fracking exist in Tasmania and Victoria. Local communities—too many to name individually—from Queensland to Tasmania are already leading the way by declaring themselves 'gasfield free'.

1.32 Even since this inquiry began, some members of the big parties have started to heed the growing calls from the community and have begun moving towards the Greens' position. The Western Australian Labor Party has adopted a platform calling for a moratorium on fracking, and the Victorian Coalition Opposition has called for an extension of the moratorium on onshore gas exploration to be extended to 2020. At the same time, Coalition and Labor State and Territory governments in NSW, Queensland, South Australia, the Northern Territory and Western Australia continue to press ahead with plans for expansion. The Australian Greens have long advocated for a ban on unconventional gas, so we welcome this newfound support and hope that it translates into action rather than more empty words.

1.33 This Bill would align Australia with the growing international movement against this environmentally and socially reckless extraction technique. Bans or moratoriums on fracking are in place or imminent in Canada in Quebec, Nova Scotia and Newfoundland. In Europe, they are in place or imminent in Germany, Wales, Scotland, France, Bulgaria, and the Netherlands, and in regions and cities in Switzerland and Spain. In the USA, New York State and Vermont have banned fracking. Cities and counties in California, Colorado, Texas, Hawaii, Delaware and Washington DC have also imposed bans or moratoriums.

Fixing the system – banning mining donations

1.34 Throughout the course of this inquiry the Committee took extensive evidence about the failure of State and Federal governments from both the Labor and Liberal-National sides of politics to regulate the coal and unconventional gas industries adequately. The massive expansion of CSG in Queensland and the unconstrained proliferation of coal mines in the Hunter Valley in NSW, the Bowen and Surat Basins in Queensland are each examples of a total failure of adequate regulation.

1.35 This failure of regulation has been consistent across both federal and State governments, and it calls for systemic reform. The Greens believe that reforming our democracy to curb the influence of corporate donors, especially those involved in extractive industries such as coal and unconventional gas, is vital to securing adequate protection for landholders, a healthy environment and a safe climate.

12 EDOs of Australia, *Submission 33*, p. 9.

1.36 The Greens' Bill, the Commonwealth Electoral Amendment (Donations Reform) Bill 2014¹³ would ban political donations from mining companies, developers, tobacco, alcohol and gambling companies. The Australian Greens believe that passing that Bill would go a long way towards addressing the many failures of regulation identified during this inquiry.

Recommendation 1

1.37 That the Parliament pass the Landholders' Right to Refuse (Gas and Coal) Bill 2015 in order to give landholders the right to say 'no' to coal and unconventional gas on their land, and to ban fracking.

Recommendation 2

1.38 That the Parliament pass the Greens' Commonwealth Electoral Amendment (Donations Reform) Bill 2014 in order to ban political donations from mining companies, developers, tobacco, alcohol and gambling companies.

**Senator Larissa Waters
Senator for Queensland**

13 More information on the Bill can be found here: http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=s992 and here: <http://lee-rhiannon.greensmps.org.au/content/media-releases/greens-bill-ban-political-donations-developers-tobacco-alcohol-gambling-and-m>

