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Att: Lisa Gropp
Presiding Commissioner
Resources Sector Regulation
Productivity Commission
Locked Bag 2, Collins St East
Melbourne VIC 8003

Dear Ms Gropp,

Re- Review of Resource Sector Regulation -Draft Report March 2020

I am most concerned that the Productivity Commission's Draft Report into the Review of Resource Sector Regulation, March 2020 fails to have regard to:

1. the climate and ecological emergency
2. the time frame in which the government should act to halt biodiversity loss and reduce greenhouse gas emissions and the steps to achieve this
3. the need to consult widely in the community.

The impacts of party politics on climate action can be prevented by creating an independent citizen's assembly to inquire into and lead government about the regulatory frameworks necessary for environmental protection.

The current draft report

1. focuses on the impacts of regulations on the resource sector whilst sidestepping the more fundamental question of whether or not current laws provide adequately robust environmental protection;
2. involved wide consultation with mining companies and regulators but limited consultation with organisations in the community who champion the environment that the regulations are designed to protect;
3. does not disclose an adequate scientific basis for a number of its draft findings.

I live in the Limestone Coast of South Australia. My community is overwhelmingly opposed to fracking for gas and has repeatedly requested that the precautionary principle be applied before gas mining occurs in our area. The Productivity Commission has failed to consult adequately with affected communities and representative organisations such as Lock the Gate and the Limestone Coast Protection Alliance about bans and moratoria in relation to gas mining. No consultations were held with the Australian Conservation Foundation or The Wilderness Society even though submissions were lodged by these organisations. In contrast, the Commission consulted with numerous mining companies and their representative bodies, including companies that did not lodge a submission with the commission.

The failure of the Commission to consult adequately with the wider community is reprehensible. This is especially so as, according to the Climate Emergency Declarations Organisation, 95 councils and the ACT government in Australia representing 8,664,607 people or 34.49% of the Australian population have now declared a climate emergency.

The report states that:

> *Onshore gas production, both conventional and unconventional, undoubtedly creates risks of detrimental impacts to the local environment, the local community and its amenity, and agricultural activities. In both the United Kingdom and in Oklahoma in the United States, wastewater injection near fault lines has been linked to an increased risk of seismic activity (Gernon 2018; United Kingdom Department for Business, Energy & Industrial Strategy et al. 2019). In some instances, these impacts are large and long lasting: for example, as noted above, Linc Energy's underground coal gasification project in the Darling Downs (box 4.3).*
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> *Some risks are immediate, some may arise over the course of a project, and some may not arise until extraction is completed. And some of the impacts are uncertain — they may not arise in every project, or the scientific evidence to assess their likelihood may still be developing. This uncertainty has underpinned a precautionary approach by some governments.' (page 121)*

Despite these findings the draft report reaches the following alarming conclusions:

1. the risks of unconventional gas development can be managed effectively. (DRAFT Finding 4.4)
2. the costs of a particular project on the environment, other land users and communities should be assessed against the benefits on a project-by-project (or regional) basis rather than by imposing bans and moratoria. (DRAFT Recommendation 4.1)
3. strict application of the precautionary principle is risky -because it might impede assessment of potential benefits of the banned activity such as tax benefits, royalty income and local employment opportunities (page 121).

The Commission fails to adequately address that bans and moratoria are imposed for all or some of the following reasons:

1. there is a lack of social licence for the activity
2. the available scientific evidence indicates that the potential risks to the environment costs of the activity exceeds potential community benefits in terms of jobs and income
3. the precautionary principle requires that these types of resource activities not occur until the environmental costs are ascertained and the risks guaranteed to be acceptable
4. the potential benefits for communities such as increased income and employment opportunities are not rigorously assessed and the resource sector is rarely held to account for these stated benefits
5. mining companies have vast financial resources, are motivated by profit and their primary responsibility is only to their shareholders. In contrast, concerned environmental organisations and community members are poorly funded and rely heavily on volunteers
6. delays in sale of petroleum, gas, coal and other minerals are NOT a loss to the community. These minerals 'are a national asset and the current systems of resource

exploitation involve the disposal of public property' (John Chandler p 3 submission 19 and the Henry Tax Review). Once sold, the resources are lost to future generations.

References by the Commission to 'Lawfare', 'red tape', 'green tape' 'inconsequential technical breaches of procedures', and 'merit' in reducing appeal rights undermines community confidence in the courts, respect for the rule of law and the purpose of environmental regulations (See page 24 and see the submission made by the Environmental Defenders Office).

The report appears to favour 'outcome based' rather than 'prescriptive' regulations. The suggestion that profit motivated resource companies should only be required to meet certain environmental outcomes and that they be permitted to self- manage reaching that objective (page 97) is highly inappropriate.

The submission of the Environmental Defenders Office notes that 'a 2012 Senate Inquiry that examined related issues, including whether the financial burden of environmental laws on private developers was unreasonable, found very little evidence to demonstrate this claim, and warned of a 'race to the bottom'.'

Instead of addressing how regulation of the resource sector can best reduce the effects of climate change, the Productivity Commission's report simply complains that 'abrupt policy changes' and 'uncertainty about and inconsistent climate change and energy policies' discourage investment in the resources sector (Draft findings 8.1 and 8.2).

The report further indicates that Australia does not need to consider its contribution to greenhouse gas emissions in destination markets when deciding whether or not to approve proposed resources projects or curtailing exports (See Draft finding 8.4). This total disregard for global citizenship utilises the same argument of some members of the live meat export industry who absolve themselves from responsibility for treatment of sheep and cattle on ships and overseas. We do not allow drug dealers to sell illegal drugs because another supplier will soon fill the gap resulting from their arrest. Nor should we allow resource companies to sell dirty coal to pollute our world just because other countries are willing to do so.

The report has quite a few positive references to improving consultation with Native Title holders and Aboriginal communities generally and has consulted with a number of indigenous communities and native title holders. However, I note that the power imbalances –both in financial capacity and commercial acumen- between mining companies and Aboriginal communities are enormous. An independent inquiry addressing these imbalances might be appropriate. At the very least, these power imbalances needs ongoing monitoring. The recent travesty in which 46,000 year old rock shelters visited by UNESCO have been destroyed by Rio Tinto in the Pilbara is an example of a complete failure of current legal regulatory processes. This was not just a loss to the local indigenous community but potentially a future world heritage site-a cultural loss for humanity.

The Commission must learn from one of its own findings. Draft Leading Practice 11.8 found that 'regulators can improve the public's understanding of regulatory objectives and processes by:

- engaging with local communities on the regulatory process throughout the lifecycle of a resources project....
- conducting broader consultation on an ongoing basis to understand community expectations and provide this feedback to policy makers and the government'.

A citizens' assembly on the appropriateness and adequacy of our environmental regulatory system will help achieve this.

Yours sincerely

Sharon Holmes
Barrister & Solicitor
5th June 2020