

Mineral and Energy Resource Exploration

Submission to the Productivity Commission

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Submission from Doctors for the Environment Australia Inc.
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The following are members of our Scientific Committee and support the work of
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Public inquiry

The Australian Government has asked the Commission to undertake a 12-month inquiry into the non-financial barriers to mineral and energy resource exploration.

Specifically the Commission should:

- determine if there is evidence of unnecessary regulatory burden and if there is, make recommendations on how to reduce or eliminate these burdens
- examine the complexity and time frames of government approvals processes for exploration, and potential for delay due to appeals both within and across jurisdictions
- examine areas of duplication between and within Local, State, Territory and Commonwealth regulation that can be triggered throughout an exploration project
- examine costs of non-financial barriers (including regulatory and related costs)
- consider options to improve the regulatory environment for exploration activities, having regard to regulatory objectives
- assess the impact of non-financial barriers on international competitiveness and economic performance of Australia's exploration sector.

The terms of reference identify certain exclusions in relation to:

- local, state, territory and Commonwealth taxation and fiscal policy
- the Government's response to the Report of the Independent Review of the *Environment Protection and Biodiversity Conservation Act 1999*
- processes under the *Commonwealth's Native Title Act 1993*, the *Aboriginal Land Rights (Northern Territory) Act 1976* or state Indigenous land rights regimes

The Commission will consult with all relevant state, territory and Commonwealth government agencies and other key stakeholders.

Introduction

Our health is closely related to the state of our environment and dependent on many natural services it provides. Environmental damage and degradation can lead to health impacts in a great many ways, both directly – as in the case of pollutants – to complex and cumulative effects. Changes to water quality and availability, loss of ecological services and the consequences of climate change, being some examples.

It is apparent from numerous reports from many scientific disciplines that many of our natural biological and physical systems are stressed or degraded as a consequence of our activities.

It is also the case that productivity in many areas is impacted by environmental change. Agriculture for example, is heavily dependent on ecological services; loss of pollination, air pollution, particularly from ozone, and deforestation will all significantly reduce productivity. Increasing heat events, floods as a result of climate change challenges and their consequences are likely to have more profound and far-reaching impacts on productivity.

Our current regulations have evolved over many generations in response to observed harmful consequences and continue to evolve as our scientific understanding improves. But it is quite clear that our regulations have lagged behind recent and rapid changes in scientific understanding. A good example is in that of air pollution. We have known for centuries that air pollutants cause harm and so have enacted regulations. There is now overwhelming evidence that health impacts occur well below the current air quality guidelines. Regulations will need to be further tightened to protect human health.

As noted in the PC report, the mineral and energy resource development industry accounts for 0.5 per cent of GDP and the mineral and energy extraction industries account for 9 per cent of GDP, but these industries result in a far greater proportion, probably the majority in fact, of Australia's environmental impacts and consequent impacts on human health.

Reducing or “streamlining” the regulations that govern these industries will also significantly increase the likelihood of direct and indirect environmental – and consequently, health impacts.

DEA submission

According to the Key Points (page 2), the PC report notes “some explorers” and “some community groups” are dissatisfied with the current regulatory for opposing reasons. However, the scope of this report is limited and focused on how regulatory processes that impose *unnecessary* burdens on explorers can be reformed. It does *not* consider how current regulations may be *insufficient* and how they can be enhanced or improved. As a result, the costs to the community in the form of externalised or hidden costs arising from inadequate or insufficient regulations is ignored in this review.

There are great dangers in taking a narrow view of a perceived problem without considering the wider social and environmental context. We appreciate that the request to the Productivity Commission from the government is likely to have been in response to pressure from the resource industry, nevertheless the exercise reminds us of an analogy in our profession of medicine where the surgeon in his report on his operation on an elderly patient's eye detailed his outstanding

performance of replacement of the patient’s retina – Forgetting, however, to mention that the patient had died from the anaesthetic. The functioning of the patient’s heart and kidneys had not been taken into account. The PC has fallen into such a trap. It is vital that the PC has the insight to be aware of these deficiencies in its report and to acknowledge these.

We remind the PC that human health assessment should be intimately bound up in the assessments for exploration and development. Yet, like the eminent surgeon, this is ignored as part of whole body of evidence. Work health and safety is understandably detailed; this is but a minor part of the health relationship of mining to the health of the community and nation.

When we look for impacts on the health of the community, the word ‘health’ is mentioned 3 times in 277 pages (page 76 once, and page 126 twice). We are astonished and are concerned that the panel failed to understand the proper functioning of the environmental impact assessment (EIA) process and failed to recognise that the environment is inseparable from human health

If we look at the question of coal mining and resulting combustion this is estimated to be responsible for 170,000 deaths globally. In Australia the health externalities and their costs are considerable. See [How coal burns Australia, DEA](#). This is a productivity issue that the PC should be considering in a thorough and independent process.

Performance of industry

We are also concerned by the stated premise that costs have increased due to both diminishing quality of resources and complying with an “increased regulatory burden” (under the heading “Performance of industry”, page 6).

This reflects the claims made by industry and some politicians that regulations are contributing to delays. These claims have been addressed and refuted in an analysis by Professor John Quiggin: [FactCheck: does it take three years to get approval for a mine? The conversation.](#)

If there has been no recent significant increase in regulatory burden, then this premise is misleading and falsely promotes the notion that the prospects and productivity of mining has diminished as a consequence of new or tightened regulations.

In any event, a broad brush review of all regulations to minimise costs – without first scrutinising their reason and value – would have potentially dangerous consequences for human health and the environment.

In fact, the increasing cost of exploration is detailed in the report (page 50). Several geographical factors are included, as well as the observation that most of the highest-grade resources have already been explored. But this has nothing to do with new regulation or overly onerous regulation: It is merely a consequence of the nature of the industry in Australia.

Therefore, trying to redress this through changes to regulation does not seem appropriate as the probability of achieving significant improvements in productivity is doubtful and the likelihood of compromising safeguards is real.

Unconventional gas

Coal seam gas is raised an example in the report (page 18):

Further changes, to improve the regulation of CSG, should be based on the best available evidence of the impacts and be appropriate to the level of risk. Regulation of CSG exploration activities should be directed towards maximising the economic, social and environmental benefit of the use of the land for the whole community.

In terms of health impacts, the general principle should be to adopt a precautionary principle, ie to avoid the potential for harm. It is not appropriate to risk human health either directly, or as a consequence of environmental degradation, due to a lack of information. The above statement can clearly be interpreted to suggest that there can be a compromise between economic prerogatives and social and environmental outcomes, and consequently health impacts.

Elsewhere in the report, the primacy of the precautionary principle in protecting health is raised. So there is some inconsistency here and the PC should clarify this.

Shale gas development in WA is also used as an example of simplifying approvals:

For example, in Western Australia, the Department of Mines and Petroleum (DMP) is responsible for coordinating exploration approvals and providing a single point of entry for applicants. Projects are assigned a case manager or team according to how complex the approvals process is likely to be. The DMP said: DMP's electronic online tracking system automatically notifies other key approval agencies involved in the assessment process. In general, other agencies have a target of 20 business days to respond to DMP. (sub. 29, p.9)

It should be noted that in the case of shale gas exploration the Department of Mines and Petroleum (DMP) has also bypassed the EPA so that environmental approval is issued by the DMP. Neither is there is a requirement for a health impact assessment – despite this being raised as a concern by the WA Health Department in the Interagency Workshop.

It is unlikely that DMP has the expertise to either assess or monitor environmental and health impacts, and as such, there is a greater potential for adverse effects to occur and to go undetected. This highlights the problem with further reduction in regulation particularly where federal regulatory processes are moved to state based departments.

Many projects are conducted incompetently and with conflict of interest (for example, leading to appeal and to unnecessary social and health costs). States do not have resources or capacity to do the assessment properly. It is this incompetence that is the main productivity issue.

The position of DEA on this issue has been developed from our detailed analysis of many EIAs of many resource projects. This is further discussed and documented in our report: [The Health Factor: Ignored by industry, overlooked by government, DEA](#). The report demonstrates the gross health inadequacies of present health assessment by the states.

As an illustration of the problem we have with state performance and attitudes we ask you to consider the media release; [Newman Government cuts resources red tape](#). Most of the statements in the release can be contested factually. The release refers to the Queensland report; [Managing the impacts of major projects in resource communities](#).

The social impact assessment guidelines dated July 2013 are grossly inadequate. In effect, the Newman Government is making their already inadequate health impact assessment process even more inadequate under the guise of cutting red tape, which does not exist.

Comments on the Draft Regulations

DRAFT RECOMMENDATION 4.3

Governments should ensure that the development of coal seam gas exploration regulation is evidence-based and is appropriate to the level of risk. The regulation should draw on the guiding principles of the Multiple Land Use Framework endorsed by the Standing Council on Energy and Resources to weigh the economic, social and environmental costs and benefits for those directly affected as well as for the whole community, and should evolve in step with the evidence.

We believe the protection of human health should be paramount and where there are identified potential risks to health a precautionary approach should be taken. As previously stated, we would seek clarification and assurance from the PC that there will not be a trade off between short-term economic incentives and social and environmental costs that can result in health impacts.

DRAFT RECOMMENDATION 6.2

The Commonwealth should improve the efficiency of environmental assessment and approval processes under the Environment Protection and Biodiversity Conservation Act by strengthening bilateral arrangements with the states and territories for assessments and establishing bilateral agreements for the accreditation of approval processes where the state and territory processes meet appropriate standards. The necessary steps to implement this reform should be properly scoped, identified and reviewed by jurisdictions and a timetable for implementation should be agreed.

There should be real concerns about the drive to reduce regulation without first assessing what the potential consequences will be. Any measure to improve efficiency must be tied to a review of potential consequences and impacts particularly relating to human health.

Approval processes related to the EPBC act, which involves matters of national significance, should not be devolved to the states, which do not necessarily have the expertise to deal with these matters and are potentially conflicted due to the short term economic benefits from development. As a further concern we note that in Queensland there is further potential regulatory inadequacy by the poaching of expert staff; [Miners snaffle gas check experts, The Australian](#).

DRAFT RECOMMENDATION 6.4

Governments should ensure that their environment-related regulatory requirements relating to exploration:

- *are the minimum necessary to meet their policy objectives*
- *proportionate to the impacts and risks associated with the nature, scale and location of the proposed exploration activity.*

Again, the focus is on minimising rather than improving regulation. By taking this position the balance is shifted away from precautionary measures to expediting exploration.

The wording “proportionate to the impacts and risks ...” invites a trade off between environmental and health risks and facilitating exploration based on what is currently known. Again, this is contrary to the statement made in the text of the report.

DRAFT RECOMMENDATION 6.5

Governments should ensure that their environment-related regulation of exploration activities should be focused towards performance-based environmental outcome measures and away from prescriptive conditions, in order to better manage risk and achieve environmentally sound outcomes.

How would “performance be assessed”? Would it include environmental and health outcomes? As it is, there is minimal potential for the prescriptive prevention of inappropriate or high-risk exploration. Changing the focus in this way would be a move toward further increasing the options for exploration and reducing inherent safeguards.

DRAFT RECOMMENDATION 6.6

Governments should ensure that when there is scientific uncertainty surrounding the environmental impacts of exploration activities, regulatory settings should evolve with the best-available science (adaptive management) and decisions on environmental approvals should be evidence-based.

In the text of the report, there is an explicit reference to taking a precautionary approach, but this has not been reflected in this guideline. Instead it reverts to what is already certain.

DRAFT RECOMMENDATION 6.7

Governments should clearly set out in a single location on the internet environment-related guidance on the range of approvals that may be required.

DRAFT RECOMMENDATION 6.8

Governments should ensure that their authorities responsible for assessing environmental plans and environmental impact statements (and equivalent documents) should make archived industry data publicly available on the internet.

In a short term comparison between economic benefits and environmental costs there will invariably be an undervaluing of environmental assets and services and the health impacts that they result in. This is because most environmental services are not currently well accounted for and where attempts are made to do this, their “monetary value” does not reflect their true value.

There is still a great deal of uncertainty and lack of knowledge about how ecological systems work, how they are affected, and how the essential services or benefits are reflected in our health and well being.

In an attempt to expedite exploration through reduced or “streamlined” regulation, the lack of certainty and knowledge of natural assets and ecological services will not be commensurately increased. There can only be one result and that is a greater potential for environmental degradation and damage and consequently impacts on human health and well being.