REPORT ON PROCEEDINGS BEFORE

PORTFOLIO COMMITTEE NO. 4 - INDUSTRY

INQUIRY INTO THE COAL AND GAS LEGISLATION AMENDMENT (LIVERPOOL PLAINS PROHIBITION) BILL 2021

AND

INQUIRY INTO THE PETROLEUM (ONSHORE) AMENDMENT (CANCELLATION OF ZOMBIE PETROLEUM EXPLORATION LICENCES) BILL 2021

Virtual hearing via videoconference on Tuesday 6 July 2021

CORRECTED

The Committee met at 9:50

PRESENT

The Hon. Mark Banasiak (Chair)

Ms Abigail Boyd
Ms Cate Faehrmann
The Hon. Sam Farraway
Mr Justin Field
The Hon. Taylor Martin
The Hon. Peter Primrose
The Hon. Peter Poulos
The Hon. Mick Veitch

The CHAIR: Welcome to the combined hearing for the inquiries into the Petroleum (Onshore) Amendment (Cancellation of Zombie Petroleum Exploration Licences) Bill 2021 and the Coal and Gas Legislation Amendment (Liverpool Plains Prohibition) Bill 2021. Before I commence I acknowledge the Gadigal people, who are the traditional custodians of this land. I also pay respect to Elders past, present and emerging of the Eora nation and extend that respect to other Aboriginals present. Today we will hear from a number of stakeholders including mining industry representatives, environmental and community groups, academics, local councils and government. Today's hearing is examining two bills. Some witnesses will be giving evidence for one bill while others will be giving evidence for both.

Before we commence I will make some brief comments about the procedures for today's hearing. Today's hearing is being conducted via videoconference. This enables the work of the Committee to continue without compromising the health and safety of all, but it does introduce elements that are outside of our control. I ask for everyone's patience through any technical difficulties we may encounter today. If members or participants lose their internet connection and are disconnected from the virtual hearing, please rejoin the hearing using the same link. Today's hearing is being broadcast live via the Parliament's website. A transcript of the hearing will be placed on the Committee's website when it becomes available. In accordance with the broadcasting guidelines, media representatives are reminded that they must take full responsibility for what they publish about the Committee's proceedings.

While parliamentary privilege applies to witnesses giving evidence today, it does not apply to what witnesses say outside of their evidence at the hearing. I therefore urge witnesses to be careful about any comments you may make to the media or others after you complete your evidence. Committee hearings are not intended to provide a forum for people to make adverse reflections about others under the protection of parliamentary privilege. In that regard it is important that witnesses focus on the issues raised by the inquiry terms of reference and avoid naming individuals unnecessarily. All witnesses have a right to procedural fairness according to the procedural fairness resolution adopted by the House in 2018. If witnesses are unable to answer a question today and want more time to respond, they can take a question on notice. Written answers to questions taken on notice are to be provided within seven days. Finally, could everyone please mute their microphones when they are not speaking.

ANDREW ABBEY, Policy Director, NSW Minerals Council, sworn and examined

The CHAIR: I now welcome our first witness. Would you like to make a short opening statement?

Mr ABBEY: The NSW Minerals Council appreciates the opportunity to assist the Committee in its deliberations on this issue. For context I note that our submission and further comments largely pertain to the coal and gas legislation amendment bill and not to the other bill, and primarily to existing and future mining in our communities. I do not have a great deal to add to our relatively brief submission other than to emphasise the following key points. As you would be aware, our submission outlines some concerns from the industry and our members' perspectives on the bill. Firstly, we question the need for the legislation. As noted in our submission, in June 2024, about 12 months ago, the New South Wales Government released its *Strategic Statement on Coal Exploration and Mining in NSW*.

The statement provides a consistent set of rules across the entire State, as noted by the Minister in the foreword, "To provide greater certainty to explorers, investors, industry stakeholders and communities about the future of coalmining in the State." It sets out how the New South Wales Government will take a "balanced approach, allowing exports to continue while there is growing demand, but significantly scaling back where mining can occur and working to reduce its impact and address community concerns". The statement also includes a map that identifies areas that are available for future coal exploration and mining as well as areas that are excluded from future coal exploration and any mining activities and areas that are prohibited for future coal exploration and mining.

Specific areas align exactly with the areas in the mining State environmental planning policy [SEPP] and of course that now includes the full extent of the watermarked area, which was recently updated I think about four, five or six weeks ago, as well as the Caroona area and a number of other areas in the State where the coal area exists. The remaining areas of the map, which is the majority of the area, particularly the Liverpool Plains and the Gunnedah council area, are largely categorised as "no proactive releases" for coal exploration under this protective rights framework, with the only exception being applications that occur directly adjacent to an existing coal title, and of course these would be subject to the usual processes. In simple terms it means there will be no future greenfield release areas for coal exploration in the "no proactive release" areas, as per the Government's statement, with the only exception being the ability to issue licences adjacent to existing coal operations, titles et cetera.

As the statement shows, in the areas subject to the bill there are a limited number of those areas. When it was released, and despite significantly reducing areas where coalmining is able to take place in the future, the NSW Minerals Council took the view it was a generally reasonable and balanced approach to the future of the coal industry in New South Wales and it attempts to deliver certainty and consistency for the coal industry and for coalmining communities and coalmining families in New South Wales. Given the consistent statewide rules now in place, in our members' view there is not an actual need for the proposed legislation, particularly where it is likely to create a new or different or inconsistent set of rules for different parts of the State. Furthermore, the impacts of the bill appear to go beyond the outcomes that are enshrined in the Government's statement, particularly in terms of not recognising existing industry investment or approvals or authorisations that already exist, by effectively cancelling any titles that have not been determined to date or where activities authorised by lawful licence have not commenced, as well as removing the ability for existing operations to seek new licences.

Secondly—and I will stop very shortly—as a matter of principle we are opposed to legislation that will take away existing lawfully obtained entitlements or rights if it effectively has retrospective application. As well as being inconsistent with the Government's strategic statement, the bill appears to impinge on a range of rights and obligations that existed prior to the commencement of any such legislation, such as the cancelling of lawfully obtained authorisations where operations or prospecting has not commenced. For example, we know the intention of the bill is designed to bring an end to the Vickery Extension Project, which has obtained a number of lawful approvals. This, over a number of years, has had a previous approval for the Vickery project. There are exploration licences [ELs] and requirements for exploration titles in terms of doing work, community consultation and years of transparent assessment processes as part of the Environmental Planning and Assessment Act approval processes, which included two or 2½ years for the Vickery Extension Project.

That included referral to the Independent Planning Commission, which held its own community consultation processes as well as public hearings. Ultimately it was determined by the New South Wales Independent Planning Commission with approval subject to conditions and requirements. I note, and I think it was in the second reading speech as well, the matter is currently still going through the process. Recently it was the subject of a Federal Court hearing where a group was seeking an injunction against the Minister being able to determine the application. That element of the court proceeding was not successful. However, the judge did require

that the Minister take into account or exercise a duty of care when taking into account the impacts of the proposal on future generations. That still has a little way to play out.

My point of saying that is that it is going through a lengthy process. Whilst we accept that, of course, Parliament has the ability to—laws with retrospective application can be made by Parliament. It is understood—and it is our view—there are well-established principles of statutory interpretation that, in the absence of exceptional circumstances, legislation is assumed to not have retrospective application generally. Of course, this is intended to make sure that the rights of people are impacted in accordance with the laws and provisions of the day and are reasonably protected. That is me done, so I am happy to take any questions or the like. Thank you for having us.

The CHAIR: Thank you, Mr Abbey.

Ms CATE FAEHRMANN: The bill is obviously my bill that I tabled and second read in Parliament. If we just focus on Vickery for a second, as you said. Are you aware that recently Whitehaven Coal pled guilty to stealing one billion litres of water at its Maules Creek coalmine.

Mr ABBEY: Yes, I am aware of it. I am not trying to avoid answering the question in any way, shape or form—I am aware of it. I have read the relevant media related to it and I understand that has been going through a legal process. I do not know the details to answer that more fully other than my awareness of it.

Ms CATE FAEHRMANN: Yes, because Whitehaven is the owner of the Vickery Extension Project and, I think, the strategic statement as well. Another question in relation to Vickery: Is it your view that where that line is located is within the Liverpool Plains as the Minerals Council defines the Liverpool Plains?

Mr ABBEY: Look, the Minerals Council does not define the Liverpool Plains. It is a good question in terms of what is the Liverpool Plains. Having worked in government years ago when the Watermark project—from a fundamental starting point, NSW Minerals Council does not have a position on what the Liverpool Plains is. It is a vexed issue: Is it the black soils, is it the flood plains, is it the area you have identified? You could probably hold a separate inquiry in relation to what exactly constitutes the Liverpool Plains. What I do know is that the strategic statement that has been released by the New South Wales Government includes all of the licences and entitlements of the Vickery project and related areas—and there are a couple.

I think there is the Werris Creek project, Tarrawonga, and Maules Creek or whatever. It includes all of those titles and elements. They have been identified so there are no surprises they exist and they are in that area. I will leave others to speculate on what part of the Liverpool Plains that is located on. We do not have a formal view on what it means. Others are probably better positioned to explain exactly what the Liverpool Plains are.

Ms CATE FAEHRMANN: The strategic statement, as I understand, in terms of the announcement, particularly in relation to the Upper Hunter by-election, was to say that there would be no more coalmining in Liverpool Plains. I think politically that was also centred around the fact of protecting land and water from coalmining in the Liverpool Plains. Would you agree?

Mr ABBEY: Once again, please do not take this as me trying to be difficult or clever, but I am not sure that the strategic statement said that. The strategic statement plays a fairly straight bat on where coal and coalmining cannot occur. Nowhere did I read in there that it is saying coalmining is prohibited on the Liverpool Plains.

Ms CATE FAEHRMANN: Yes. Mr Abbey, the question was also relation to the Government's commitment or announcement in April this year, which Deputy Premier John Barilaro made, that there would be no further coalmining in the Liverpool Plains.

Mr ABBEY: In terms of the Deputy Premier's announcement and what he meant by that, I cannot speak for what the Deputy Premier meant; the Minerals Council does not speak for what the Deputy Premier meant. I am not going to attempt to second-guess what he meant by that. What I can say is obviously they reached an agreement or a conclusion about the Watermark mine. In terms of other projects or the like that are located in that area, the strategic statement makes it clear that they exist. They are on the map—if anyone has seen the map they are the grey shaded out areas of existing licences, so there is no surprise. The document is very clear and up-front about what the rules are around those—where you cannot mine in the other areas. As I mentioned in my opening statement, the vast majority of the area that is subject to the bill is the no proactive release areas where new greenfield mines cannot pop up.

Ms CATE FAEHRMANN: I am conscious of time, Chair, and I just have one last quick question. No doubt other members have some. Do you know the quantity of water that the Werris Creek, the Whitehaven Vickery mine and the extension projects take from the area?

Mr ABBEY: Look, I am not intimately familiar with individual projects. I think a question like that is best put to Whitehaven and/or the Government, who is assessing the project or regulating the project. That is an individual project for a company.

Ms CATE FAEHRMANN: That is all I have, Chair.

The CHAIR: Do other members have questions? Well, that was fairly quick and painless for you, Mr Abbey. I do not believe you took any of those three questions on notice. Do you have anything else to add? If not, we can conclude your time with us.

Mr ABBEY: No, nothing from my end. Thank you for the opportunity.

The CHAIR: No problems. Thank you very much, Mr Abbey. We will now take a short break.

(The witness withdrew.)

(Short adjournment)

SUSAN LYLE, Chair, Caroona Coal Action Group, sworn and examined

GRAEME NORMAN, Committee Member, Caroona Coal Action Group, sworn and examined

GEORGINA WOODS, NSW Co-ordinator, Lock the Gate Alliance, affirmed and examined

DANICA LEYS, Chief Executive Officer, Country Women's Association of NSW, sworn and examined

The CHAIR: Welcome back to today's hearing. I note that during the last session we had some issues with the broadcast audio where people watching live could not hear us. We are intending to try to get that issue fixed and I note that what was said during that session will still be available via the transcript. I welcome our next set of witnesses. Would any of you like to make a short opening statement, keeping it to two or so minutes? Ms Lyle or Mr Norman?

Ms LYLE: Yes. I will make an opening statement. Thank you for the opportunity to address you today.

My name is Susan Lyle. I chair Caroona Coal Action Group Inc. and with me today is Graeme Norman a committee member.

As most of you would be aware our organization has been for the past 13 years opposing Coal and Coal Seam Gas extraction on the Liverpool Plains. As stated in our submission the Liverpool Plains is perhaps the most unique agricultural region in Australia with its ground and surface water and rich black vertisol soils.

At this inquiry we want to concentrate on and emphasize the science from Emeritus Professor Ian Acworth's paper 'The Old Mooki Drainage System and its impact on the hydrogeology of the Breeza Area'. Can I ask if everyone has read this paper? It is technical but the summary says it all. No one has refuted this paper.

For years we, UNSW WRL and others had been trying to access the information that we eventually uncovered at the 5 BHP bore sites on Mystery Road, on the Breeza Plain. It was from these bores sites that Professor Acworth was able to establish the connectivity between the coal seams and the irrigation water. The very reason BHP withdrew and why Shenhua Watermark was unable to do their required water management plans. At this point I want to emphasize that it makes no difference if you dig a hole or bore a hole, as with Coal Seam Gas extraction, the result is the same. Therefore, Professor Acworth's paper applies across the plains and the PELS. The damage is identical.

There have been many disappointments in our endeavors to get to where we are today. Scientific and technical information has been ignored and ridiculed by those who we call 'guns for hire'. Bore sites have been destroyed, bore sites that would now be vital to this inquiry. A Namoi Catchment Water Study ($5ml) cannot be located. Hydrogeology had not been applied and the financial cost to our community, has been enormous. Much of the scientific work, that should have been done by Government before the Els and PELs were issued, has been financed by our farming community.

Had BHP and Shenhua Watermark been allowed to start mining it would have been perhaps the greatest environmental and economic agricultural disaster this country has seen. And this is the very reason the CSG Zombie PELS on the Liverpool Plains must also be extinquished.

Ms LEYS: [Audio malfunction] unconventional gas exploration, extraction and production. So, as a result of that, we support completely the provisions of the bill that has been put forward and as outlined in our submission. I do not think there will be enough time, I think, to talk about all the technicalities and the legal side of these expired petroleum exploration licences [PELs] and the reasons why they have not been extinguished until now, but I think from our point of view we would like to talk about particularly the community impact, which has already been touched upon by some of the previous speakers as well. The community impact is profound and it is not just from a health and a social impact point of view in terms of mental anguish, distress, anxiety in terms of having this issue continually unresolved for over 10 years now, but there actually is an economic impact as well.

Investment decisions are being made tentatively, if at all, in these areas because there are concerns around this overarching issue that just has not been dealt with. Rural communities are in these areas. Ms Woods talked about four million hectares. You are not talking about a small area. There are a lot of different communities—towns and villages in that area—that have been impacted for a very, very long time. I would have to say that we are disappointed that this issue just cannot simply be resolved; that we actually have to come to this point where we are now—in a Committee inquiry—but we would like to put on record our thanks to those who brought it to this point so that it can be actually discussed and brought out into the open a little bit more. I will leave it there and I am happy to take questions.

The CHAIR: Thank you. We will now go to questions. I might just start with a few questions and Mr Field has put his hand up. Ms Lyle, you mentioned that there were a few documents or reports that have gone missing. I think one of them was something to do with Namoi. Could you elaborate on that? What are the names of these?

Ms LYLE: It was the Namoi Catchment Water Study, which we tried to find about nine to 12 months ago and no-one seemed to be able to find it within the department.

The CHAIR: Your understanding is that it was supposed to be produced by the department?

Ms LYLE: Yes.

The CHAIR: Okay. Thank you. Just in relation to Ms Georgina Woods' submission, you talk about the renewal process for the zombie PELs. What is your understanding of how that renewal process is supposed to work and perhaps how it is not working?

Ms WOODS: Well, I mean, the provisions really of the Act do not put any sort of time frame on it, so an application has to go in prior to the expiry date. It is our understanding that that was done for every one of the 12 extant petroleum exploration licences in New South Wales in the north-west, but along with that application has to come sort of an activity proposal—like what are you going to do on a forward work program for exploration and some quite minimal sort of environmental words, I think. A number of years ago the Wilderness Society did use the Government Information (Public Access) Act—GIPA Act—process to get some of the material that was provided as part of these applications for renewal. But obviously those work programs that were put forward back then—which was a good six or seven years ago—now, in some cases, are long gone and not done. You have to assert that you have complied with conditions and all this sort of stuff, but the process takes place entirely behind closed doors.

The public knows the renewal application has been made because the licence continues in force, and so we infer that that has happened, but none of that material is made available via the Digital Imaging Geological System database or any sort of public register. There are no public consultation provisions, the application is not put through the Strategic Release Framework—which is the Government's process for assessing new exploration licences for gas in New South Wales—and eventually a decision is made. I do not have any understanding for why a decision has not been made about these licences over the many, many years that have passed. The previous Minister two Ministers ago, Don Harwin, told the Parliament that the applications for renewal would not be processed until the Narrabri Gas Project was determined by the Planning Commission, and he said that 3½ years ago.

To us, that was an indication that Santos was in the driver's seat of the process because, had the Government had a clear sense of its own priorities of the public interest and an understanding of where gas ought and ought not to be allowed to be explored for, it could easily have processed those renewal applications and done so by its own criteria. Waiting for Narrabri to us indicated that they were waiting for Santos' convenience and Santos' priorities to determine which of the licences would be renewed. From remarks that the Deputy Premier has made more recently, it does seem to us that they are negotiating with Santos about these renewals. Nobody who lives in the areas that are affected by these petroleum exploration licences have any input or understanding of the nature of that negotiation and what kind of decision will be made and on what terms.

The CHAIR: I do not want to paraphrase you but, from what I understand of what you have just said, we are only really guessing that these applications for renewal have been put in. There is no actual paper trail or electronic record to show that they have been; we are just guessing because the PELs say that they are still in force. Is that what you are saying?

Ms WOODS: Yes. I would describe it as more than a guess. The Government has also confirmed that those applications have been made. And, as I said, some of them were obtained under the GIPA Act a number of years ago, so we do know. But no, those applications are not made public anywhere.

The CHAIR: Lastly, in your submission you talked about how you sent a letter to the Deputy Premier regarding your concerns that these companies have failed to comply with minimum standards and codes of practice. On notice, would you be able to table a copy of that letter, or at least table a copy of where you see these companies failing to adhere to those minimum standards and codes of practice?

Ms WOODS: Yes, we would be happy to table the letter. We did include a fair amount of that information in our submission because we thought it would be interesting to the Committee because when the Government introduced the Gas Plan six or more years ago, it introduced this idea that there is a "use it or lose it" policy with regard to gas licences. So you cannot just bank a gas licence and sit on it and wait for market conditions to change. That essentially is what Santos has been doing, and Comet Ridge, for the last however many years. So

they introduced these minimum standards to say, "Well, you actually have to do exploration if you're going to hold on to a licence and you have to conduct community consultation and you have to do a bunch of other things."

They are quite minimal, but even those minimal standards, in our view, have not been met. It is entirely within the Deputy Premier's power—and we think it is incumbent on him—to refute the renewal applications, except for PEL 238, which obviously has been the only one of those 12 that has been subject to any kind of exploration in the last decade. We will table that letter, for sure.

The CHAIR: Thank you.

Mr JUSTIN FIELD: Thank you to all the witnesses. I might start with Caroona Coal Action Group, Ms Lyle and Mr Norman. The Deputy Premier obviously lives up there and announced the buyback of Shenhua Watermark coalmine and made comments at the time about negotiations with Santos over gas plans for the plains, as Ms Woods has just mentioned. Can you confirm that there are petroleum exploration licences over the black soil plains and there is the potential, I guess should those licences be acted on, for future coal seam gas development on the plains?

Ms LYLE: Yes, PELs one and 12.

Mr JUSTIN FIELD: So there is nothing restricting gas development exploration and/or future production under those PELs under the existing rules, which include the protection of biophysical strategic agricultural land, is there?

Ms LYLE: No.

Mr JUSTIN FIELD: How does that make you feel, given that in 2014 the Government announced these changes to the gas rules but these licences by effectively not being dealt with mean that all those provisions that the Government announced in 2014, my understanding is they basically do not apply to these historical licences. Is that your understanding?

Ms LYLE: Mr Norman, do you want to go?

Mr NORMAN: I am more associated with the sites that ended up in the Shenhua buyout than I am with the details of the PELs and the fact that they can be reactivated. So Ms Lyle is more of an authority on that than I am. We experienced 13 years of doubt over the agricultural industry in our part of the Liverpool Plains, and the anxiety and the indecision that resulted from that so far as the agricultural industry is concerned was massive. I think the threat of these expired but not extinguished PELs is more than what the agricultural industry on the Liverpool Plains can expect to endure going forward. Ms Lyle, do you have anything to add?

Ms LYLE: Can I add to that? Taking the scientific side, since 2014 the hydrogeology work that has been done, as we have referred to in our submission, by our Emeritus Professor Ian Acworth covers those PELs; it covers the water issues there. This is where we are coming from now—that it makes no difference, as I said in my statement. If you dig a hole or bore a hole, you are still going to do the same damage across those black soil plains where the PELs are located.

Mr JUSTIN FIELD: Ms Lyle, are you aware whether or not the Government in making a decision about renewal of these PELs is engaging with that science? Has it come to ask you or the sector about whether or not these PELs should be renewed, rejected or limited in their size or scope based on the science and impacts? Are you involved in that process at all?

Ms LYLE: No, not at all.

Mr JUSTIN FIELD: Ms Woods suggested before—and I will ask her but I will confirm with you—you have not been party to any of the discussions that Mr Barilaro has said the Government is having with Santos at all?

Ms LYLE: No.

Mr JUSTIN FIELD: And it is Santos that has an interest over those PELs that affect the Liverpool Plains, isn't it?

Ms LYLE: Comet Ridge, yes.

Mr JUSTIN FIELD: Ms Woods, to confirm: Your understanding—and it is a shame that we do not have the Government here to be able to ask a Minister or the department to confirm—is that there is nothing preventing the Minister from simply choosing not to renew these licences in part or in full?

Ms WOODS: I think certainly for the 11 licences other than PEL 238 in the Pilliga, because they have not been used, it is a relatively simple matter to apply the minimum standards and the "use it or lose it" policy and not renew them.

Mr JUSTIN FIELD: The Australian Petroleum Production and Exploration Association [APPEA] in its submission—again, it is a shame that APPEA chose not to appear today, but it did provide a submission, unlike the Government so far—mentioned that the Government had not been approving any work programs I think since about 2013 until the Narrabri decision. Were you aware or are you aware that it is the case that the Government actually had a policy position on not approving any new work programs during that time?

Ms WOODS: I suppose it appeared so but I was not aware of a formal policy. We try to find out what we can about these rather opaque processes. I was slightly exaggerating before when I said no work has been done for a decade. Some of them certainly have been a decade but, yes, since about that time, just before the Gas Plan, there has not been active exploration underway on those other licences other than PEL 238. I do not understand why that has been the case but it certainly has appeared to us to be a go-slow and a hiatus on the process of those applications and you need those activity approvals to do the work.

Mr JUSTIN FIELD: It is interesting that APPEA specifically said, "The Government was not approving work programs between 2013 and the Narrabri decision." I might be paraphrasing that slightly. Are you aware of any decisions or approvals on work programs since the Narrabri decision?

Ms WOODS: I do not know. I cannot definitively answer that. If there had been activity approved, that would be on the public database. I would have to check that.

Mr JUSTIN FIELD: Obviously the Government announced quite a significant change to the way petroleum exploration licences would be issued as part of its 2014 Gas Plan changes. But, just to confirm, your understanding is that the competitive selection process, the option process that it has outlined, in no way, shape or form applies to these current licences and their renewal processes?

Ms WOODS: No, and I think the pertinent part of it is the preliminary regional issues assessment, which was introduced as part of the strategic release framework after the ICAC inquiry into the corruptly issued coal exploration licence scheme in the Hunter and the Bylong Valley. They introduced this process to create an up-front consideration of issues. We have just been through this in the western part of the State, in western New South Wales. A preliminary regional issues assessment was undertaken to consider releasing areas around Ivanhoe for gas exploration. That process takes place in public. It leaves a lot to be desired, to be honest, from our perspective, but it is a public consultation process. It looks at the land capacity, it looks at social issues, it looks at water and it looks at environmental constraints.

That process was introduced six or so years ago by the Government but that preliminary issues assessment, that public consultation and that strategic release framework have never been applied to the renewal process for previously existing coal seam gas exploration licences. The big buyback process and reset of policy resulted in gas licences being bought back, cancelled or extinguished everywhere else—in the Northern Rivers, in Sydney's drinking water catchment and in the Lower Hunter—but the north-west has remained the place where these decades-old, in some instances, licences are in place. The Government's approach has been, "As long as those are extant they do not have to go through this public consultation and consideration of the triple bottom line, public interest."

Mr JUSTIN FIELD: I put it to you, Ms Woods, that it would be a better outcome for the people in the north-west to simply have these licences cancelled either through a decision of the Government or this legislation and then, should the Government choose to try and reintroduce exploration for gas in these areas, go through the process that the Government has outlined.

Ms WOODS: Yes, and if the Government could do so in a timely fashion I do not see why that would really hurt anybody because the licences themselves are not actually worth anything at the moment. Santos wrote down the value of all of those licences to zero in its balance sheets quite some time ago, so it would be relatively simple administratively, you would think, to not renew them and then say, "Okay, if the Government does still want to persist with the idea of gas exploration in the north-west"—which we do not think is wise, but they might think that that is worth doing and actually go through this process that they went to the trouble of creating, which is supposed to consider impacts on productive farmland, aquifers, rural communities and environmental values.

The Hon. SAM FARRAWAY: My question ties in directly with what you have said so I will ask a question straight after.

Mr JUSTIN FIELD: Ms Leys, I was going to ask you about that. Do you think that would be a better process for your members? You were talking about the economic impact on the industry and on towns from this. Would it be better to cancel it and then go through this proper regional assessment process and release process?

Ms LEYS: I would absolutely agree that that is a better process. We as an organisation have overarching concerns with conventional gas extraction more broadly but, notwithstanding that, in terms of introducing a better process, more transparency around the process and more opportunities for the public to actually be involved in terms of consultation, that would have to be an improvement on the process that exists now. That said, and as Ms Georgina Woods alluded to, there are still issues with the regional assessment process in terms of how they go about it, but the concept is not a bad one. Yes, that would have to be a much better way to go: Wipe the slate clean, so to speak, and start again with a proper process that the New South Wales Government has created in order to try and give some assurances to rural communities. If it is so confident in this process in terms of its ability to give those assurances to regional communities, then let us wipe the slate clean and actually go through the process.

The Hon. SAM FARRAWAY: I just wanted to come back to Ms Woods' point about Santos and its balance sheet—and just for the record, I have views on the extinguishing of PELs, especially in the north-west in the Coonamble area, and I have been on the public record. My point is that as long as the Committee understands that just because Santos has written down its PELs to zero does not mean that they are worth zero. Throughout this process and throughout this hearing and this inquiry I think it is important to know that just because they may appear as zero on their balance sheet, that does not mean that that is actually what they are worth [audio malfunction]. If you were to purchase them now, that does not mean that essentially they are worth zero.

The CHAIR: I will take that as a statement and I will move to Ms Boyd, who has been waiting patiently to ask questions, and then to Mr Veitch.

The Hon. MICK VEITCH: I could not hear a thing that Sam said. I do not know what you said. I will have to read the transcript. I hope they got it.

The CHAIR: I understood it to be a statement.

Ms ABIGAIL BOYD: Good morning to all of our witnesses and thank you for your participation. I will follow up on that point in relation to the writedown of the value of the PELs. Ms Woods, we know that this is something that mining and gas companies do quite regularly with the impact being that they reduce the annual profit and they reduce the tax bill for that particular year. What would happen, do you know, and have you seen this happen before, if those particular assets were to be subsequently written back up because there was a renewal? Would that cause a problem from an accounting perspective? Is there any incentive for Santos to avoid that happening?

Ms WOODS: I have absolutely no idea how to answer that question.

Ms ABIGAIL BOYD: We might have to wait for an accounting expert.

The Hon. SAM FARRAWAY: They pay tax on it, Abigail. That is how it works. If the PEL is sold, or with any accounting practice, if you have written it down to zero—

Mr JUSTIN FIELD: Point of order—

Ms ABIGAIL BOYD: Thank you. Mr Farraway, I do know how tax and accounting works. My question was for the witness, not for you. We will just leave that as a comment. Coming back, Ms Woods, in your submission it is very clear that there is nothing stopping the Government from allowing these to expire. We have heard some chat around there being a sovereign risk or some sort of need for compensation. That is not correct, is it, in your view?

Ms WOODS: I do not think so. It is just simply a legislative process and the Minister has discretion about that decision—whether to renew or not. For people who handle that network, it stretches the bounds of credulity that this poses any kind of risk. It has been dragging on for such a long time and, as I said in our opening remarks, all of the decision-making power, essentially, is ceded to Santos; it is at their convenience that these applications will be processed. In the legislative framework itself, it does not appear to me to be a sovereign risk because it is a ministerial decision whether to approve or not. There is nothing that binds the Minister to approve an application for renewals.

Ms ABIGAIL BOYD: What would be the benefit then of failing to renew—so not just not letting it expire? What is the benefit to Santos of having these things basically as zombie PELs rather than being explicitly renewed?

Ms WOODS: I am speculating somewhat, but I imagine it is because there is a requirement to actively explore if you hold a gas licence and so that is about expenditure. You have to seek activity approvals and do a review of environmental practice, so there is work and expenditure involved in actively using a licence. Obviously, as we have said, there is a new process that has been introduced now, so it would be harder to get a licence and so it is certainly in Santos' benefit to wait until the gas market conditions change. Essentially, that is what happened with the Narrabri gas field proposal. The Government signed a memorandum of understanding saying, "We will expedite this and it will all be approved by"—I think it was January 2016 or something like that.

I might be wrong, I do not have it in front of me but quite a while ago the Government promised to make a certain decision on that gas field and it was Santos themselves who slowed the process down in producing their environmental impact statement and then making their response to submissions. At that time the gas price was lower than it had been. As I say, this is an inference, really, more than direct knowledge, but people in our network see it as a market play to hold onto these licences that would otherwise now be quite difficult to obtain because they would have to go through public consultation and they would have to be considered against the public interest. The Government is essentially allowing Santos to make that play.

Ms ABIGAIL BOYD: So it is holding it as an option, basically. Santos has this ongoing option to use those PELs if and when it sees fit, rather than having to do something in the interim.

Ms WOODS: Yes, and it is well known within our network that Santos' original plan for the north-west of New South Wales was to have seven gas fields, not just the gas fields in the Pilliga. The Pilliga was their foothold in the region because it is public land and was thought to be an easier way to get in and establish the industry in the region. But then, in fact, they did have plans to have seven gas fields from the Upper Hunter out to Coonamble and up to Moree in those PELs. That was many years ago now but the logic of the coal seam gas industry does rely on its ability to expand across the landscape because the resource is somewhat uncertain until you begin drilling for it. You need to have vast acreages to be able to spread drilling to access more gas as the wells dry out. People in our network have been fighting this industry for more than a decade because they understand that those PELs are being sat on by Santos because without them the Narrabri gas field itself is constrained in its ability to expand.

Ms ABIGAIL BOYD: My final question on that point is that if these were allowed to expire and Santos then decided subsequently that it wanted to have those PELs back, would it be subject to competition with other players over those?

Ms WOODS: If they were extinguished?

Ms ABIGAIL BOYD: Yes.

Ms WOODS: Yes. So the strategic release framework basically has the Preliminary Regional Issues Assessment, which we mentioned before up front. Then, if a government decision is made to release an area for gas then it is put out for competitive tender, yes.

Ms ABIGAIL BOYD: So Santos is holding these PELs in a way that precludes any competitor from taking the PELs?

Ms WOODS: Yes.

The Hon. MICK VEITCH: My question is to Ms Leys. It relates to your submission where you talk about the Government and the announcement that they were going to release a comprehensive strategy and action plan about mid-2021 to support the domestic gas market in New South Wales. As I understand it, that still has not been presented, but you also go on to say in your submission that it would be an oversight to release the strategy without addressing the issue of these five PELs across New South Wales. I would just like you to explore a bit further with the Committee as to why you feel that would be an oversight.

Ms LEYS: I think if you read the communications that have come out from the Government in relation to the release of this upcoming gas strategy—which, as you mentioned, is supposed to be coming out any day now. I think the statement was made that it was supposed to be mid-2021. In its simplest form, I do not think you can have a comprehensive gas strategy without dealing with this issue of the expired PELs that we have sitting off to the side. It is not really a comprehensive gas strategy if it excludes the largest area of New South Wales that is currently covered by gas exploration licences. To go back to the point that I was making before when I was answering a question from Mr Justin Field, it is an opportunity for the slate to be wiped clean, so to speak, and for us—if the Government has such confidence in this new strategy and this new way of doing business and addressing some of the issues that we are talking about, then why would they not address the petroleum exploration licences, the ones that we are speaking about, the 11 or so? Why would they not take that opportunity as part of that gas strategy to give the public more confidence and more opportunity to have a say going forward?

The Hon. MICK VEITCH: Yes, thank you. Ms Lyle, in response to questions from Mr Field, you spoke about the fact that there have been no active explorations over the past five years with these PELs. Is that correct?

Ms LYLE: That is right.

The Hon. MICK VEITCH: What about subsequent audits of their compliance, then? I think your submission talked about 2014 being the last time there was some sort of compliance audit on these PELs. Is that still the case? Do think there has been no audit of compliance by Government since 2014?

Ms LYLE: I think Ms Woods would be able to answer that better than I would. I do not know, to be honest. There has certainly been no activity but whether there has been any auditing, I do not know.

The Hon. MICK VEITCH: Okay. Ms Woods?

Ms WOODS: We are aware of an audit being undertaken at that time because of the Government Information (Public Access) Act [GIPAA] application that was made by the Wilderness Society at that time. That is the only reason we know that they did one. We have not done a GIPAA for another audit of compliance but given there has not be much activity, I would not expect it. There was a compliance report done by the Resources Regulator a couple of years ago now into the beneficial use of gas. I do not know precisely what they were talking about but essentially Santos is burning the gas that it is drawing out of the Pilliga now in its exploration and appraisal titles in the nearby Wilga Park Power Station, which it co-owns. So it is commercially using the gas even though it does not have a production licence, which is allowable under the regulation. The Resources Regulator did a compliance audit of that because it is actually quite a complicated set of rules. The condition of PELs—I am not aware of one more recently.

Mr JUSTIN FIELD: Ms Woods, this question is probably best to you but if others want to jump in, that is fine. It goes to the question of compensation. In his comments a couple of months ago Mr Barilaro suggested he was in negotiations with Santos and that has been raised this morning. Are you aware of any suggestion that compensation may be payable as a result of either reducing in size or expunging any of these licences?

Ms WOODS: It would not seem really necessary to me under the statute to do so because this is simply a renewal process and if your application for renewal is not granted, that seems a fairly straightforward decision. So I really have no idea and I guess that underscores that people do not really have much line of sight of exactly what is being discussed here. I think it is fair to say in our network that there will be mixed views about compensation. On principle, it does not seem necessary. It seems like a terrible waste of public money but there is very strong feeling that these licences need to be gone—every single one of them—and so, if that is the price that is paid for it, then I hazard that there will be a fair few people that will be willing to see it done.

Mr JUSTIN FIELD: I note when a number of licences were expunged in 2014 the Act that was brought in at that time specified that no compensation be payable. However, I think application fees and maybe some exploration costs were paid. Are you aware of exactly what compensation was paid at that time for those licences?

Ms WOODS: I am sorry, I cannot recall. I am sure it would have been—I hope it would have been—made public at the time. I do not know whether Ms Leys would know.

Mr JUSTIN FIELD: Ms Leys, are you aware?

Ms LEYS: No. I am sorry. I cannot remember. I can perhaps take that on notice.

Mr JUSTIN FIELD: I will see if I can put those questions to the Government. Ms Woods? Sorry.

Ms WOODS: I guess it is worth mentioning that for petroleum, unlike coal in New South Wales, the cost of exploration is actually deductible against royalties. So you would not really want to create a situation where you were kind of double dipping and giving public money for exploration costs that had already been deducted out of royalty payments.

Mr JUSTIN FIELD: Yes. Fair enough. Another suggestion that has been raised around this bill and the intention of the bill held more generally is that Parliament should not be acting to remove what is sort of seen I guess as a property right that has been issued to a particular company or licence holder and that we should use administrative processes of the law—administrative processes under the Act—rather than a parliamentary and political process. Could you speak to that issue? Ms Woods, this is one for you.

Ms WOODS: Yes. As I said in our opening remarks, I think that does seem like a fairly reasonable position to take—that process should be followed and the administration of Government should be undertaken in accordance with the statute that exists—but the absurdity of how long this has been dragging on and the impact that it has on the people who are affected by these licences and their businesses have really got to a point that it is

so unreasonable that it is, I think, warranted for Parliament to intervene. The Ministers, several Ministers, have had ample opportunity to exercise their duties and responsibilities under the Act and have not done so. I do not think that anybody would think that this provision meant that you could just, in perpetuity, continue a licence and there would be no expiry of it ever, as long as you had made this application that you could just continue using it and it would stay in force with no end at all.

Mr JUSTIN FIELD: I am noticing at my end that the video is dropping out for quite a few of the witnesses so, Chair, I am just checking in with you before I ask any further questions. Are we all right with connectivity?

The CHAIR: You are coming through a bit broken up, so for that last question we are getting—

Mr JUSTIN FIELD: It might be my end then. I will put it back to you then, Chair.

The CHAIR: Thank you. I have just got a couple of questions for Ms Leys—or just one question. In your submission towards the end you talk about one of your observations:

> Forcing landowners into a compensation scheme with the gas industry has proven consistently to be in the interests of the gas industry.

I would draw your attention to another submission we received from Dr Taylor and Professor Soliman Hunter where they say that compensable loss does not take into account cumulative impacts. I want to seek your comments on whether, if we are moving forward into a compensation scheme with the gas industry, should it not include cumulative impacts, given that it seems like they are the main concerns from the community?

Ms LEYS: Sure. Sorry, just so I can answer, I could not quite hear all of your question. I assume that, correct me if I am wrong, your question, Chair, is around the degree to which certain issues are compensable or not for landholders and how cumulative impacts are not taken into account in that calculation? Is that the gist of the question?

The CHAIR: Yes.

Ms LEYS: Okay. Yes. Well, that statement is true and there is a lot of work that has been done by us but particularly also landholder groups that have done work around concerns with cumulative impacts in terms of cumulative impacts over time but also cumulative impacts in relation to the extent to which a gas field may be developed over time over a geographical area. So the system as it exists at the moment is, if you are a landholder, what is compensable really just relates to the impacts that take place on your farm within the boundaries of your farm, if we are talking about a farmer. There is no real ability for any impacts to be taken into account across a wider footprint, so to speak, so there are very much issues. How that relates back to this issue is we are not just talking about the Narrabri Gas Project. As has been alluded to, there is real concern—and warranted concern. This is not just fearmongering and paranoia. There is actually real concern about the Narrabri Gas Project being, I suppose, the thing that then kicks off a wider broadscale gas field across the north-west of New South Wales.

There is just no confidence in the current regime that it can be adequately regulated and there is certainly no confidence in the current regime that any losses can be compensated. Certainly when we are talking about water losses alone, the mind boggles. You can get around the concept of what a compensable amount would be for any particular landholder within that region who may lose their water. That is just, from a practical and monetary point of view, one of those things that in many cases may not even be able to be compensated for. I hope that answers some of your question, Chair.

The CHAIR: Yes, it did.

Ms LYLE: Chair, can I add to that or not?

The CHAIR: Yes, by all means.

Ms LYLE: I do not think there has been enough emphasis today on the water issue. I would like to ask everyone: How are you going to compensate for the loss of water? I do not believe that there has been enough hydrogeology work done by the Government. In fact, there is not a hydrogeologist, I do not think, within the Government water resources. So therefore I think there is science out there—and I draw your attention to the paper that we sent in with our submission—that the evidence is clear: These PELs cannot go ahead without huge damage being done to the water. I think we ought to go back to the water the whole time. It is the lifeblood of the majority of these farming areas.

The CHAIR: Thank you. I am just looking to see whether there are any other questions from other Committee members. If there are not, I will draw this session to a close. There are no more questions. I thank all the witnesses. I appreciate that we have had a few technical difficulties with audio and visual and connection-wise, so thank you for persisting with us. I believe some of you may have taken some questions on notice. The

Committee secretariat will be in touch and you will have seven days in which to respond to those. Once again, I thank all members for their time and all witnesses for their participation.

(The witnesses withdrew.)

(Short adjournment)

MADELINE TAYLOR, Senior Lecturer, Energy Law, University of Sydney, sworn and examined

TINA SOLIMAN HUNTER, Professor, Energy and Natural Resources Law, Macquarie University, sworn and examined

The CHAIR: Welcome back to today's hearing. Would either of you like to make a short opening statement? Dr Taylor?

Dr TAYLOR: Yes, I would like to prepare and speak on behalf of both Professor Soliman Hunter and I in an opening statement. Thank you, Committee members, for the invitation to address you today. I am making this opening statement on behalf of Professor Tina Soliman Hunter and I. We have been researching in the area of natural resources law for over a decade. It is our belief that this bill now proposed is a welcome first step to cancel the 12 dormant petroleum exploration licences in New South Wales and to provide that the exploration licences will expire at the end of this term. Given our expertise, we would like to request please that questions pertaining to the New South Wales PELs be directed to myself, and any other questions about PELs generally in Australia be directed to Professor Soliman Hunter.

Our submission centres on the fact that unconventional gas deposits are often in situ with agricultural land due to geological conditions. Under our Torrens title system in Australia, there is no right of veto for landholders and therefore it is the role of the State as the resource owner to regulate its petroleum resources in a manner to protect the rights of freehold landholders and protect agricultural land as a finite resource. In our submission we mount three key arguments. Firstly, we argue that petroleum exploration licences, and indeed petroleum titles, pose a threat to prime agricultural land in New South Wales. It is the exception unfortunately, not the norm, that agricultural land can be excluded from petroleum activities. We are concerned that New South Wales is not providing a risk-based, ecologically sustainable, development-based regulatory regime in this respect. There is no notification of community consultation requirements for New South Wales in regard to PELs, and a compensatable loss under section 107A of the Petroleum Onshore Act is usually limited to surface impacts only.

Secondly, we hold a concern that only the equine and viticulture industry clusters are listed as blanket exemptions in New South Wales. We believe and we argue that biophysical strategic agricultural land en masse in New South Wales should be excluded. Given this, we also believe the gateway procedure as it is currently implemented will only really apply to the expansion of brownfield sites, which means that any PEL will not be subject to the gateway procedure. We have concern about this [inaudible]. Thank you.

The CHAIR: Thank you, Dr Taylor. It seemed like that was a pre-prepared written statement. Would you be able to email that through to the Committee secretariat? It will help Hansard. We are having a few issues with sound audibility and connection issues.

Dr TAYLOR: My apologies. Yes, of course. I will forward that.

The CHAIR: No need to apologise. I will throw it out to questions from Committee members. I am looking for people who have their hands up. No-one is putting their hands up. Ms Boyd, you are looking.

Ms ABIGAIL BOYD: Apologies, I was waiting for Mr Justin Field to have first dibs, but I don't know if his video has gone off.

The CHAIR: He is coming in and out because he has a technical issue as well. If you would like to jump in, Ms Boyd?

Ms ABIGAIL BOYD: Yes. Apologies if this is not within the work that you have been doing, but hopefully it is. Mr Field is back now. I will let him ask the first questions, given it is his bill, and I will come back.

Mr JUSTIN FIELD: Thanks, Abigail. Thank you, Dr Taylor and Professor Soliman, for being here today and for your submission. You point out the issues around agricultural land generally, and that has been a very critical part of the debate now for a decade or more about this industry, but I want to keep it relevant to this bill and the issue of the expired PELs. Your understanding of the law as it is written and the intentions of the Government based on its public statements—as it stands, without cancelling these bills or expunging them through a government administrative decision or the passage of this legislation, the Government's stated process for considering regional impacts and impacts on biophysical strategic agricultural land [BSAL] would not be picked up through any renewal process. Is that your understanding of how [inaudible] works?

Dr TAYLOR: That is correct, Justin.

Mr JUSTIN FIELD: So all those things that the Government announced in 2014 to allay the concerns of the community and the agricultural sector will basically be avoided by the Government by simply going through a renewal process rather than allowing [inaudible] to be cancelled by this legislation or administrative process.

Dr TAYLOR: Yes, and the reason being is this will not be considered a greenfield project, which is usually a catch-all provision for where the gateway process and in turn development consent consultation with the community et cetera takes place. Rather, this would be a brownfield project likely with the renewal of the existing licence as it is. So there will be no gateway procedure, there will be no agricultural impact statement [AIS], there will be no public exhibition.

Mr JUSTIN FIELD: You note in your submission the two critical industry clusters that are identified in the Government's policy being obviously the wine industry and the equine horse breeding industry. How does the Government implement those considerations when it comes to, say, the black soil plains of the Liverpool Plains or even up around the Moree Plains? At the moment, if these are allowed to simply be renewed, even in a constrained state, how will those particular industry interests be addressed through the resource process or the planning process?

Dr TAYLOR: There will be no addressing of the impacts per se at all for an exploration licence under any sort of agricultural land, apart from viticulture and equine. Fifteen per cent of cropping land at the moment in New South Wales is subject to a PEL. So that means there are a huge amount of landholders who will not actually have a proper consultation process. Obviously if the PELs get then converted into a production lease, that is a different matter altogether and then we will have a development consent procedure, we will have consultation et cetera. But given that Narrabri and the petroleum production leases there have been the only, I suppose, foray into this arena for New South Wales for a long time, a lot of these regulatory stops that we had put in place for the protection of agricultural land and other sensitive land uses took place in 2014 and 2015 and they are largely outdated now. By that point, most of the that BSAL land was not actually mapped, so there has actually been a gap in the knowledge that was created then and the regulation now.

Mr JUSTIN FIELD: To put it quite simply, the best way to ensure that we can reassess the agricultural value of those areas and to ensure that is considered in any future gas statement that the Government might come out with is to use this legislation as the first step, as you mentioned, to cancel these PELs or for the Government to use its administrative powers to do the same.

Dr TAYLOR: Yes, that is absolutely correct. There is a huge amount of concern that there will not be proper public decision-making and anticipation here. That is one of the key tenements of our planning regulation and petroleum system in New South Wales, is to take a firmly risk-based approach rather than adaptive approach, as we see in petroleum Acts in Queensland for example. There is this issue about how is there going to be more public involvement here. The only way to do that is to cancel these PELs and start from the get-go essentially.

Mr JUSTIN FIELD: I would like to ask you a question that is not covered in your submission but I am sure with your awareness of how the law works in New South Wales you will have a view on this, and that is about compensation. John Barilaro has mentioned in the media that he is in negotiations with Santos. I think a lot of people take that as a reading of negotiating around money and negotiating around areas of land that they are most interested in. Under the law as it stands, would the Government be required to pay compensation to Santos, or any other petroleum exploration licence holder, if they through an administrative decision chose not to renew these licences?

Dr TAYLOR: It is an interesting question. If this were to be a buyback, for example, then there would need to be compensation. If there was an outright cancellation, there may not actually need to be compensation if there is a cancellation for a public purpose. So it really depends on how these cancellations take place and the agreement and the conditions in which that exploration licence has been granted to Santos and the other proponents.

Professor SOLIMAN HUNTER: If I could just add to that as well, at the Federal level there is obviously acquisition of property on just terms. Such an acquisition statement does not exist in State legislation. Whereas if a licence was to be reacquired, then compensation may have to be made by the Federal Government. That may not be the case if it was a State government. The other thing is whether a licence would be termed "property" or whether it is actually just an administrative right. If it is deemed to be property, and we have case authority that says it is likely that it would be—that would be the Newcrest case and the WMC Resources case, both from the High Court—then there would be compensation on just terms at Federal level but not necessarily at State.

Mr JUSTIN FIELD: Then, to add a bit of complexity, if the Parliament was to make a decision such as to agree on the passage of this particular legislation, that could avoid any claims for compensation, as the Government did in the 2014 Act when it expunged a number of licences.

Dr TAYLOR: Correct. That is my understanding, Justin.

Mr JUSTIN FIELD: Chair, I am having quite a lot of sound challenges so I might get rid of my video and go on mute for a minute. You can pass on to others and I will see if I can fix this.

The CHAIR: I think Ms Boyd was going to ask some questions.

Ms ABIGAIL BOYD: I am having similar problems hearing but I will persist and see what happens. Just on that compensation point, we hear a lot from Government members or Ministers about this idea of sovereign risk. We hear it bandied about in a way that is not necessarily technically correct. I wanted to get your perspective on the difference between the risk of a country changing its laws versus the risk of a country acting in accordance with its laws but perhaps not an expectation of the corporations. Do you believe there is sovereign risk involved with extinguishing the PELs?

Dr TAYLOR: This would certainly be a question for Professor Soliman Hunter to answer.

Professor SOLIMAN HUNTER: Yes, I will take that one. Yes and no. Sovereign risk, like you said, it is about changing your law or acting in accordance with the law. The reality here is that if a lease has expired, then a lease is no longer current. Therefore, to cancel that would not be exposing the investor to sovereign risk. That is quite different to the example of the Petroleum and Gas (Production and Safety) Act in Queensland. It has had over 10,000 legislative changes since its inception in 2004. That poses a greater sovereign risk than the cancellation of an expired licence and yet we still have investors coming. One of the things that needs to be made clear to an investor is, if a licence has lapsed, what is going to happen to them. At the moment, we are in this position of a very grey area; we are not sure what is happening, hence the reason why we got these zombie licences.

I think you would create greater clarity and certainty for investors if there was a path in which a licence progressed through. For instance, offshore a licence progresses very clearly. You have a licence, it is granted for the primary and secondary work program for six years and then you can extend that. Then you either have to make a declaration of discovery or the licence cannot be renewed if it is an exploration licence. If you have a declaration of discovery but you cannot actually make it commercially viable within the next 15 years, you can put it under retention lease. There is a clear path in which a licence will follow depending on where it is at. That is what investors want. That reduces sovereign risk.

Dr TAYLOR: In terms of our petroleum onshore Act, the Northern Territory and South Australia have very certain terms in which a licence upheld will lapse. There is a maximum of two times in which you can renew a five-year term PEL. That provides certainty, reduces sovereign risk and reduces investment uncertainty et cetera as well. There is also a comparison with our other States and Territories as well.

Ms ABIGAIL BOYD: That was going to be my next question, as to whether you had a view on how we compare across Australia. I will hand over to Sam, who was trying to ask a question.

The Hon. SAM FARRAWAY: It was actually covered in an answer to your question. Just to go to one more point with Dr Taylor, you spoke about the buyback and the cancellation [audio malfunction].

The CHAIR: Sorry, Sam, we are having trouble hearing you. Would you be able to turn off your video or move closer to the microphone?

The Hon. SAM FARRAWAY: Is that better?

The CHAIR: Yes.

The Hon. SAM FARRAWAY: The answer was partly in Abigail's question but I want to go to Dr Taylor around the buyback having to be compensated and the cancellation under a public purpose, I think you said, which would not have to be compensated. Can you explain your view on that a little bit more around the public purpose and cancellations?

Dr TAYLOR: Certainly. As the State is the resource owner under our property law system of Torrens title—one of our most famous legal exports, actually, from Sir Robert Torrens—this means that we can essentially have a situation where the petroleum resource owner says, "It is in the greater public interest here under our planning Acts and under our petroleum Acts to cancel these PELs." That would be a way in which to avoid, in terms of public law anyway, compensation. Obviously I cannot speak to any confidential petroleum licence terms that may have been issued to Santos and the other proponents at the time—I cannot comment on that. But in terms of a legislative change, that is really an effective way of providing certainty to everybody, including the proponents

themselves, that the greater public interest is the preservation of ecological sustainable development, as per our Act requires—that is the object of the petroleum Act—and also our planning Acts. We are falling in line with that and we are also falling in line with the claim that we have a risk-based planning law system.

In order to do that, we need to be pre-emptive about risks that are cumulative in nature. The biggest problem that we have is that, in the public interest, we actually are not certain about the cumulative impacts at all subsurface of coal seam gas, particularly on agricultural land. That is because it is a young industry in terms of other energy resources. We are still getting the science right. We are in a method of learning by doing and we are seeing what that means in Queensland, where I am originally from and where I started my research. I have seen the impacts on agricultural landholders who are maybe not even a part of direct gas wells; they are actually getting land subsidence now due to deviated wells. These are the sorts of issues we need to think about now very seriously and direct our policy so that we do not end up in a situation like Queensland, where we are constantly renewing our legislation and we are going through inquiries.

There have been so many inquiries in Queensland on this very question and we are still ending up with really difficult issues. I hope that answers your question. It is a long way of saying that the public interest is the catch-all way of being able to act as a petroleum resource owner.

The Hon. SAM FARRAWAY: I do think that obviously it would be challenged out there, but that is fine. You have answered the question. Thank you very much.

Dr TAYLOR: My pleasure.

The CHAIR: I might ask one question given that no-one else has put up their hand. In the last page of your submission you talk about compensable loss and how it does not include cumulative impacts. You then go on to say that perhaps collective bargaining is a way forward in terms of negotiating access to this resource with owners of the land. Do you think we need to sort out what is compensable under the Act first before we move into a collective bargaining model?

Dr TAYLOR: Thank you for that question. Yes, certainly. The proposition of collective bargaining really stems from my research in Queensland, New York and British Columbia in Canada, where we have this regime of a way of empowering landholders. But of course that is secondary to the primary task at hand, which is defining what is compensable loss, as you point out. Surface impacts alone—noise, dust, disturbance to agricultural land et cetera—is certainly not enough when it comes to compensation. We have seen a myriad of case law coming out of Queensland where aggrieved farmers have said, "This compensation has not covered the death of my crop, potential water contamination and the fact that I cannot get insurance now." They have had to go to the Land and Environment Court to increase that compensation.

The other problem is there is not transparency over compensation at all. For example, in British Columbia the Surface Rights Board actually has a public database—obviously with confidentiality taken into account, cancelling out proponents' names and landholders' names—providing compensation and the terms of land assets. That is the sort of model that we would need in order for there to be transparency. But getting that definition of compensation right is fundamental. Surface impacts alone just does not cover it. Subsurface needs to be covered but also neighbouring landholders needs to be covered. At the moment, neighbouring landholders in other parts of land are not usually considered to have compensatable loss as well. So it is the amount of compensation, the nature of the compensation but, finally, it is about the area on which the compensation can be covered.

The CHAIR: Just one follow-up from that, we have one zombie PEL in question that is perhaps no longer a zombie now under the Narrabri Gas Project.

Dr TAYLOR: Yes.

The CHAIR: Would you see it as important that we get that definition right about compensable and what is and what is not before that project really kicks off?

Dr TAYLOR: Yes, completely, because otherwise we are going to be in a situation similar to the Petroleum and Gas (Production and Safety) Act in Queensland, where we will have to retrospectively amend our legislation as to what a compensatable loss is. You are right that since the Narrabri Gas Project was approved that PEL is now being converted into a petroleum production lease. The problem I have there—and it is in my submission to the Narrabri gas inquiry—is the fact that there were no domestic reservation conditions on that petroleum production lease. There were no conditions in terms of the gateway procedure either, because the gateway procedure in the AIS does not actually allow that panel to decline that petroleum application, I suppose. There is no mechanism for cancelling, revoking or rejecting a petroleum licence on the basis of agricultural land deprivation. That is essentially what it means. You can either get a gateway certificate without conditions or with conditions, but there is no such thing as a gateway certificate that rejects a petroleum title.

The CHAIR: Thank you, that is great.

Mr JUSTIN FIELD: Dr Taylor, this question is for you. It is pretty clear that the Government does not support the bill, but the Deputy Premier has made clear there are negotiations. We expect that some may be expunged and some may be shrunk in size. I am asking, from an administrative law perspective and your understanding of the Act, does that create any problems or any risks associated with precedent—this sort of politicisation of this approach to dealing with renewals?

Dr TAYLOR: I think that cancelling the PELs without an Act and doing it as a matter of administration and the right of the Government to do so is a bandaid fix. It does not fix the legislative settings that we need amended urgently. These provisions are over five to six years old and they have laid dormant for this time. We need to define what compensation means and we need to ensure that at the very get-go of any PEL being proposed there is a gateway process that allows for the revocation of an exploration licence if it damages agricultural land. There needs to be a public consultation process for exploration as well. We see this in the Northern Territory, for example. As soon as a PEL is proposed, there is public consultation that is allowed and we do not have that in New South Wales. These are the basic settings that we need to get right. Cancelling the PELs in a sort of ad hoc manner—and maybe just a few of them or whatever the Government decides—is not fundamentally shifting the law and policy in this space. It certainly is not something I see as a long-term solution.

Mr JUSTIN FIELD: Assuming that this does not become law, and the Government has indicated that it does not support it—and I understand that—and separating the question of cancelling or shrinking those existing or zombie PELs, how do you think the law should be changed in the future to deal with this question of what happens when a PEL expires in the future? How would we ideally change the law to ensure communities have more certainty around the status of an exploration licence at its conclusion?

Dr TAYLOR: It is a great question. I think we need to look to our comparators—we would look to South Australia, for example, where we cannot have a PEL that is renewed more than twice for a maximum period of five years. There needs to be certainty. Merely saying that a licence can exist in perpetuity is not the case with all the other Australian jurisdictions at all. They really vary and a lot of them have a lapse in time. That is what is needed at the very minimum, coupled with the other principle I outlined around ensuring that there is significant examination of the risks of essentially exploring—which does include drilling most of the time, by the way—on agricultural land. If we are just narrowing the issue down to PELs, there needs to be certainty on when those PELs expire and how many times there can be a renewal of those PELs.

The CHAIR: I will call a close to this session. I thank Dr Taylor and Professor Soliman Hunter for their contributions and appearance. I believe you may have taken a question on notice. If you have, the Committee secretariat will be in touch and you will have seven days to get that answer back to us. Once again, thank you very much.

(The witnesses withdrew.)

KIWA FISHER, Deputy Mayor, Upper Hunter Shire Council, affirmed and examined

The CHAIR: Welcome back to our final sessions of today's hearing. I welcome the Deputy Mayor of the Upper Hunter Shire Council, Kiwa Fisher. Would you like to make a short opening statement before we go to questions?

Mr FISHER: Yes, very much so. On behalf of council, I thank you for the opportunity to submit to the Committee and also to speak today. Three of the 11 so-called zombie PELs are partially located within our LGA—namely, PELs 433, 452 and 456. PEL 433 is held by Santos NSW and Santos QNT. It was first issued in 2001 and expired in February 2015. PEL 452 is held by Santos QNT and was first issued I think in 2007 and expired in January 2013. PEL 456 is held by Hunter Gas and Santos QNT and was first issued in 2008 and expired in March 2018. We as council are not aware of any exploration activity within these PELs for several years, nor are we aware of any community consultation carried out by these proponents with regard to these PELs for several years. All three PELs were issued prior to the independent review by the then chief scientist, Mary O'Kane, and the Government's subsequent strategic release framework, both of which date to 2014.

That framework implemented the transparent and strengthened selection process for issuing coal and petroleum prospecting titles through the up-front consideration of geological, social, environmental and economic factors, and operator suitability and capability. As our PELs predate the upgraded framework, and the Minister has not commissioned any subsequent studies of the suitability of those areas for exploration, we would contend that these PELs are a legacy of a previous era of less informed decision-making. We also view section 20 as problematic in that it allows the continuation of expired PELs essentially forever if their renewal application is validly applied for. In effect, this allows the decision-maker, the bureaucracy that supports that person and the proponent to effectively park the issue in limbo and to kick the can down the road. This places the affected community and landowners in those PELs into perpetual uncertainty, and is akin to having the sword of Damocles continuously hanging over their heads. While in this position, any investment decision that a landowner makes must take into consideration those licences. What are the chances exploration will continue? What are the chances that the area will be developed into a productive gas field? It is those sorts of things.

In the worst-case scenario, the very existence of such a licence can act as an investment deterrent. We believe that legitimate grounds exist for the non-renewal or cancellation of these licences, certainly for those three partially located within our shire. Those grounds beg minimum standards for work programs, which state that the title area must be actively explored, and where there is evidence of non-performance that will be a consideration to determine if a title should be cancelled or not renewed. Secondly, I refer to the minimum standards for community consultation. This is an ongoing and recurrent failure of the onshore gas industry in New South Wales. The Department of Trade and Industry [DTI] identified this back in 2014. The Government subsequently introduced an upgraded community consultation guideline, which in effect has been comprehensively ignored by proponents ever since.

I would quickly like to cover three other points. I am not sure what time I have left. Firstly, in section 30, part 2—the so-called "use it or lose it" provision—it states that a renewal can only be applied for 75 per cent of the original or the previously renewed licence area. We are not aware of this provision ever having been used or enforced. At the conclusion, I would perhaps like to ask you if you could inform us whether that is indeed the case. Special circumstances are allowed whereby this can be avoided, but a proponent sitting on their hands for year after year is certainly not one of them. As we point out in our submission we also have coal exploration licences in our shire where this is also occurring and where similar provisions also exist—so no exploration activity, an expired exploration licence provided to be renewed, no surrender of 25 per cent of the licence area and no decision made. These things hang in the air like our Greek friend's sword.

Secondly, I have a very brief comment on Hunter Gas, part holder of PEL 456 and owned by a Hong Kong holding company Kerogen Investments No. 1. We ask: What inquiries has the Minister made to satisfy himself that Hunter Gas meets the minimum standards for technical and financial capability? Applicants of course must demonstrate, with evidence, access to the appropriate and relevant technical expertise, the financial capacity to engage that expertise and the ability to comply with regulatory requirements. As you know, a PEL is a privilege bestowed by the State to develop its resources on behalf of its people. They are not to be handed out like bus tickets and they are certainly not a free ride to be abused.

Finally, and perhaps most importantly, is climate change. It is here, it is happening, it is already affecting us and it is exponentially worsening. We have so much work to do to avoid, prepare and mitigate. To further develop fossil fuels at this stage is fundamentally incompatible with the State and most of the world's net zero 2050 commitments. Even the International Energy Agency is now saying the same thing. That concludes my comments and I will hand over to Committee members.

The CHAIR: Thank you. Given that that looked like a previously prepared statement, would you be able to email that through to the Committee secretariat just so we make sure we get your wording exactly right?

Mr FISHER: Yes, certainly.

The CHAIR: We have been having some issues today with audibility.

Mr FISHER: Yes. I tried to listen earlier and it was not working.

The CHAIR: Yes. I will open up to questions from the Committee. I am looking for some indication from anyone, but most people have their screen off. Mr Field?

Mr JUSTIN FIELD: Thank you, Chair, and thank you very much, Mr Fisher, for your evidence today and the submission. You are at the local level. Can you give us a sense of the community's view? I know there will be different views, but where do the majority of your community members sit when it comes to these expired PELs?

Mr FISHER: Much like the Hunter Gas Pipeline, you know these PELs have largely been forgotten. They have been sat. There has been no work. There has been no activity, but as soon as the issue rears its head again, particularly with the PELs, the first worry at the moment is water. I think these concerns are widely held. We have all seen the scenes in that movie in the documentary with the fellow lighting the tap. We have all seen your former colleague lighting the river. There are worries about water. You know we are a rural shire. We are an agricultural shire. Beef cattle and horse breeding is what we do most effectively, and we do it very well. Water underpins the success of that.

To the east of the shire, where I am located, we have significant surface water resources. Out towards the west around Merriwa way the areas covered by these PELs are more groundwater-resource dependent and the threat that gas poses, even at the exploration stage, to the security of that water is the uppermost concern of those affected landowners. They have been very vocal previously. The issue died down along with the exploration and I think that this will rear its head again, particularly in the aftermath of the worst drought that we have seen around here for many a year.

Mr JUSTIN FIELD: You mentioned the thoroughbred breeding in the Upper Hunter and of course the Upper Hunter and the Lower Hunter were particularly a point of focus of the Government's changes in 2013-14, when it introduced the critical industry cluster [CIC] provisions. My understanding, though—and just to confirm that it is your understanding, or is it?—is that those critical industry cluster protections do not apply for these historical PELs. They would apply only if new PELs were being introduced.

Mr FISHER: I would have to take that on notice, to be honest. The thoroughbred breeding region is not really overlain by these exploration licences. These are mostly in the west of the shire and that is more sort of beef cattle country. There was the Aquifer Interference Policy. There were various other policies introduced at that time as an extra layer of protection. You are right; we do have an equine CIC. We could very realistically also have a beef cattle CIC in this area. We have a fully integrated industry. TAFE held courses on beef breeds. We have an abattoir facility in Scone. We have numerous producers from every level—you know, premium Wagyu to your more everyday beef. We do have a thriving integrated industry in that sphere and if they chose to so identify themselves I think the presence of the wine and equine clusters would see a beef cluster identified in our shire and beyond as well.

Mr JUSTIN FIELD: That being the case and that being your evidence, I wonder whether or not it would be better for your region to have these licences expunged, either through administrative decision or cancelled through this legislation, and then for the Government to go through with a more strategic release that can more adequately consider that industry as a standalone cluster—a critical industry cluster—and make strategic decisions about whether future exploration is appropriate or not in that area.

Mr FISHER: I would agree with that 100 per cent, absolutely. As you know, we did attach it to our submission. We have a longstanding position statement on coal and coal seam gas. I fully admit it requires updating to reflect the latest legislation and regulatory changes, but that is at least three councils old—so in excess of 12 years—the first amendment and the second position statement I think is dated 2015. We oppose all coal and gas within the shire, and gas includes the exploration stage where damage may occur.

Mr JUSTIN FIELD: I have one more question before I hand over to others, if that is okay. I know that the Deputy Premier has signalled that either he or the Government are in negotiations with Santos at the moment. We are not sure what they are negotiating over. Are you involved in any discussions? Is the council involved in any discussions with the Government about the status of these PELs or if they are going to be expunged or constrained in size and where it would be appropriate or not? Are you engaged at all with the Government on this?

Mr FISHER: We have not been on it on an official level, no, not at this stage. However, during the recent Upper Hunter by-election we certainly had the opportunity to express our views to both the Deputy Premier, the Treasurer and also the successful candidate, Mr Layzell, as well. Certainly the impression given in the meeting was that they understood where we were coming from, and a certain degree of sympathy was held for our position.

The Hon. MICK VEITCH: You are pretty critical of the lack of consultation that the PEL holders undertake with your community. Has that been since they were granted the PELs or is it a new advent?

Mr FISHER: As I mentioned in my opening comments, the DTI did hold an inquiry into the regulatory effectiveness of how licence holders were complying with the regulations. Community consultation was one thing that they did highlight. It was not good then. New guidelines were introduced with very strict terms of what you should and should not do; it set it out in great detail. This was for coal and for coal seam gas. I sit on the Dartbrook Community Consultative Committee. It is a coalmine that has been in care and maintenance since 2005. We meet every quarter. There is lots to discuss. It is very open and transparent. As with any committee, it does not always run smoothly but we meet and we talk and we discuss, and it is all there on the table—we can ask questions. I cannot think of a single gas proponent where such a thing has happened within the shire and, as I say, we do have three.

One of them does not occupy an awful lot of land, one of them certainly does. All of them have attracted community concern and would benefit from a community consultation process, as we have with wind farms—we have got a couple of those proposals in the shire as well. There is a community consultation committee for each and they work as best as they can. That does not happen with gas. It was pointed out in 2014. As I say, the Government did put out the guideline. It was very thorough. It laid out exactly what should be done and it has pretty much been ignored.

The Hon. MICK VEITCH: Has the council approached the PEL holders to try to encourage—

Mr FISHER: I must admit I do not think we have, no. It is one of those things that is just sitting there. What is happening? Nothing. What do you do?

The Hon. MICK VEITCH: In your opening comments and also in your submission you talk about the "use it or lose it" provisions. Essentially what you are saying is that these PELs have not met the requirement of "use it" and so they should "lose it".

Mr FISHER: That would be our position, certainly. Obviously the PEL renewal application is confidential, so we are not aware—maybe they have surrendered 25 per cent, but we are in the dark and, as I say, we are not aware—that for any of those either ELs or PELs that "use it or lose it" has been enforced. It was brought in for a sensible reason. It is a power that the Minister has and now we think he should use it.

The Hon. MICK VEITCH: My last question, Mr Fisher, relates to your firsthand experience on the ground as a local councillor. What is the social impact of these PELs hanging over the community in their current state?

Mr FISHER: As I said to you, I am in the east of our shire. If you drive up Castlerock Road, this is a coal exploration licence but it is an old one. Off the top of my head, I have forgotten the name of the holder. They bought up a section of land going out towards Castlerock, which is a beautiful part of the world—stunning, it is good beef country, there is water there. It is good country; it always has been. But where that company owns the lot, they usually rent it back to the person they bought it off. You can see the decay and the lack of investment in infrastructure, the lack of renewal of fencing. It goes into this sort of stasis where it is not being fully utilised and things just do not happen. That is with coal. With gas, I think a lot of the landowning community, we have ridden gas out, seen it off. They still hold these licences but they are not actually doing any work; nothing is happening.

We will go on and we will buy that block next door when old mate retires or passes away and the family do not miss it—"We will put in a barn, we will sink a new bore here, we will invest." If these things get renewed or there is a danger of a perception that they will be renewed, I think you will find some of those landowners will start to be worrying. We had the same thing again with the Bickham coal. I think the decision was made in 2010 by then Premier Keneally that the application would be turned down. There was an open-cut SEPP prohibition put on the area and almost immediately two blocks of land a little bit further up the valley were bought and converted into thoroughbred farms. Those guys invested there on the understanding that Bickham coal was not going to happen.

When Bickham reappeared in, say, 2014 or 2015 even with "We are going to go underground", suddenly those guys said, "Crikey! What I thought was a safe haven isn't actually as safe," and that is what this is about. I refer to coal ELs that have expired within my shire. Those are the Bickham coal ones. I cannot see that mine ever being developed into a productive coalmine, but those things are still in there. They expired in 2017, those

licences. No decision has been made on the renewal and we do not know whether 25 per cent of that land area is being surrendered by the proponent. You can see we are in a bit of a quandary.

Mr JUSTIN FIELD: The new member for Upper Hunter, Dave Layzell, I think in his first speech he made a comment with regard to the zombie PELs that he is happy to see them removed or pledges to remove the PELs which have "no chance of actually being used". Are you aware of what he means when he says that, because I think he was a bit more adamant during the campaign? I am trying to get a better understanding of his position. Unfortunately, the Government did not show up to this inquiry today.

Mr FISHER: To be honest, I have not had the opportunity to speak with David since his election. As I mentioned to you previously, I was encouraged by his demeanour before the election when this issue was discussed. I read that report. I saw that the angle perhaps taken in those reports was that he had changed his tune. I am not necessarily completely agreeing with that. I would hope that the chance of these three PELs being developed into a gas field is completely out of the question, but while they exist you can never say never. That is where we are at.

The CHAIR: I will call the last session to a close early. Thank you, Mr Fisher, for your time today in giving evidence and for your submission on behalf of the council. I do not believe you took any questions on notice, but if you have the Committee secretariat will be in touch. You will have seven days to get the answers back to us. That concludes the hearing for today.

(The witness withdrew.)

The Committee adjourned at 12:21.