

# TRANSCRIPT

## STANDING COMMITTEE ON THE ENVIRONMENT AND PLANNING

### Inquiry into unconventional gas in Victoria

Melbourne — 22 July 2015

#### 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

#### Witnesses

Mr Gerald Leach (sworn), Chair, Land Management Committee,

Ms Melanie Brown (affirmed), Policy Manager, and

Ms Emily Waters (affirmed), Policy Adviser, Land Management, Victorian Farmers Federation.

**The CHAIR** — I welcome the audience but also the Victorian Farmers Federation to the hearing on onshore gas, noting particularly that we appreciate the evidence of Gerald Leach, Melanie Brown and Emily Waters. I would appreciate it if Keir would swear the witnesses in now.

I indicate that the committee's evidence today is in relation to the inquiry into onshore unconventional gas and that evidence is being recorded. We welcome you to these hearings. All the evidence taken at the hearing is protected by parliamentary privilege; therefore you are protected against any action for what you say here today, but if you go outside and repeat the same things, those comments may not be protected by privilege. I invite you to take either the oath or the affirmation.

Gerald, I ask you to lead off with a presentation, and then the committee will ask a few questions. Thank you.

**Mr LEACH** — Thank you, Chair. My name is Gerald Leach. I am a sheep and grain farmer from Walpeup in the Mallee. I am here today as chair of the VFF Land Management Committee to present to your inquiry into unconventional gas. I am joined by Melanie Brown, VFF policy manager, and Emily Waters, policy adviser for land management. I am going to summarise the VFF's submission, and Melanie and Emily are here to assist in answering any questions you may have for us.

The VFF has developed a mining and petroleum policy through its policy committee structure and annual conference process. The VFF mining and petroleum principles are listed on page 5 of our submission. The VFF's mining and petroleum policy calls on the state government to extend the present moratorium on exploration and extraction of unconventional gas until 2020, given the uncertainty of the risks to Victorian agriculture. At present there is a lack of information on the potential risks of an unconventional gas industry, particularly on Victoria's groundwater resources. Given the uncertainty, the VFF believes the moratorium should remain in place until scientific evidence demonstrates it is safe. VFF members have identified their top environmental concern with an unconventional gas industry as the potential for cross-aquifer water contamination.

The government should develop and make public Victorian-specific research on the environmental, public health and water risks associated with unconventional gas activities. The previous coalition government commissioned a study to examine the potential impacts of onshore gas developments on water resources. Findings of these studies are crucial to informing the community and regulators of the suitability of an unconventional gas industry in our state. However, the findings have not yet been made public. As well as enhancing scientific information and regulatory safeguards, there are opportunities to strengthen farmers' rights. VFF members often report that they feel compromised in the negotiation process for exploration and mining activities. If a landholder disagrees with mining activities proposed, they lose the power to negotiate outcomes once the matter progresses to the compensation agreement dispute resolution stage.

The VFF's written submission has highlighted opportunities to review existing legislation to improve farmers' rights. Firstly, the VFF believes that legislation should be amended to give farmers the power of veto over mining activities on their land. Agricultural landholders should have the right to determine what their land is used for, and this right should be enshrined in legislation. While the Crown owns the minerals, the land, including the top 15 metres of soil, is privately owned. In most cases modern mining requires the removal or disturbance of this soil to access minerals or petroleum resources, which landholders should have the power to stop.

Secondly, farmers should receive appropriate commercial payments for all mining and petroleum activities on their land. VFF members believe that current compensation arrangements do not provide a reasonable return to a farmer for use of their land, their time and the impact on their business. Farmers believe that outcomes could be better if left to the farmer and mining company to negotiate. There is not always a fair return for the farmer when compensation agreements are determined by a third party such as VCAT and based on the cost of making good damaged land. There are opportunities to provide commercial payment arrangements to account for the full impact of a mining activity on a farming enterprise.

Thirdly, there is significant concern in the agricultural sector about the potential legacy issues surrounding unconventional gas activities. Farmers are concerned about long-term agricultural productivity and access to quality water supplies. Issues caused by abandoned or decommissioned wells and pipelines should be the responsibility of the mining company. State government, as the regulator, has the obligation to ensure those rehabilitation responsibilities are carried out where the impacts are unforeseen or damages realised after the bond period expires.

In conclusion, there is uncertainty about the impact of an unconventional gas industry on the environment and our valuable water resources. A large number of our members believe that the potential environmental risks are too great to accept without guarantees from the Victorian government that such an industry can be safely managed. VFF members responded to the unpreparedness of Victorian-specific scientific evidence and Victorian regulations by calling for an extension to the present moratorium.

The rights of agricultural landholders need to be strengthened in relation to negotiating land access and entering into agreements with mining proponents. The power of veto and creating an environment for commercial payments create a more level playing field between the landholder and mining companies in the negotiation process. Thank you. We are very happy to answer questions.

**The CHAIR** — I thank you for your submission, noting the great importance of the VFF's opinions. I go to your request for a right of veto and ask whether the VFF has done any modelling on the economic impact of that, on the one hand, and the impact on royalties that the state might receive, hence the collective. If you have, would you make that available?

**Mr LEACH** — We have not done specific research on that as such. However, what we have done is look at other jurisdictions where the right of veto is in play. In Western Australia there is a right of veto on private land. The other issue is that there are examples under Victorian legislation where there is a right of veto — not over mining but over quarrying — where the extraction occurs in that first 15 metres. Our observation has been that in fact there is less dispute when that is the case because what happens is that a commercial arrangement occurs between the proponent and the landholder, with much less dispute than we see at times in the mining sector

**The CHAIR** — My key point is that there is not any modelling that you have in your possession of the impacts and the impacts on royalties. I accept that, so that is fine.

**Mr LEACH** — No, we have not.

**Ms SHING** — Thank you Gerald, Melanie and Emily for coming along today and for the submission that we have received and also that you have talked to. I have a question in relation to what you have just talked about. I am pleased to hear that the position has been developed in direct consultation with members, including through the national conference, and that it does, perhaps, represent the best possible version of your members' positions on this issue, particularly noting that in individual communities it can be very divisive where one person with land may support the idea of exploration or unconventional gas proceeding where a neighbour does not.

On that basis I take you to the second page of your submission where you indicate — and again to pick up on the Chair's point — that the right of veto is an important part of your position. Under the 'Farmers' rights' section, you talk about the right of veto and then in the last paragraph you talk about neighbouring agricultural producers often being left out of the negotiation process with a mining operation; however, 'unconventional gas activities may result in regional environmental, water and landscape impacts', to quote that paragraph.

Given the comment you made, Gerald, about how the VFF believes that negotiations should be left to the farmer and to the company in relation to a licence arrangement and/or compensation that might be payable, does the VFF have a specific view on the impact or responsibility where the effects of unconventional gas exploration or recovery will go beyond the border of the drill site itself and potentially onto neighbouring properties?

**Mr LEACH** — Thank you for the question. There are two aspects to our policy in that respect. There is the issue of the individual farmer on whose property the activity is proposed, and we are saying that that individual landholder should have the right of veto. But quite clearly through our submission we have made it very clear that it is extremely important that the other component of all this is the appropriate regulatory framework so that we ensure that there is no damage, no off-site impact from mining activities. So when we talk about, for example, an unconventional gas development, what we are saying is that even if a farmer says, 'Yes, you can have that activity on my property', if it is going to cause damage to adjoining properties through such a thing as contamination of an aquifer that might affect several properties, then it is not appropriate for that activity to go ahead. Obviously there is a responsibility not just on the mining company and the individual landholder but on the regulator to ensure that if damage was going to occur to other properties, then that activity should not go ahead.

**Ms SHING** — But just to be clear, you are not talking about any broader right of veto by a neighbouring property or landowners whose water access, soil et cetera might be at risk or whose market share might be at risk from a reputational perspective in the event that a drill is approved?

**Mr LEACH** — We believe that it is the regulator's responsibility there. Obviously we believe that there should be capacity for affected third parties to complain to the regulator and for the regulator to therefore take action.

**Ms SHING** — Thank you. That is very helpful.

**Mr DALLA-RIVA** — Gerald, just a question in relation to the submission you have there, page 21. It relates to table 8, 'Survey results'. This is talking about the moratorium. Before I get to that, I just want to understand: why is it that the VFF is seeking a moratorium until 2020? What has delivered you to that particular year?

**Mr LEACH** — The reason why it is 2020 is that I have to say it is our best estimate of the time it will take to determine whether an unconventional gas industry can be safely carried out in the state of Victoria. Our belief is that at the moment there is a significant amount of research required to investigate whether that is the case or not, particularly given that we are not aware of any research that has taken place in an area that is similar to Victoria in its hydrogeological status.

We are quite concerned that there may well be extrapolations made from research that has been carried out in much less intense geophysical areas, whereas certainly you could not — other than in Tasmania, I believe — put much faith in anything else that has been researched in Australia in terms of how it would apply to a state such as Victoria, particularly the areas that are obviously being looked at in terms of south-west Victoria and parts of Gippsland.

**Mr DALLA-RIVA** — Thank you for your comments. Following on from that, on table 8, 'Survey results', I am just trying to get some indication because whilst you have said in your submission that 74 per cent of VFF membership was supportive of this policy — that is, the moratorium continuing until 2020 — the survey results do not necessarily comply with that. I am looking at where it says 'Support a moratorium until such time as peer-reviewed research shows onshore gas extraction can coexist with agriculture', 44 per cent of your members are still looking at it, subject to the research.

Then you look at 'Support lifting the current moratorium immediately' — 12 per cent of your members. Then 'Support lifting the current moratorium if the parliamentary committee's report makes that recommendation' is 6 per cent. So when I look at the total number and that is 'Support a total ban on onshore gas exploration extraction', it is 37 per cent. You would have to say that if you were to take the figures just on what I am seeing here, subject to there being peer-reviewed research, subject to the parliamentary committee's report and just generally within the support of lifting the moratorium, you have 63 per cent of your members either supporting or intentionally wanting to support it. That clearly goes against what you have just submitted in your presentation — that the VFF is opposed to it.

**Mr LEACH** — With respect, I cannot agree with your conclusion. What we have said there is that 74 per cent of VFF membership was in support of this policy, and that is the combination of the 44 per

cent that support a moratorium until such time as peer-reviewed research shows that onshore gas extraction can coexist with agriculture and the 37 per cent that support a total ban on onshore gas exploration and extraction — —

**Mr DALLA-RIVA** — That is 81 per cent.

**Ms WATERS** — Sorry, if I can just add a correction to this, a number of questions were asked in our survey, and I have included as a table in our submission the response to one question. A second question was: ‘Do you support the current VFF policy of a moratorium until 2020?’. Seventy-four per cent responded to that question, saying ‘Yes’, and the remaining responded, saying ‘No’. Then a separate question was asked, ‘Do you — A, B, C or D — support a moratorium?’ and it was a different question. What I can do, if it assists the committee, is provided separately the response to that question. The numbers in table 8 do not relate to the comment that a survey of VFF members shows that 74 per cent of membership was supportive of this policy, and that was the policy on the moratorium to 2020.

**Mr DALLA-RIVA** — Notwithstanding the 74 per cent, if you were to just look at the view about the moratorium either being lifted based on peer research, just lifting it immediately or lifting it based on our parliamentary inquiry, 63 per cent would be leaning towards that either fully, partially or with some caveat. Is that correct?

**Ms WATERS** — We have two different questions asked. An individual responded to one question in one way, and that does not necessarily reflect the way or the reason they would respond to the second question.

**Mr DALLA-RIVA** — Not counting the 74 per cent of the first part, in the second part, when you were drilling down to your members, clearly there is a leaning towards the moratorium being lifted, with conditions. The nod meaning?

**Ms WATERS** — The numbers tell us a story. We form our policy through our policy committee structure and annual conference processes. This survey was just to get that story within the membership of how members feel for different reasons about the moratorium or about a ban or if there are some members who support it being lifted immediately, perhaps subject to conditions and perhaps not. It is helpful for us to see that. But our policy, as it stands, has a formal process in the way it is developed.

**Mr DALLA-RIVA** — I am still trying to work out where the 2020 comes from.

**Ms WATERS** — That was proposed at our annual conference on 26 June, and it was carried by the members who were there who had the voting powers.

**Ms SHING** — Just to build on that, was there specific wording put as part of the motion that was accepted at the conference? Because 2020 appears to be worked into the extension of the moratorium until such time as peer-reviewed research shows onshore gas extraction can coexist with agriculture. Was that roughly the wording of the motion?

**Ms WATERS** — The wording of the resolution was:

The VFF supports a five-year moratorium on exploration and extraction of onshore gas in Victoria.

**Ms SHING** — So a straight-out moratorium until 2020, without caveats around it?

**Ms WATERS** — It was a five-year moratorium on exploration and extraction of onshore gas.

**Ms SHING** — So no conditions. Okay, thank you.

**Mr LEACH** — Chair, I apologise; I got my maths wrong. I thought I was pretty good at maths too!

**Ms HARTLAND** — Can you take us through the steps that a farmer will go through when they are approached to actually allow drilling on their land?

**Mr LEACH** — I think Emily is probably more au fait with the actual process. Is that okay with you?

**Ms WATERS** — With the legal process?

**Mr LEACH** — No.

**Ms SHING** — The process of interaction, I think, was more what you are talking about.

**Mr LEACH** — Sorry, you mean in terms of being approached by an exploration — —

**Ms HARTLAND** — By a company. What is the process from there?

**Ms WATERS** — A farmer can be approached, and we have examples of a farmer being approached in a range of ways, such as through written communication or them physically presenting at the site with information on the purpose of the exploration licence.

**Ms HARTLAND** — Clearly the farmer and the company will meet, but if the farmer decides that they do not want this process to go ahead, what legal recourse have they got to not allow that to happen?

**Ms WATERS** — If the farmer does not consent and the farmer and the mining company are unable to reach an agreement, then they commence the dispute resolution process, and a compensation agreement can be reached by going to VCAT or in some cases the Supreme Court.

**Ms HARTLAND** — Then this is quite a costly process for a farmer if they have to go to the Supreme Court. Do they have no right to actually just say no to this exploration?

**Ms WATERS** — At the moment if there is a disagreement, then yes, it commences that dispute resolution process, which is formal, through VCAT.

**Ms HARTLAND** — If a farmer was to take it to VCAT and then to the Supreme Court, can you provide just a ballpark figure of what that would cost that person?

**Ms WATERS** — It depends on what that person wishes to investigate prior to going to VCAT. There are examples of where the costs could be prohibitive for that individual before starting the dispute resolution process, depending on what information they feel they need to equip them to get the better outcomes for that individual.

**Ms HARTLAND** — Which is why the farmers federation is putting forward the veto position that farmers should have a right to veto without having to go through this process?

**Mr LEACH** — There are two aspects to that. We certainly believe it would be less confrontational, but also it creates a more level playing field. At the moment it is not a level playing field because the farmer knows that ultimately they cannot say no and that the proponent of the development has therefore, if you like, got very much an upper hand in any negotiation. There are certain limitations on the level of compensation that can be achieved by going just by statute.

**Ms HARTLAND** — You may not be able to give me exact figures — it may need to be on notice — but can you give us an idea of what the compensation is?

**Ms WATERS** — It is something we can take on notice.

**Mr LEACH** — Yes, I think we would rather take that on notice. We are happy to supply that to the committee.

**Ms HARTLAND** — Certainly at the Sale hearings farmers who were presenting were talking about their concerns about remediation after the process. To what level are the companies required to remediate? It seems to be what the company thinks that they should do and what the farmer thinks that they should do. Is there anything that is regulated to say where it should end up?

**Mr LEACH** — Yes, there is regulation surrounding that. I will stand corrected, but I think at the moment the company has to provide a bond. As I said, I will stand corrected, but I think it is a three-year period after the development has ceased that it is then determined whether it is appropriate or not. We believe that should be at least five years, but also, and as we say in our submission, there are two aspects to that. One is that at the moment the farmer has no say in terms of what those rehabilitation plans should be when the development first occurs. It is only the regulator. The farmer does not have sign-off. We also believe that given that there are potential legacy issues that have not been addressed in the past, there should be a responsibility on the regulator — in this case it is the state government — to either make good themselves or provide a mechanism to make sure that the company makes good even if it is beyond that period of time.

**Ms HARTLAND** — One last question: a farmer we visited at our Sale hearing talked about the fact that when they bought their property they were not aware that there was any mining overlay on their property, because in their conveyancing it was not on their title. Is that something that you would think should be on the title so people are aware of what it is they are purchasing?

**Mr LEACH** — I must admit that I am surprised it was not on the title.

**Ms HARTLAND** — We were really shocked.

**Mr LEACH** — I think my answer to that is pretty obvious — it definitely should be.

**Ms BATH** — If I can digress a little bit, in terms of the impact on infrastructure we have had conversations with a few people in regard to the impact on the land, fencing, trucks or roads and, if we are looking at dairying, on dairy cattle. Have you had conversations with your members with regard to that, and what do you see as an issue around that?

**Mr LEACH** — I take it you mean the infrastructure —

**Ms BATH** — Of the mine.

**Mr LEACH** — of the mine, which would potentially impact on the productivity of the farm. Yes, a number of our members have certainly expressed serious concerns about that. If you look at what we have seen historically in other places with unconventional gas developments, there are quite significant areas of tracks and pipelines that may be underground, but there are still issues in terms of when they are being built. Also there can be issues — even though they are underground — when they are in use.

When we look at that in relation to, say, the situation in Queensland or New South Wales, they are bad enough, but if you put that into a more intensive, say, dairying farm scenario, it is not just the infrastructure but you have animals that obviously need to be contented. I do not think anyone should take that lightly. If you are talking about a dairy cow, any disruption to its daily routine or any fright it might get or anything — all of that impacts on its milk production. The infrastructure and the environmental quality for the animals on a farm — infrastructure in terms of how it can impact on farm machinery being efficient and also in terms of the impact it can have on animals — is a very serious issue in terms of the potential loss of productivity.

**Ms BATH** — If I recall correctly, in Sale there was a company involved in lignite extraction of gas who spoke about the availability of water from the underground to be used by farmers. Have you had any comments around that?

**Mr LEACH** — Yes. Part of our VFF policy is that surplus water from the mining process should be made available to agriculture, subject to its suitability.

**Mr DAVIS** — Gerald, I thank you and the VFF for your evidence, noting the follow-up question from Colleen and indicating that both Ms Shing and Mr Dalla-Riva think it would be useful to have, if you are agreeable, access to that survey so that we can see the details of what people think.

**Mr LEACH** — We will certainly do that. Thank you.

**Mr DAVIS** — I also indicate that you will receive a copy of the transcript for proofreading in the next few days.

**Mr LEACH** — And I will practise my maths!

**Witnesses withdrew.**