



LEGISLATIVE COUNCIL

GENERAL PURPOSE STANDING COMMITTEE NO. 5

MEDIA RELEASE

INQUIRY INTO COAL SEAM GAS

Inquiry report released today

FOR IMMEDIATE RELEASE

1 May 2012

A Parliamentary Committee has tabled its report on the environmental, economic and social impacts of coal seam gas mining in NSW. The report contains 35 recommendations for Government action.

“A key theme throughout the report is the level of uncertainty surrounding the potential impacts of the coal seam gas industry. More data needs to be gathered to assess potential impacts, and in order to do this, we need to allow the exploration phase to proceed. While exploration and drilling are of great concern to many community members, they are unavoidable if we are to assess whether it is safe for the industry to proceed to production,” said the Committee Chair, the Hon. Robert Brown MLC.

“The report’s final recommendation is that before issuing any further production approvals, the Government should ensure that the deficiencies in the regulatory framework are addressed and a comprehensive, effective and transparent regulatory regime is put in place.”

“With regard to property rights, we found an imbalance between landholders and mining companies with regard to land access. The Committee therefore recommends that the *Petroleum (Onshore) Act 1991* be reviewed with a view to strengthening landholder rights and achieving a fair balance between the rights of landholders and coal seam gas operators.”

“I urge the Government to implement all of the Committee’s recommendations,” said Mr Brown.

Copies of the report can be downloaded from www.parliament.nsw.gov.au/gpsc5 or are available from the Committee Secretariat by calling (02) 9230 3081.

-ENDS-

For further information please contact Committee Chair Hon Robert Brown MLC, on 9230 2573

Summary of recommendations

- Recommendation 1** **27**
That the NSW Government request the Commonwealth Government’s Independent Expert Scientific Committee to:
- work closely with the coal seam gas industry to overcome barriers to data-sharing, and
 - fund the conduct of regional-scale water assessments in New South Wales and the development of models of cumulative water impacts as a matter of priority.
- Recommendation 2** **27**
That the NSW Government consider tightening the *Draft Code of Practice for Coal Seam Gas Exploration* so that the suggested measures around water testing and monitoring, including documenting existing water bores, drilling monitoring bores, regularly monitoring water impacts and paying for independent water testing, are *required* rather than *optional*.
- Recommendation 3** **28**
That the NSW Government amend the *Draft Code of Practice for Coal Seam Gas Exploration* to require information on baseline data to be made publically available.
- Recommendation 4** **60**
That the NSW Government progress as a priority the project being undertaken by the Office of Water to assess the potential volume of produced water from the coal seam gas industry.
- Recommendation 5** **60**
That the NSW Government not approve any coal seam gas activity without a solid waste management plan included in the relevant approval.
- Recommendation 6** **62**
That the NSW Government ensure that aquifer interference requirements are introduced for any wells drilled into coal seams, including exploration wells.
- Recommendation 7** **63**
That the NSW Government consider expanding the monitoring of decommissioned wells. This could extend to inspections at intervals of five years up to twenty years.
- Recommendation 8** **63**
That the NSW Government ban the open storage of produced water.
- Recommendation 9** **76**
That the NSW Government continue the current ban on fracking until the National Industrial Chemicals Notification and Assessment Scheme assesses fracking chemicals for their intended use and toxicity according to international standards, and the NSW Government considers any findings of this assessment.
- Recommendation 10** **76**
That the NSW Government ban the open storage of fracking fluids, and require coal seam gas companies to store fracking fluids securely prior to treatment and disposal.

- Recommendation 11** 87
That the NSW Government develop an effective model to ensure that coal seam gas companies are held responsible for covering the full costs of remediating any environmental impacts, particularly any long-term environmental damage.
- Recommendation 12** 91
That the NSW Government require, in the preparation of a Review of Environmental Factors, referral to the Office of Environment and Heritage.
- Recommendation 13** 127
That the NSW Government establish ‘shop fronts’ to provide information and advice in the regions most affected by coal seam gas development.
- Recommendation 14** 128
That the NSW Government require the Department of Trade and Investment, Regional Infrastructure and Services to notify relevant local councils as soon as a petroleum exploration licence application is made over their local government areas.
- Recommendation 15** 128
That the NSW Government implement the community consultation process as outlined in the *Draft Code of Practice for Coal Seam Gas Exploration* at the point of exploration licence application and on renewal.
- Recommendation 16** 137
That the NSW Government review the *Petroleum (Onshore) Act 1991* with a view to strengthening landholder rights and achieving a fair balance between the rights of landholders and coal seam gas operators in relation to land access, and considering harmonisation with the *Mining Act 1992* if possible.
- Recommendation 17** 145
That the NSW Government amend the *Petroleum (Onshore) Act 1991* to require a licence holder to enter into an access agreement with a landholder for coal seam gas production.
- Recommendation 18** 146
That the NSW Government lead the development of a template access agreement in conjunction with the NSW Farmers’ Association and the Australian Petroleum Production and Exploration Association, as a matter of priority. The template access agreement should:
- be comprehensive and cover both the exploration and production of coal seam gas, and
 - include a clear statement about the right of landholders to seek legal advice.
- Recommendation 19** 146
That the NSW Government require coal seam gas operators to reimburse landholders for reasonable legal costs incurred in the review of an access agreement.
- Recommendation 20** 146
That the NSW Government recruit officers to inform landholders of their rights and responsibilities when dealing with coal seam gas companies and locate these officers in regional ‘shop fronts’.

- Recommendation 21** 149
That the NSW Government require coal seam gas companies to reimburse landholders for the reasonable costs of arbitration to resolve disputes about access agreements.
- Recommendation 22** 155
That the NSW Government ensure that the template access agreement for exploration and production take a default position whereby the landholder be compensated in the sum of \$5,000 per well head per annum.
- Recommendation 23** 170
That the NSW Government require an Agricultural Impact Statement to be prepared for all exploration licence applications.
- Recommendation 24** 171
That the NSW Government expedite the development of the remaining strategic regional land use plans for the Central West, Southern Highlands, Murrumbidgee, Alpine, Western and coastal regions.
- Recommendation 25** 182
That the NSW Government prepare and publish projections of the employment opportunities that could be created by the coal seam gas industry in regional areas.
- Recommendation 26** 187
That the NSW Government continue to publish forward estimates of the royalties expected to be paid by the coal seam gas industry.
- Recommendation 27** 188
That should the coal seam gas industry proceed in New South Wales, the NSW Government should require coal seam gas companies to pay the full royalty rate from the first date of production under a petroleum title, and that coal seam gas companies be advised of this at the time of their exploration licence application or renewal.
- Recommendation 28** 188
That should the coal seam gas industry proceed in New South Wales, the NSW Government should collaborate with the Local Government and Shires Associations of NSW to develop a 'Royalties for Regions' program similar to that operating in Western Australia.
- Recommendation 29** 194
That should the coal seam gas industry proceed in New South Wales, the NSW Government should implement a domestic gas reservation policy, under which a proportion of the coal seam gas produced in New South Wales would be reserved for domestic use, similar to the policy in Western Australia.
- Recommendation 30** 203
That the NSW Government include in all conditions of consent a requirement for petroleum production to minimise fugitive emissions and to comply with an upper limit of 0.1 per cent fugitive emissions.
- Recommendation 31** 221
That the NSW Government establish a position for a Petroleum Ombudsman.

Recommendation 32**221**

That the NSW Government establish an Industry Unit within the Division of Resources and Energy in the Department of Trade and Investment, Regional Infrastructure and Services to provide a coordinated response to coal seam gas developments in New South Wales. The Unit should:

- issue licences for coal seam gas development,
- drive policy development on the coal seam gas industry, and
- provide a repository of knowledge within Government about coal seam gas issues.

Recommendation 33**222**

That the NSW Government establish a Compliance Unit within the Environment Protection Authority. The Unit should:

- undertake regular monitoring of coal seam gas operations,
- address community complaints, investigate incidents and take enforcement action where required, and
- be comprised of specialist compliance officers, as many of whom as possible should be located in regional 'shop fronts'.

Recommendation 34**222**

That the NSW Government establish a dedicated Complaints Hotline within the Compliance Unit. The Hotline should:

- answer calls from community members seeking to report concerns about potential environmental pollution or the behaviour of coal seam gas companies, and
- refer complaints to the Compliance Unit for investigation and possible action.

Recommendation 35**223**

That the NSW Government issue no further production licences until a comprehensive framework for the regulation of the coal seam gas industry is implemented.

Summary of key issues

A key theme throughout this report is the level of uncertainty surrounding the potential impacts of the coal seam gas industry. The many unanswered questions include: will the industry threaten the quality and quantity of water resources? How dangerous is fracking? Are there other potential health and environmental impacts? Is coal seam gas a cleaner energy source than other fossil fuels? And what are the economic benefits for New South Wales?

More data needs to be gathered to assess the potential impacts of the coal seam gas industry. In order to do this, we need to allow the exploration phase to proceed. Exploration necessarily involves drilling. While exploration and drilling are of great concern to many community members, they are unavoidable if we are to assess whether it is safe for the industry to proceed to production. For example, without drilling, we cannot assess the industry's potential to contaminate or deplete water resources.

The key issues considered in this report, and the Committee's recommendations, are summarised in the following pages.

Water

A key question faced during this Inquiry was whether coal seam gas activities could contaminate or deplete water resources. The scientific evidence on this question is contested. The Committee considers that the uncertainty about the likelihood of these impacts occurring underscores the need for more data to be gathered and analysed in regions where exploration is taking place. To this end the NSW Government should actively engage with the Commonwealth's Independent Expert Scientific Committee, and request that regional-scale water assessments be finalised as a matter of urgency in regions where exploration is taking place (Recommendation 1). In addition, some of the data needed to assess cumulative water impacts is held by coal seam gas companies and is considered by some coal seam gas companies to be commercial in confidence. Gaining access to this data should be a priority for the Commonwealth's Independent Expert Scientific Committee (see also Recommendation 1).

Fracking

Inquiry participants expressed particular concerns about fracking and its potential to heighten the risks of water contamination and depletion. It would be premature for the Government to lift its moratorium on fracking before the chemicals used are tested, and a stringent regulatory framework is put in place. The Committee recommends that the moratorium on fracking remain in place until the National Industrial Chemicals Notification and Assessment Scheme concludes its assessment and the NSW Government considers any findings (Recommendation 9). The Committee is also concerned that any leaks or spills of fracking fluids or produced water could contaminate water resources. The Committee therefore recommends that the open storage of fracking fluids and produced water be banned (Recommendations 8 and 10).

Remediation

Coal seam gas companies must be held accountable for remediation in the event of deleterious environmental impacts. The Committee recommends that an effective model be developed to hold coal seam gas companies to account for the full costs of remediating any potential environmental impacts, such as water contamination or depletion, even if such impacts occur decades into the future (Recommendation 11). The Committee also suggests that the Government consider expanding the

monitoring of decommissioned wells, such as by conducting inspections at intervals of five years up to 20 years (Recommendation 7).

Community engagement

A number of Inquiry participants, and key stakeholders such as local councils and indigenous communities, are disgruntled about the lack of genuine community engagement in relation to the coal seam gas industry in New South Wales. In many instances community consultation appears to have been inconsistent, poorly timed and restrictive. As one means to improve its engagement with regional communities, the Committee recommends that the NSW Government establish regional 'shop fronts' (Recommendation 13). The 'shop fronts' should be staffed by Government officers who would educate landholders on their rights and responsibilities when dealing with coal seam gas operators (Recommendation 20), as well as regionally-based compliance officers (Recommendation 33).

Land access and compensation

Many Inquiry participants are concerned that coal seam gas companies will take an aggressive approach to enforcing their access rights. Despite evidence to the contrary from several coal seam gas companies, the Committee cannot dismiss the evidence that some operators have attempted to pressure landholders for access, nor the possibility that companies may force access in the future. As such, the Committee believes that the *Petroleum (Onshore) Act 1991* must to be reviewed with a view to strengthening landholder rights (Recommendation 16).

Many Inquiry participants expressed concern about the access agreements that landholders must sign before any exploration activity can be undertaken. An important step forward in redressing the unequal bargaining positions of landholders and licence holders, is for the Government to lead the development of a template access agreement to cover both the exploration and production phases (Recommendations 17 and 18). Landholders should also be given the opportunity to seek legal advice on access agreements and be reimbursed for reasonable costs of seeking this advice (Recommendation 19). In addition, if a landholder is required, or requests, to engage in arbitration over access, the reasonable costs of this process should be reimbursed by the relevant coal seam gas company (Recommendation 21).

There appears to be limited guidance for landholders when determining appropriate compensation for hosting coal seam gas activities on their properties. The Committee therefore recommends that the template access agreement for exploration and production take a default position whereby the landholder be compensated in the sum of \$5,000 per well head per annum (Recommendation 22).

Agriculture

Numerous Inquiry participants said that coal seam gas development cannot coexist with agriculture and food production in many areas across the State, and called for 'no go' zones to be established. However other Inquiry participants, such as the NSW Government, called for 'balanced coexistence' between resource development, agricultural production and environmental protection. To achieve 'balanced coexistence' the Government has developed Strategic Regional Land Use Plans. The Committee is concerned that only two Plans have been completed to date, and recommends that the development of the remaining Plans, including for coastal areas, be expedited (Recommendation 24).

Economic benefits

The evidence on the economic benefits of the coal seam gas industry is contested. Some Inquiry participants suggested that the coal seam gas industry could deliver thousands of new jobs and billions of dollars in investment to regional areas, and generate billions of dollars in royalties. However, other Inquiry participants countered that the industry's economic benefits have been overstated. In order to maximise the industry's economic benefits for New South Wales, the Committee recommends that the five-year royalty holiday for coal seam gas production should be abolished (Recommendation 27), and regional areas where most coal seam gas activity is occurring should have a greater share of royalties (Recommendation 28).

Energy security, prices and greenhouse gas emissions

Opinions differed on the potential for coal seam gas to provide a cheap, secure and relatively clean energy source. To ensure that any coal seam gas development in the State assists in containing price increases and enhancing energy security, the Committee recommends that a portion of the coal seam gas produced in New South Wales be reserved for domestic use (Recommendation 29).

The evidence on the greenhouse gas emissions of coal seam gas is also contested, particularly when fugitive emissions are taken into account. While it is impossible to reach a definitive conclusion, the Committee considers that *at worst* the greenhouse gas emissions of energy produced from coal seam gas are likely to be equal to those from coal. The Committee believes that the dispute around greenhouse gas emissions should not prevent the development of the industry in New South Wales.

Breaches of environmental regulations

A number of Inquiry participants alleged environmental pollution by coal seam gas companies. While the Committee is mindful that many of these allegations are anecdotal and unproven, they are nevertheless alarming. It has been revealed that a previously-dismissed concern, namely the pollution of the Pilliga Forest by Eastern Star Gas, was ultimately proven correct. The Committee considers it inexcusable that this pollution went undetected by NSW Government authorities. Given this example of the NSW Government's failure to adequately police the industry, the Committee is sceptical that all coal seam gas companies are meeting their licence conditions, particularly given the large geographic area in which exploration activity is occurring.

Regulation

Inquiry participants identified a number of claimed deficiencies in the regulatory regime including fragmentation across government agencies, inadequate monitoring and enforcement, ineffective complaints handling, and insufficient resourcing. In addition, there is a potential conflict of interest in the role played by the Department of Trade and Investment, Regional Infrastructure and Services (DTIRIS). To address these deficiencies, the Committee has therefore made several recommendations, drawing on Queensland's experience of regulating the coal seam gas industry.

The Committee recommends that a new Industry Unit be established within the Division of Resources and Energy, DTIRIS (Recommendation 32). The Unit should function as a 'one-stop-shop' on coal seam gas issues responsible for issuing licences, driving policy development and acting as a 'knowledge bank' within Government. In addition, a new Compliance Unit should be established in the Environment Protection Authority with responsibility for monitoring coal seam gas activities, investigating incidents, and taking enforcement action where required (Recommendation 33). The Unit

should be staffed by specialist officers including hydrogeologists and geologists. The establishment of a Compliance Unit would address the potential conflict of interest in the role of DTIRIS by removing the monitoring, enforcement and complaints functions. A dedicated Complaints Hotline should also be established to answer calls from community members seeking to report concerns, and refer complaints to the Compliance Unit for possible investigation and enforcement action if necessary (Recommendation 34). In addition, a Petroleum Ombudsman should be established to oversee the industry, which could potentially improve community confidence in the industry (Recommendation 31).

Moratorium on production approvals

The Committee believes that New South Wales has a unique opportunity to get things right before allowing the industry to develop further. Because the coal seam gas industry is in its infancy in New South Wales, an effective regulatory regime can be implemented before the industry is allowed to proceed to full-scale production. The Committee recommends that no further production approvals are issued until the deficiencies in the regulatory framework are addressed and a comprehensive, effective and transparent regulatory regime is put in place (Recommendation 35).