



Wednesday, 12 October 2011

## More false claims to Senate Inquiry from anti-gas campaigners

Activist group 'Lock the Gate' was last month forced to admit that its submissions to two parliamentary inquiries were inaccurate and misleading because several slabs of text from an American shale gas study had been copied and included (without reference) with inappropriate changes made.

It's not the only occasion on which 'Lock the Gate' has been loose with the truth. APPEA has reviewed the submission to the Federal Senate inquiry into the management of the Murray Darling Basin from the group's president, Drew Hutton. It contains the following further inaccuracies and misrepresentations.

1. Mr Hutton claims that the CSG industry is exempt *"from the provisions of many pieces of legislation"*. **This is not true.** The CSG industry is subject to the main State and Commonwealth environmental legislation – the Queensland Environmental Protection Act 1994 and the Commonwealth Environment Protection and Biodiversity Act 1999 (the EPBC Act).
2. Mr Hutton says *"no Federal law or regulation specifically addresses the CSG mining industry"*. **This is misleading.** While Australia has no legislation called the *Commonwealth CSG Industry Act 201 ...*, Mr Hutton does not mention the EPBC Act which deals at length with impacts of the industry through the assessment of specific projects and impacts. The EPBC Act does not deal with specific industries. Rather, **the Act deals with any and all industries and activities those industries undertake.**
3. Mr Hutton wrongly states that *"CSG is not subject to any formal federal review or environmental process in the application phases"*. **This is not correct and in fact, CSG export projects have all required specific approval from the Commonwealth**, following environmental assessment and evaluation under the EPBC Act. This is an extraordinary comment. Mr Hutton's submission seeks to dismiss the incredibly demanding Commonwealth environmental assessment process with the glib and equally misleading comment *"other than companies are required to address points in their submissions referencing their compliance to Federal environmental concerns"*. In reality, to "address points in their submissions" means to do a comprehensive environmental impact statement in accordance with terms of reference that are publicly advertised and in relation to which anyone may comment. *And "Referencing their compliance to Federal environmental concerns"* does not mean simply making comments which then have no consequence. It means demonstrating how a proponent intends to comply with Commonwealth environmental laws so it might obtain approval (subject to demanding conditions) under those laws for the project.
4. Mr Hutton says that *"No follow up, no field checks, no review or responses are required"*. **Again, this is simply not true.** The EPBC Act approvals require monitoring to be done and reported to the Commonwealth Department of Sustainability, Environment, Water, Population and Communities. They require reporting of non-compliance. They require independent auditing at the request of the department. They require "all plans approved by the Minister" under the approvals to be published on the proponent's website. They require production of an annual environmental return which addresses compliance with conditions of approval. The return must be published on the proponent's website.

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- (a) In some cases, conditions of approval require the proponent to submit plans to an independent expert panel. This is a demanding process. The panel then advises the Minister on the adequacy or otherwise of the plans.
- (b) The Commonwealth *review* and *response* is a combination of the approval (with conditions) required from the Commonwealth, in addition to the above (to name but a few requirements of those approvals).
- (c) The EPBC Act itself contains several powerful compliance provisions, including directed environmental audits (in addition to those required under the approvals) (S458); criminal and civil penalties, remediation orders and injunctions from the Federal Court (S480A); executive officer liability, and remediation determinations by the Minister (S480D). Ultimately, the Minister can suspend or revoke an approval or vary conditions for non compliance (S143).

It is simply wrong to say that “*no follow up, no field checks, no review or responses are required*”.

5. Mr Hutton falsely claims that “*The CSG Industry is not subject to the State Water Acts*”. **Again, this is wrong.** The NSW Water Management Act 2000 applies and Chapter 3 of the Queensland Water Act 2000 was inserted into the Act specifically with the CSG industry in mind. Section 361 of the Water Act says: *The purpose of this chapter is to provide for the management of impacts on underground water caused by the exercise of underground water rights by petroleum tenure holders*” (emphasis added). What follows in Ch 3 is almost 100 sections of the Water Act dealing with a range of matters including:
- The declaration of cumulative management areas;
  - The preparation of underground water impact reports by petroleum tenure holders;
  - The provision of information to the Queensland Water Commission to assist it in performing its functions with respect to the CSG industry;
  - The development of water monitoring strategies for each of the Queensland Water Commission (in the case of declared cumulative management areas) and petroleum tenure holders in other cases;
  - The development of spring impact management strategies;
  - Requirements for public consultation in relation to underground water impact reports;
  - Provisions for compliance with and penalties for not complying with requirements of approved reports (approved by the chief executive);
  - Completion of baseline assessments for bores, and compliance with baseline assessment plans (and penalties);
  - ‘Make good’ obligations for water bores; and
  - Functions and powers of the Queensland Water Commission in relation to the industry.

**It is grossly inaccurate and misleading to say that the State Water Act does not apply to the industry.**

6. **Mr Hutton is wrong and his comments misleading** when he says it is left to “*conditions on the license as the only way in which to regulate the industry*”. Conditions are imposed through environmental authorities, Commonwealth approvals, Coordinator General conditions, and other approvals. In addition, the above provisions of the Water Act regulate the industry as do provisions of the Environmental Protection Act, the Queensland *Petroleum and Gas (Production and Safety) Act 2004* and the Commonwealth EPBC Act.
7. **It is simply not correct for Mr Hutton** to say that there is a “*reliance on self-assessment and self-monitoring*”. Regular independent audits are required in State and Commonwealth approvals. There are mandatory requirements in legislation for reporting and compliance that are not based on self-assessment and self-monitoring. The Queensland Water Commission must develop water monitoring strategies for declared cumulative management areas. The industry is clearly one of the most heavily regulated to have ever attempted to start operation in Australia and particularly in Queensland.

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