

# TRANSCRIPT

## STANDING COMMITTEE ON THE ENVIRONMENT AND PLANNING

### Inquiry into unconventional gas in Victoria

Melbourne — 22 July

#### Members

Mr David Davis — Chair

Ms Samantha Dunn

Ms Harriet Shing — Deputy Chair

Mr Shaun Leane

Ms Melina Bath

Ms Gayle Tierney

Mr Richard Dalla-Riva

Mr Daniel Young

#### Participating Members

Mr Jeff Bourman

Mr James Purcell

Ms Colleen Hartland

Mr Simon Ramsay

#### Staff

Secretary: Mr Keir Delaney

Research officer: Ms Annemarie Burt

#### Witness

Ms Megan Davison (affirmed), Executive Director, Victorian Division, Minerals Council of Australia.

**The CHAIR** — Megan, you might like to make a short presentation, and then we will ask some questions. You have heard, I think, a lot of the evidence today.

**Ms DAVISON** — Sure, thank you. I thought I would just make some very brief opening remarks and open up to questions. I find they are most valuable in this hearing environment. Obviously I am here representing the Australian minerals industry — the exploration, the extraction and the production of minerals across the country. We represent 85 per cent of Australia's production value. I am the executive director of the Victorian division, representing the interests of our members with interests in Victoria.

Also the minerals industry is a significant gas consumer. The most recent Australian Bureau of Statistics reports of 2012–13 reported that mining used 134 petajoules of gas out of a total of 617 petajoules, so just under 20 per cent. To give you a comparison, households used 155, and obviously the mining industry used 134, so it is a significant consumer of gas, particularly in regional and remote areas where grid connection for electricity or alternate energy sources is not available.

One of the things that I emphasised in the submission is the regulatory regime here in Victoria. Victoria is unique in that coal seam gas and oil shale — two petroleum products in all other jurisdictions — are classified as minerals under Victorian state law. I am here representing the explorers and producers of those commodities, because they are minerals commodities, and some of my members have interests in exploring for those — so not covering tight gas, shale gas.

Some of the key questions that are asked of Victorians around the onshore gas industry include the simple one: should we have one or not? I think this is quite a meaningless question, because what context do we have? Unfortunately the nature of the debate at the moment does not go into context. By example, where will Victoria get its gas from in the future? Will it be locally, or will we be dependent on interstate sources or potentially even internationally? And what does each option mean with respect to jobs — direct jobs through our gas sector, indirect jobs to do with the associated industries that will emerge through that? What does it also mean for accessibility and reliability? I think the question needs to be asked of every Victorian: if we do not produce gas in Victoria, it will mean this, this and this; if we do, it will mean this, this and this — make an educated decision. It is not a simple yes/no question.

The same can be said for discussions regarding the emissions profile of gas as a carbon-based fossil fuel. This is not an argument about gas production and renewable energy; this is an argument around gas as a key input for various sectors where there are no viable alternatives and also as a feedstock for petrochemical and manufacturing industries, as evidence has been provided over the course of today and the previous hearing. So I do not think it is actually helpful when we are having a partial conversation around the need, or not, for a gas industry. There are many variables, but unfortunately it gets narrowed down into yes or no.

Obviously I can speak to the regulatory regime, and I note there were a number questions earlier on around access arrangements, vetos, regulatory authority and oversight. I am happy to take those questions and any other questions that you would like to ask. I would also like to touch on one of the points made earlier around minerals not being on a land title. The whole state has minerals underneath in various quantities — various commodities. They have not traditionally been on the section 32 documents, which go with conveyancing documents. That is something that we have been disappointed by, because the last thing that you want is a surprise when people have bought property or whatever. There was never a requirement, but as of last year there is new guidance for all conveyancers that actually requires them to take notice of whether there are licences over particular pieces of land. I think that is a really good thing. Having said that, it is where mineral resources are known to exist and known to be potentially economically viable to extract.

Also I will just briefly touch on the concept of veto. Obviously the Crown owns the resource, which we firmly believe is in the best interests of Victoria. It is part of the Torrens title law, and it is something that provides certainty. Everybody knows, or has the ability to know, given that the Crown owns the resource, where they sit. Then it comes down to consultation, negotiation, access. A right of veto to individual entities, whether they are landowners or businesses, in effect transfers the minerals from the state to the individual, and our view is that that is at the expense of all Victorians, so the greater good gets compromised by an individual's decision-making. Having said that, mining and agriculture in Victoria have coexisted for 160 years. It is one of the oldest mining jurisdictions around and has been constantly mining in some form or another for 160 years. Given that Victoria is 3 per cent of the mainland area, that is pretty impressive. I do not think we can discount

that. I think that those who seek to drum up a division between one primary industry and another are doing a disservice to the work of those in those industries for the last 160 years. With that, I am happy to take questions.

**The CHAIR** — Megan, thank you for that presentation. You represent the Victorian branch, as it were, of the Minerals Council and the interests of the mineral extraction industry. But uniquely in Victoria, you make the point, this involves some petrochemicals because they are treated within the minerals act here, which is unlike elsewhere.

I was attracted to page 9 of your submission, under ‘The legal rights of property owners and existing land and water uses’. You make a point here about the establishment of statutory no-go zones, which the council is opposed to, and also why a right of veto is not the appropriate strategy. You make the point earlier in the presentation about the length of time that the state has owned the resources, as it were. This is reflected in a passage I am going to quote here:

... mining legislation, where regard is given to landholder interests, but primacy is given to the right of the state. An absolute right of veto for any person or group with an ownership interest will affect the ability of the state to facilitate economic development, jobs and harness flow-on benefits for the broader community.

The ability to block access to these resources would act effectively as a transfer in ownership of the minerals from the state to the landholder and represent a loss of economic development opportunity to the state.

Has there been any attempt to quantify that, do we know, or has that occurred in any other state where there has been a veto or a control right that has been put?

**Ms DAVISON** — It is loss of potential, because if there is a no-go zone — there are examples in Queensland on strategic cropping land; in New South Wales there are certain areas where exploration cannot occur — it is forgone knowledge and it is forgone potential. You cannot quantify the loss of value without knowing what the resource is.

**The CHAIR** — So in effect what you are saying here is that over the longer haul a veto would transfer potentially millions and billions of dollars worth of royalty rights, for example.

**Ms DAVISON** — Absolutely. If, for example, veto rights existed over the Latrobe Valley, not only is it a loss of economic revenue through royalties; it is a loss of power base, and it is a loss of subsequent industries that have been dependent for going on 80 or 90 years. There are many, many flow-on effects.

**The CHAIR** — I think that is my primary point from reading your submission.

**Ms SHING** — Thanks for your presentation and for providing that additional detail around the importance of a scientific approach to this decision and the need to actually have the most rational set of discussions that we can possibly have. In relation to understanding the risks, we have heard a lot of evidence both here and at the hearings in Sale, and also in the course of receiving submissions, that reputational risk and community concern for the value of product generated by landholders insofar as beef and dairy are concerned is a primary worry. It is a primary worry on economic grounds as well as on grounds for future value of property rights.

We are talking about needing to take the emotion out of the issue, as you have referred to and as is set out in the substantive submission from the Minerals Council of Australia. I am keen to see how it is that we do that where we do not yet have a conclusive scientific basis upon which to resolve that these things are able to be done in an absolutely safe way. Again you have talked about context; you have talked about the need to have a contextual discussion where a yes/no inquiry, I think you said, is a simplistic conversation. I am wondering how it is that we go about managing competing expectations around this where the objectives of stakeholders, whether they are community stakeholders, landowners or industry, are able to be resolved and are so far removed from each other at the beginning of the debate.

**Ms DAVISON** — Sure. Reputational risk is a key to everyone. I would like to touch on not only the key to existing businesses in an environment but also on new businesses, new entities. The reputation of any business is critical to its survival, and it is something that the minerals companies in Australia pride themselves on. You will note in my submission that I refer to sustainability principles that the members of the Minerals Council are required to sign on to. It is a process called enduring value, and it goes to a whole raft of principles around risk, around fiduciary responsibility and around human rights, Indigenous rights, safety — all of those things. They are very high standards. The minerals industry is a highly regulated industry for a number of reasons, so it is

held to a standard above a lot of other sectors. That is fine, as long as there is an understanding that it is a highly regulated industry held to high standards and those companies actually meet those standards.

Reputational risk for existing users: there is a process called cumulative impact assessment, and that is something that is enshrined in most laws around minerals and petroleum. I also heard Professor Peter Cook talk about baseline information. Absolutely that is critical. The absence of baseline information held by water authorities or geological surveys can be limiting if you cannot go out and actually do your drilling and assessment yourself. So with the moratorium on onshore gas, apart from Geoscience Australia and GeoScience Victoria doing a small sampling piece of work through the national partnerships agreement, the data is simply not being generated.

So on one hand we need that data to provide assurances, but we cannot get that data, so it is a catch 22 situation. Most governments no longer explore or extract minerals — they provide the right to do that through law, with the appropriate safeguards. Coexistence, as I mentioned, have been in place for many years, and the cumulative impacts are very important. Under the Environment Protection and Biodiversity Conservation Act there is now a referral to what is called the independent expert scientific committee, which is a coal and onshore gas scientific advisory committee where all proposals are referred to, and they are assessed on their merits around groundwater — things like that — and cumulative impact.

I do reference the national partnership agreement on the draft harmonised framework in my submission, and there are 18 different principles that were mentioned also by Paul from APPEA and also Professor Peter Cook, ranging from well construction to what to do with the produced water, which was discussed earlier with the hydrologist — all of those things. So there is a whole lot of checks and balances, and that cumulative impact. These companies that are looking to explore or extract for any mineral are part of the community anyway; they are living and working, and the children are going to school. There is no motivation and no interest to not have the appropriate checks and balances in place. It does perplex me when it is considered to be an us-and-them kind of conversation, because we are all in this together.

**Ms SHING** — Can I take you back to the point of my question around reputational risk, though?

**Ms DAVISON** — Yes.

**Ms SHING** — If, for example, and I note that the submission refers to Dairy Australia and refers to the report that says that coexistence is possible, there are a whole lot of other things in that report, though, that to my mind and on my reading put very strong caveats around that statement, so I would want to make sure that we look at that in context, but in terms of reputational risk, where we have just heard from Dr Matthew Currell around the risks that may occur in the context of proximity of drills within specific distances of water tables and what that might mean as far as heavy metal contamination and changes to the composition of groundwater. Where we have, as we do in Gippsland, large reliance upon groundwater for the purposes of producing world-class beef and dairy in massive proportions, the reputational risk for taking goods to market domestically and internationally where best quality is the selling point for niche and mass production scales, reputational risk is everything. So I am just wondering whether you have a view on how we reconcile what the reputational risk is for primary producers in that area who rely upon being able to say, ‘We are pristine and fresh in what we produce’, on the one hand, versus the potential for contamination and managing risk on the other hand as far as what you need to do in terms of development plans and mitigation strategies.

**Ms DAVISON** — Sure. There are examples, and I refer to Queensland again because that has got the most mature onshore gas industry where there are beef producers that are selling at very high premiums with a lot of gas wells on their farms. I have been to one of those sites — a gentleman called Simon Drury, who has got 50-odd wells. He irrigates his land with the water that comes out of the reverse osmosis plant. There are also in the Hunter Valley, a great wine region, lots and lots of export wine products on coalfields, so there is a lot of precedence. It certainly can be done, and it is in the interests of everyone for it to be done. In fact there are a number of mining companies that actually diversify. They have significant agricultural holdings that they run along with the mine, and there is mutual benefit. There is greater understanding of the underlying land and greater understanding of the underlying water resources, by virtue of having the exploration and production activity from minerals companies.

Risk mitigation is everything as well. One of the things that is curious to me is elimination of risk. You can only eliminate a risk if the hazard no longer exists. Nothing is risk free, and I think that the seeking of guarantees, the

seeking of 100 per cent certainties — that is not life. We cannot do that in our own life. We all take risks every day. This is about managing risks, putting secondary and tertiary controls in place to a great standard, then also, even if those controls fail, for whatever reason, you have got the mitigation. So you are actually mitigating any potential impact from the failure of all these controls lined up.

**Mr DALLA-RIVA** — I am very thankful for your submission. You have raised, I guess, again the view that there is a risk component that needs to be managed. You made comment before that: ‘these industries have coexisted for over 150 years’. I am still trying to get my head around the notion that, as you said:

... the intersection between mining and agriculture and a perception that the industry’s activities are having a negative impact on soil structure and water availability ...

is —

in turn affecting food security.

You do not see that as a particular point?

**Ms DAVISON** — It is certainly not a blanket statement — absolutely not. There is very little evidence that there have been the detrimental impacts on economic value as well. Certainly individuals may feel impact, whether it is perceived or real, and we see the example with wind farms in Victoria. There is a perceived impact on some people, despite the scientific evidence. So we just advocate for scientific evidence, assessment of impact and to let the science speak for itself.

**Mr DALLA-RIVA** — Yes, the science is speaking for itself, and there are varying views on what the science is saying.

**Ms DAVISON** — That is an interpretation issue, yes.

**Mr DALLA-RIVA** — Yes, if the interpretation is correct, I would say you have lost the argument in terms of coal seam gas being undertaken in Victoria by the simple fact that people have a very strong view, perceived or otherwise. Do you think that the industry itself, be it your industry or the various petrochemical industries, have actually lost that argument?

**Ms DAVISON** — I think the argument has not been fully articulated. I think that there are a number of factors that do not get aired in the debate, despite information being available. Certainly we have produced information, as have our colleagues at APPEA and PACIA in manufacturing. They do not get the same airplay. That is fine, but there is information out there; it is just not actually being utilised. It is very easy to get your pseudoscience through the internet, whereas we would be relying on credibility. We are very fortunate to have a CSIRO of the world standard that we do have. We have chief scientists in various jurisdictions. Many of our medical facilities and many of our universities are highly regarded. It is easy, though, to interpret how you want the outcome to be, which is disappointing. As a scientist myself, you let the facts lay before you as they are.

**Mr DALLA-RIVA** — Does fracking cause earthquakes?

**Ms DAVISON** — There has been some evidence of some seismic activity. There has been evidence of seismic activity from drilling underground railway stations and drilling underground roadways. Absolutely, any significant ground disturbance can potentially cause some correlated seismic activity. It does not go to that it will; it also does not go to that — even if it does — it actually represents a material risk.

**Mr DALLA-RIVA** — Again it is not a debate or argument with you particularly; it is just that you made the point that the science is up and down, yet we have had people from the industry — and I was looking at the evidence from Sale, where they said that fracking does not cause seismic activity. So even within their own industry there is confusion, with one saying it does and others saying it does not.

**Ms DAVISON** — I am referring to, obviously, coal seam gas, which is —

**Mr DALLA-RIVA** — Yes, that is what I was referring to as well.

**Ms DAVISON** — very unlikely to be fracked.

**Mr DALLA-RIVA** — We have received evidence as well. Anyway, thank you.

**Ms HARTLAND** — I have particular concerns around the way communities get treated in all of this. I have been interested today to hear — and it has been repeated somewhat in your submission — that you, or your organisation, does not actually think that farmers have any rights over their land and thinks they should not have a right to veto. I am interested in that in terms of: then what do we start saying to the farming community? Well, you can farm, but you have no right to say who comes onto your land and who extracts or drills on your land? I think we would get to a situation where farmers would no longer be prepared to take the risk if they have no rights. What would you say to that?

**Ms DAVISON** — I have not said that farmers have no rights. What I am saying is that the Crown — —

**Ms HARTLAND** — They have no right to veto.

**Ms DAVISON** — What I am saying is the Crown has the right; miners do not and farmers do not. The Crown has the right as the custodian of the resource. The farmer has the ability to negotiate and have a compensation agreement, but the ultimate decision-making authority is the owner of the resource, which is the Crown, which is how Parliament has determined over many, many a decade.

**Ms HARTLAND** — And you think that is acceptable, that farmers should not have right of veto?

**Ms DAVISON** — No, I think that the Crown has the right to exploit — —

**Ms HARTLAND** — No, that is not the question I asked.

**Ms DAVISON** — No, that is the question.

**Ms HARTLAND** — No, it is not the question. I am asking you about farmers' rights to veto, and you are saying that that is perfectly acceptable in your organisation?

**Ms DAVISON** — I think farmers should not have a right of veto over something they do not actually own, and that is what I am talking about, the Crown resource.

**Ms HARTLAND** — In that case then, should we now not start warning farmers on their titles, telling them that at any time a mining company, with the permission of the Crown, can come onto their property and begin extraction works?

**Ms DAVISON** — That is incorrect, because you cannot enter a property without seeking access and consent for access. If that consent is denied, it triggers a compensation conversation. If there is no resolution there, the Victorian civil administration tribunal is the adjudicator on behalf of the state.

**Ms HARTLAND** — And if then the farmer feels aggrieved at that process, their only choice is to go to the Supreme Court, if they can afford it?

**Ms DAVISON** — That is correct; that is how our court system works.

**Ms HARTLAND** — So that leaves farmers extremely vulnerable because it does take away their rights to farm.

**Ms DAVISON** — I disagree that it takes away their rights to farm. There are many examples where there are extraction operations and exploration operations coexisting with farming operations.

**Ms HARTLAND** — I am talking about farmers who do not want to involve themselves because they have no right to veto, and they have no right to stop a company coming onto their property. We can talk about all the fancy bits at the start, but in the end they have absolutely no right to stop a company coming onto their property and extracting.

**Ms DAVISON** — Sorry; the 'fancy bits' you refer to is that the Crown owns the resource?

**Ms HARTLAND** — You were talking about the compensation and the consent processes, but if that farmer continues to say, 'I don't want you on my property', in the end they have no right to stop that?

**Ms DAVISON** — That is correct; it is the state's decision.

**Ms HARTLAND** — And your organisation thinks that is perfectly acceptable?

**Ms DAVISON** — The state owns the resource; absolutely.

**Ms HARTLAND** — So what do we do then about the right to farm? We are talking a lot about Gippsland in particular, which has incredibly high value. Are we then saying to farmers, 'You really have to be cautious about farming and buying this property because at some stage a mining company can come onto your land without your permission and begin mining'?

**Ms DAVISON** — This is not a new situation, so any landowner would be aware of what — —

**Ms HARTLAND** — No, that is not actually — the evidence we received from farmers is that they were not aware — —

**Ms DAVISON** — Okay. Well, every landowner could be made aware of it.

**Ms HARTLAND** — They are not aware.

**Ms DAVISON** — But it is law. Not all of us knows every single piece of law that relates to our own life, and I understand that. That can be confronting if it seems like it is something new, but it has been in our system for well over a century.

**Ms HARTLAND** — So would you suggest it should go on people's titles so that they are made absolutely aware of the risk they are taking in buying a property?

**Ms DAVISON** — Should what go on the title?

**Ms HARTLAND** — It should go on their title to say that the Crown has the right to give licence for extraction on their property.

**Ms DAVISON** — That is a decision for the Crown, but I think it is just stating the fact, so I do not see how it would be a problem.

**Ms BATH** — With respect to what Colleen was just questioning you about, Megan, have you got evidence with respect to New South Wales or Queensland of a VCAT equivalent — I have not got the exact acronym there — of where a farmer or farmers or primary industry have said no and they have actually won a court case? Are you aware of that, or is it always negotiated that mining will occur? Have you seen evidence?

**Ms DAVISON** — Through a court system — certainly, for example in Victoria — the court cannot make a decision on access; it can only make a decision on compensation. If a compensation agreement has not been agreed, because the court is making an adjudication on the Crown's right, it cannot actually deny access to that land on behalf of the Crown through a licensing regime, but it can award compensation. There are equivalent structures in New South Wales and Queensland. I have noted that that is petroleum law, so there might be a different language around that, but certainly the jurisdictions — the Crown — owns the resource.

**Ms BATH** — If we are looking at compensation for the farmers, is there a figure, a percentage; how does that work? Have you got comment with respect to the mining company paying the farmer compensation?

**Ms DAVISON** — Sure. There are a range of fees that could be agreed to, like access fees. We have a similar process with native title holders as well, so there is compensation for loss of access to a certain portion of your land and if your productive capability has declined because you are using a certain number of hectares. Having said that, the surface expression of a drill is 30 centimetres. A drill pad could be about the size of this table. Exploration is not a significant impact on the ground.

Mining is very different. With mining the options are purchase of land, lease of land and things like that, but the majority of activity in any jurisdiction is exploration with regard to an area. Some 0.2 per cent of Australia's landmass is covered by mining — 0.2 per cent.

**Ms BATH** — I would comment that we have had a comment previous to this that in terms of infrastructure the impact can be far greater than this space on the farmer's land with respect to transport and all those types of things.

**Ms DAVISON** — Certainly for gas wells, yes, it potentially can.

**Ms BATH** — Sure. Have you got comment with respect to — if we change track a little bit — tourism and the impact of tourism on this? We have talked a lot about dairying, which is close to many of our hearts, and general agriculture, but with respect to tourism and this issue — because again in Gippsland but also along the Otways we rely heavily, and it is a big industry. My concerns are around that impact and negative impact on this industry in terms of tourism.

**Ms DAVISON** — I think the assumption of a negative impact discounts the positive impacts also. Impact can be positive or negative. One of the benefits of any mineral development to any community in any region is that a company becomes an anchor tenant for upgrades of infrastructure and increased capacity in utilities, because it is an anchor contractor. It contracts a certain amount, and therefore the communities can benefit, so there is that benefit with regard to tourism.

You might be surprised to know that mining tourism occurs as well. Certainly the Pilbara sees a very high proportion of travellers going on mining tourism. I do not see how there can be any change to the tourism activities. I think you can only get the upside by the additional comforts that tourists tend to expect when they tour around — access to the utilities they need. The Darling Downs is a large area in Queensland that has a whole lot of onshore coal seam gas but also some coalmining and the associated infrastructure. A councillor there — Cr Ray Brown — has mentioned numerous times that in Dalby, which is one of the central towns there, there are no traffic lights, but you cannot get a park in the street. It is just thriving. You have got small businesses providing breakfast to the tradespeople who are going to site. There is all of that, not to mention that children are returning home because there are supplementary industries, and with that comes local tourism as well. What are they called? The staycation as opposed to the vacation is attracting people.

**The CHAIR** — Megan, thank you. That was very informative, and no doubt the secretariat will be in touch in the next while to seek further information. You will get a copy of the transcript in the next few days, but we thank you for your evidence today.

**Ms DAVISON** — Thank you.

**The CHAIR** — I declare the hearing closed.

**Committee adjourned.**