

AUSTRALIA PPT PRE-TRIBUNAL

MAY 14, 2018 2:30-4:30

MS. SHAY DOUGALL: Hi, this is Shay Dougall from Australia. And, Benedict, do you want to unmute yourself?

MR. BENEDICT COYNE: Hello, I'm Benedict Coyne from Australia.

MS. SHAY DOUGALL: And Mariann Lloyd-Smith.

DR. MARIANN LLOYD-SMITH: Hi, it's Mariann from Australia.

MS. SHAY DOUGALL: And Dr. Geralyn McCarron.

DR. GERALYN MCCARRON: Hello. I'm Geralyn McCarron.

MS. SHAY DOUGALL: So, thank you very much for this opportunity.

What else I might do is just go straight into some introductions. Can you see the screen there?

Okay. My name is Shay Dougall. I'm a wife, a mother, an OHSE professional, a landholder advocate and a gas field resident and the convener of this Australian Tribunal.

Benedict is a member of the Australian Lawyers

1 For Human Rights. He's also the Chair of the Human  
2 Rights Action Committee. And Benedict is a  
3 well-qualified and well-respected human rights lawyer in  
4 Australia who has got an enormous amount of experience.

5 Doctor Geralyn McCarron is a GP who practices  
6 in Brisbane. She has spent lots of years on the ground  
7 out here in the gas fields and is very well respected by  
8 the people out here and is in a very unique position  
9 among her peers.

10 And Dr. Mariann Lloyd-Smith, again, eminently  
11 qualified. A doctor who is expert in toxicology and who  
12 has given evidence all the world and she'll be talking  
13 about the toxics of the unconventional gas.

14 Our overview of the session is the basically  
15 I'll give a brief introduction. Benedict will then  
16 undertake his part. Doctor Geralyn McCarron will talk  
17 about health. Doctor Mariann Lloyd-Smith will talk and  
18 then I'll continue to complete the process of our other  
19 sessions and then Benedict will summarize our session.  
20 We'll have some time for questions at the end.

21 So basically unconventional gas in Australia.  
22 Well, it's big business. How big?

23 Well, let's have a look at just how big it is.

24 I'll show you this interesting slide. So there is an  
25 interesting slide and this will show you just how big

1 the business is in Australia.

2 So that's a map of Australia obviously. This  
3 is the oil and gas tenements across our country. And  
4 this is oil and gas wells that are currently drilled in  
5 our country. And you can see where the tenements are  
6 and where we are expecting it to be drilled in the  
7 future. And this is the gas pipelines across the  
8 country.

9 So, yes, gas is certainly very big business in  
10 Australia. As elected representatives of the people the  
11 government also has a contract with us and that  
12 contract, though, has limited rights.

13 So when the government is pursuing the gas our  
14 contract with them only requires them to consider  
15 limited rights with regard to us, the people, but they  
16 maximize the rights of the industry. And this is what  
17 is resulting in the impact.

18 The thing is that way back in 1932 a pair of  
19 academics may well have been prophetic when they  
20 theorized that the corporation as an economic organism  
21 may even supersede the state as a dominant form of  
22 social organization.

23 Well, in my current experience as advocating  
24 for landholders impacted by the unconventional gas it is  
25 clear to me that the line between the government and

1 multi-national companies is not only bird but in some  
2 cases it's not existent.

3           So basically us, the landholders, are the  
4 trade-off in the government's dash-for-cash. In the  
5 pursuit of the dollars of getting the gas out of the  
6 ground the government and the industry is trading off  
7 what they see is short term impacts on landholders for  
8 their own shareholders value. But the reality is that  
9 this is where they are mistaken because there are long  
10 terms impacts that they're not factoring in but it will  
11 cost them and it will cost us.

12           What they are actually doing is managing for  
13 gas shareholders and they're forgetting about the other  
14 stakeholders, who are us.

15           So our contribution to this tribunal  
16 highlights those failures to govern for us, the  
17 stakeholders, and the rights that our limited contract  
18 with the government fails to address.

19           Our evidence is hosted at that web address.

20           We've written a report that summarizes our  
21 evidence and submitted that to the tribunal and that  
22 report maps out evidence against John Knox's 2018  
23 reports and applies that to the five sub-cases that we  
24 provide evidence for.

25           So in considering the evidence that we have

1 provided and given the 20 to 40-year impact ahead us of  
2 in this existing industry both those impacts that are  
3 still to occur and this industry that is rapidly  
4 expanding, we're asking the judges to consider the  
5 potential future harm as well as the harm and our  
6 contribution to this tribunal.

7           And our contribution to this tribunal is a cry  
8 from thousands of real individuals who are pleading for  
9 you to help us to make our government start governing  
10 for stakeholders and not gas shareholders.

11           So I'd like to introduce the next speaker who  
12 is Benedict Coyne. And I will just unshare my screen so  
13 Benedict can take it.

14           I think I've done that. Benedict, over to  
15 you.

16           MR. BENEDICT COYNE: Thank you, Shay.

17           Good morning everyone. Our tribunal members,  
18 for the record, my name is Benedict Coyne. I'm  
19 executive counsel at a Queensland law firm and the  
20 immediate past national president of Australian Lawyers  
21 For Human Rights, which is a national association of  
22 legal professionals who advocate on the promotion and  
23 protection of international human rights standards in  
24 Australia and overseas.

25           I stepped off two weeks ago after being in the

1 national president's position and I now remain on the  
2 Executive Management Committee and the Chair of the  
3 Human Rights SubCommittee, which will become relevant  
4 later in my submissions.

5 I appear today on behalf of the Australian  
6 sub-cases and to provide submissions to assist the  
7 tribunal in relation to this petition and in relation to  
8 its considerations and deliberations of the  
9 Australian's government obligations under International  
10 Human Right Law as it relates to the impugned conduct  
11 and activities of the unconventional oil and gas  
12 extraction industry, which I will collectively refer to  
13 as the fracking industry, in both Queensland and  
14 Australia.

15 I thank the tribunal members and the Permanent  
16 Peoples' Tribunal and all of the organizers,  
17 specifically Tom, Anna, Damian and Carly and everyone  
18 else and all the contributors, the lead attorneys, Shay  
19 especially, for organizing everything at this end.

20 And I thank everyone for this exciting and  
21 worldly opportunity to present to the tribunal through  
22 an open accessible forum of digital media on these very  
23 important human rights and environmental issues at a  
24 crucial time where humanity finds itself precariously  
25 perched upon the precipice of irreversible, catastrophic

1 climate change.

2 I would like to pay my respects to the  
3 traditional custodians of the land on which I am today,  
4 which is beautiful sunny but albeit wintery Brisbane and  
5 by the Jagger and Turrible people I pay respect to their  
6 elders past and present and emerging, their ancestors  
7 and their future generations.

8 And I would also like to acknowledge that I  
9 speak today on stolen land. That sovereignty was never  
10 ceded neither by aboriginal Australians nor the Torres  
11 Strait Islanders.

12 I would further like to acknowledge the  
13 traditional indigenous custodians of the land on which  
14 everyone listening resides around the world, their  
15 elders, past and present and emerging and ancestors.

16 And finally I would like all of to us  
17 acknowledge our future generations. Our childrens'  
18 childrens-children and so on, the plants, water bodies  
19 and eco-systems on whose behalf we engage in this  
20 important work.

21 In the words of the Special Rapporteur on the  
22 issue of human rights obligation relating to the  
23 enjoyment of a safe, clean, healthy and sustainable  
24 environmental, John Knox who said, "Human rights  
25 environmental protection are interdependent; a safe,

1 clean, healthy and sustainable environment is necessary  
2 for the full enjoyment of human rights, including the  
3 right to life, to the highest sustainable standard of  
4 physical and mental health; to an adequate standard of  
5 living; to adequate food; to safe drinking water and  
6 sanitation; to house and participation in cultural life  
7 and to development as well as the right to a healthy  
8 environment itself, which is recognized in regional  
9 agreements and most national constitutions in 2018."

10           At the same time the exercise of human rights,  
11 including rights to freedom of expression and  
12 association, to education and information, to  
13 participation and the effective remedies is vital to the  
14 protection of the environment and I would add to the  
15 protection of our democracies.

16           The global frontier of fracking and of the  
17 fracking industry -- sorry, I'll start that again.

18           The global frontier of the fracking industry  
19 brings high prices to international human rights law and  
20 the democracy and for the rule of law. However, the  
21 raging expansion of this dirty and dangerous and toxic  
22 industry also presents opportunities for change.

23           We know well the evidence of some 270,000  
24 wells that are being fracked across North America and  
25 the world and hundreds of incursions of human rights



1 violations by large corporation throughout Australia,  
2 which will become the subject of detailed evidence to  
3 this, our Tribunal.

4           In terms of giving a bit of an overview of  
5 where Australia is at it is worth noting that in  
6 Queensland there is unrestricted access for fracking  
7 companies. Whereas our Victoria became the first state  
8 to permanently ban fracking last year. There are  
9 moratoriums in Tasmania and West Australia and New South  
10 Wales has applied certain restrictions.

11           The new nukes out on South Australian liberal  
12 conservative government is planning a 10-year ban on  
13 fracking in much of the state's southeast, however, the  
14 Northern Territory recently announced on the 17th of  
15 April that its ban on fracking will be lifted, much to  
16 the caution and terror, perhaps, of the Northern  
17 Territories who knows what's been happening in  
18 Queensland.

19           The federal government is also pushing for  
20 more fracking. Our federal minister for environment And  
21 Energy Josh Fryenburg recently stated, "I would like all  
22 moratoriums and bans across Australia lifted because  
23 more gas is good for jobs and it's good for energy,  
24 security and supply."

25           And thus we meet here today and the work of

1 the Tribunal is incredibly important.

2 So fracking presents high pressure politics in  
3 Australia and if the highly destructive disruptive  
4 fracking boom precedent in the U.S. and Queensland is  
5 anything could go by and expanded there is much at  
6 stake, including the very integrity of our democracy.

7 Beyond this proven devastating toxic  
8 environmental effects being to dire water, land and air  
9 and climate change causing contamination this most  
10 controversial industrial activity of our time is an  
11 unprecedented global threat to the intertwined complex  
12 of universal human rights.

13 Humans, I guess I would state, very obviously  
14 require a healthy environment for a fulfilling and  
15 dignified life, for the ability to achieve self-  
16 realization, self-determination and community harmony.

17 Fracking engages the profiteering might of the  
18 industrial military complex. Companies such as  
19 Halliburton, whose conduct in the U.S. to Australia is  
20 rupturing the very socio-cultural fabric of our  
21 democratic socio-cultural commons, the collective good  
22 in a place that we like to call home.

23 Historic boundaries delineated by law have  
24 been uprooted and challenged by the right to frack. It  
25 has exposed the profound frailties of our political

1 institutions meant to regulate industry, protect human  
2 health and environment.

3           And as our opening session explained the state  
4 is meant to be the guarantor and protector of our human  
5 rights, however, that is certainly not the case in  
6 Australia.

7           Fracking signifies the tragedy and promise of  
8 the dusk of an era and a last ditch rapacious land rush  
9 of a plummeting and I would submit fossil-foolish  
10 paradigm in its last desperate clutch for power,  
11 political power, energy policy power, private profit  
12 power and power itself.

13           Yet, of course, the counter, people power and  
14 human rights are still relevant in the mix, certainly in  
15 Australia and around the world and may indeed yet  
16 surmount the Goliath gargantuan corporate gas interests  
17 and just make it through to the finish line of  
18 protecting all of our rights, albeit gasping for breath.

19           The aforementioned moratorium throughout  
20 Australia and the determined work of civil society  
21 groups, in particular people like Shay, Geralyn, John  
22 Jenkin and his family and the over 40,000 persons strong  
23 Lock The Gate Alliance, which is landholders committed  
24 to engaging their fundamental democratic rights to  
25 commit civil disobedience if necessary, to refusing

1 access to private fracking companies to their private  
2 property and in that way to prevent from violating their  
3 human rights. All of that represents the hope.

4           Whereas the abhorrent destructive  
5 scorched-earth examples in Queensland over unrestrained  
6 rapacious fracking industry and government selling out  
7 such policy represent the horror and the danger to  
8 them. Therefore, there is much at stake which is why  
9 this petition to the Permanent Peoples' Tribunal is of  
10 such crucial importance.

11           I will now be focusing on my area of  
12 speciality being human rights law and international  
13 human rights law in Australia and outlining for the  
14 Tribunal the answer to the question of why things in  
15 Queensland, in particular, and Australia more generally,  
16 are so democratically dysfunctional to have allowed the  
17 rapid expenses of the rights violating industry.

18           And I think that the answer to and the  
19 exploration of that question is instructive, as history  
20 always is, to be informing our mapping of how we take  
21 steps into the future and the recommendations and  
22 advisory opinions that this Tribunal may make that will  
23 assist all of us in trying to plot a path through a more  
24 safe, sane and sustainable future.

25           So in order to answer the question it is

1 necessary to traverse the history of human rights in  
2 Australia and outline the motivations and mechanisms of  
3 its ongoing international human rights law recalcitrant.

4           Conceptualization of human rights have existed  
5 for many centuries mainly the threaded theaters of the  
6 world's theologies and sacred spiritual teachings  
7 weaving through the winds of time.

8           Human rights are ancient concepts imbued in  
9 the world's major religions. Principles of mutual  
10 respect, tolerance, compassion and dignity are a core  
11 part of Christianity, Islam, Buddhism, Hinduism, Judaism  
12 and hopefully even Pokeman god and so on.

13           Another historic source of human rights is, of  
14 course, the common law, rules and principles established  
15 by judges on a case by case basis throughout the  
16 centuries and when Australia was invaded the common law  
17 was imported into this land.

18           Of course, the world's first Bill of Rights  
19 the Magna Carta, is probably the most famous founding  
20 human rights document which then influenced various  
21 declarations, revolutions in America, in France. And  
22 all of those developments and evolutions formed the  
23 creation of the modern conceptualization of  
24 international human rights law through the formation of  
25 the United Nations.

1           It's also important to mention that the -- all  
2 the international treaties emanating from the United  
3 Nations and the seven core international human rights  
4 treaties, which Australia has signed and ratified, are  
5 all predicated on what I would call the international  
6 consensus of good faith participation in the modern  
7 international order.

8           And that comes by Article 26 of the 1969  
9 Vienna Convention on the Law Of Treaties which  
10 stipulates the Principle of Pacta Sunt Servanda. And  
11 that is every country who ratifies the international  
12 treaty must do so in good faith. That it will uphold  
13 the principles and laws therein, including by the  
14 domestic implementation of those principles and law.

15           And I would suggest that this is colloquially  
16 the handshake of humankind that allows for the efficacy  
17 of international law which is arguably the cornerstone  
18 of our civilization. And without those good faith  
19 obligations being realized and without those good faith  
20 obligations being respected we are all in a much more  
21 precarious place as a global order. It's a very  
22 delicate handshake.

23           Human rights came into their own in an  
24 official universal international legal context as a  
25 fierce Phoenix arising from the holocaust horrors of

1 World War II in the revelations of an abhorrent  
2 widespread genocide.

3           The preamble of the Universal Declaration of  
4 Human Rights expounds, "Whereas disregarding contempt  
5 for human rights resulted in barbarous acts which have  
6 outraged the conscience of mankind and the advent of a  
7 world in which human beings shall enjoy freedom of  
8 speech, belief, freedom from fear and want has been pro-  
9 claimed as the highest aspirations of the common  
10 people."

11           And all of that is applicable and transfer-  
12 able to the predicament in which we find ourselves  
13 regarding our corporate and state violations of human  
14 rights in an environmental context. Especially because  
15 we're facing such a global catastrophic situation with  
16 emissions causing climate change, et cetera.

17           So Australia's history in this whole process  
18 is quite remarkable given that we are such, I guess, a  
19 small nation relatively and according to population in  
20 the sense that Australia was instrumental in the  
21 drafting of the International Declaration Universal  
22 Human Rights. In fact we had one of the eight member  
23 drafting party.

24           That drafting party was chaired and supervised  
25 by Eleanor Roosevelt and it basically formulated a blue

1 print for an architectural dignity tolerance and  
2 inclusive plurality amongst the multi-rational, multi-  
3 ethnic, multi-cultural, multi-political, multi-sex,  
4 multi-gender, multi-ability, multi-indigenous  
5 kaleidoscopic expressions of humanity.

6           And our delegate, Australia's delegate there,  
7 Colonel Roy William Hodgson, was a survivor of the Anzac  
8 Gallipoli historical movement and incident in the First  
9 World War and he went on to become an international  
10 diplomat. At the same time Australia did also have a  
11 foreign minister who became the third president of the  
12 UN General Assembly and oversaw the adoption of the  
13 Universal Declaration Of Human Rights on the 10th of  
14 December, 1948. We have the 70th anniversary this  
15 year.

16           And I saw all of that because I believe very  
17 strongly that Australia bears a significant  
18 responsibility in upholding that delicate handshake of  
19 which I spoke. We are now on the UN Human Rights  
20 Council from the 1st of January this year. We were  
21 elected in October last year and yet we are absolutely  
22 have a very deplorable and despicable record in terms of  
23 the failing to uphold our obligations to the  
24 international community.

25           Now I'll spend a lot of my time drawing those



1 contrasts and distinctions and highlighting them as well  
2 and also painting a positive way in which we can easily  
3 rectify those issues.

4           So I think that also is worth pointing out the  
5 competitive false dichotomies around conservative ideas  
6 of what human rights are or are not or who they belong  
7 to and whom they do not.

8           There appears to be a profound misconception,  
9 especially these days, of rising near liberalism,  
10 nationalism, militarism and anti-rights groups that  
11 human rights are somehow a finite resource. Whereas  
12 actually the fountain of human rights is an infinite  
13 spring. It flows freely for every one by virtue of the  
14 fact of being human.

15           And a meme I saw the other day on instagram  
16 and we're seeing on digital media I thought I might cite  
17 it which said "Equal rights for others does not mean  
18 less rights for you. It's not pi."

19           So I might jump forward, just noticing time.  
20 Now Australia, unfortunately, holds the unenviable  
21 position of being the only western liberal democracy and  
22 common law legal system without a Bill of Rights or any  
23 Human Rights Act. We have had four decades now of UN  
24 treaty bodies, special rapporteurs, heads of UN member  
25 states, recommending that Australia implement its

1 outstanding international obligations by way of a Human  
2 Rights Act or an International Bill Of Rights. And all  
3 of those cause have gone ignored.

4           Unfortunately, when the constitutional framers  
5 were meeting in the 1890s they had a number of  
6 conventions. And they were very enamored with the  
7 American model of constitutional law but also felt a  
8 loyalty to the United Kingdom and the way that was  
9 constituted. So they kind of borrowed from both. But  
10 whilst there were a number of advocates for a Bill of  
11 Rights it was rejected because it was considered that  
12 rights protections, like due process of law, may  
13 interfere with laws made to the detriment of racial  
14 minorities, including immigration laws and those laws  
15 prohibiting chinese people from working in the gold  
16 fields.

17           So it had started out as a racially  
18 discriminatory motivation to not have a Bill of Rights.  
19 And our constitution, very sadly, remains one of the  
20 only liberal democracies with an actively racist  
21 constitution which does not uphold any stipulations or  
22 protections even for basic quality, which is absolutely  
23 remarkable in this day and age.

24           As an international human rights law expert  
25 professor Ben Saul put it, "A Bill of Rights was

1 rejected during the drafting of the constitution because  
2 it was said that elected parliaments would never violate  
3 rights as long as you were white."

4           Now Australia, as I said, is a signatory and  
5 has ratified the seven core International Human Rights  
6 Treaties being the International Covenant On Civil And  
7 Political Rights, the Economic Covenant On Economic And  
8 Social And Cultural Rights, both of 1966 and we signed  
9 that on the 10th December 1972, and ratified in the  
10 subsequent years.

11           We've also ratified the 1963 International  
12 Convention of Malaysia on all forms of racial  
13 discrimination. The 1984 Convention against torture and  
14 other cruel, inhuman or degrading treatment or  
15 punishment. The 1981 Convention on the elimination of  
16 all forms of discrimination against woman. The 1989  
17 Convention on the rights of the child and a 2006  
18 Convention on rights of persons with disability.

19           As I stated before since our first periodic  
20 report, and this all became very live and illustrated  
21 during our First Universal Periodic Review in January of  
22 2011 and also the Second Universal Periodic Review in  
23 November 2015 that Australia has had, as I said, four  
24 decades of UN bodies basically saying why haven't you  
25 promptly implemented your outstanding international

1 obligations.

2           So I'm going to jump forward a little bit  
3 again and just talk about our special rapporteurs with  
4 regards to Australia, have criticized Australia's lack  
5 of constitutional and legislature human rights  
6 enforcement mechanisms as follows.

7           We in 2000 -- and this is just a  
8 non-exhaustive list of examples. In 2006 we had the  
9 report of the Special Rapporteur on Human Rights  
10 Compliance while encountering terrorism, again,  
11 recommending Australia's ongoing failure of domestic  
12 implementation remains a significant concern of the  
13 Human Right Committee.

14           And the special rapporteur urged Australia to  
15 enact federal legislation implementing the ICCPR. So we  
16 haven't even complied with implementing the ICCPR which  
17 is, I would suggest, significantly embarrassing for a  
18 country who now advocated so fiercely to be on the  
19 United Nations Human Rights Council.

20           2007 a Special Rapporteur on Adequate Housing  
21 said the same thing. 2009 the former UN Special  
22 Rapporteur On Indigenous People, James Anaya, visited  
23 remote indigenous communities and also found Australian  
24 breach and those remote indigenous communities are  
25 affected by fracking directly.

1           Former Prime Minister Tony Abbott's response  
2 then, and this is symbolic of Australia's general  
3 demeanor when it comes to selective aspects of the  
4 international order was, "This is the kind of nonsense  
5 we are used to from these armchair critics."

6           I think he should get a life. I think  
7 factually and objectively James and I probably visited  
8 more indigenous communities than Tony Abbott ever did.

9           2010 the Special Rapporteur on Health  
10 recommended Australia constitutionally enshrine rights  
11 encompassed in all of those outstanding treaties and  
12 make them directly distributable.

13           And in March 2015 the Special Rapporteur On  
14 Torture found Australia in breach of the torture  
15 convention which was absolutely unprecedented and that  
16 was due to Australia's treatment of asylum seekers in  
17 off-shore detention centers and Nauru and Manus Island.

18           November 2016 the Special Rapporteur On The  
19 Rights Of Migrants also found similarly and recommended  
20 a federal human rights framework be implemented post-  
21 haste.

22           And the Special Rapporteur On Violence Against  
23 Women in March last year and in April last year the UN  
24 Special Rapporteur On The Rights Of Indigenous People,  
25 Victoria Tauli-Corpuz, also made similar and broader

1 criticism, specifically with regard to the rights on  
2 indigenous peoples. And then earlier this year, 2018,  
3 the Report Of The Special Rapporteur on the Situation Of  
4 Human Rights Defenders and that is the French jurist  
5 Michelle Frost.

6 Now I had a number of clients who were -- had  
7 cases against the fracking industry and fracking  
8 companies in particular and we were doing advocacy on  
9 that. And I had quite a large number of environmental  
10 advocates and communities advocates like Shay, like  
11 Geralyn, met with Michelle Frost to talk about the  
12 significant problem.

13 So I'm going to jump right ahead and kind of  
14 finish up now basically just talking about the rapid  
15 expansion of fracking has unfortunately manifested as  
16 the headstone of democracy and logical progression of  
17 unrestrained corporate power, a systemic indication of  
18 government against it's people.

19 And it violates numerous universally accepted  
20 human rights as contained in all of those treaties,  
21 including the Right To Life, Article 6 of the ICCPR;

22 Article 6 of The Declaration Of Human Rights,  
23 The Right To The Enjoyment Of The Highest Attainable  
24 Standard of Physical And Mental Health;

25 Article 12 of ISESCO, Article 12 of the

1 Declaration of Human Rights. The new emerging right to  
2 a healthy environment which finds its place in the  
3 January 2018 framework principles that have been  
4 formulated -- framework Principles On Human Rights And  
5 The environment by the former Special Rapporteur On The  
6 Environment, John Knox.

7 But we also need to think about, perhaps, less  
8 direct violations including the Right To Affective Legal  
9 Remedy, Article 8 of the Declaration Of Human Rights;

10 The Right To Not Be Arbitrarily Deprived Of  
11 Property;

12 Article 17 of the Declaration Of The Right To  
13 Self-Determination finds itself in all of those  
14 instruments;.

15 The right to the equal protection of the law;.

16 The right for indigenous people to enjoy their  
17 own culture and the Declaration Of The Rights Of  
18 Indigenous People becomes important there;

19 The right to Safe And Healthy Working  
20 Conditions, talking about workers:

21 The Right To An Adequate Standard Of Living,  
22 including adequate housing;

23 The Right To Legal Protection Against  
24 Arbitrary Or Unlawful Interference With Privacy, Family  
25 And Home;

1           The Right To Equal Access To The Public  
2 service, Article 25 of the ICCPR.

3           And also it's very important and I'm sure  
4 there will be focus on it and I've seen it in the  
5 submissions, the 2011 Guiding Principles On Business And  
6 Human Rights, rapidly emerging as being a substratum  
7 formulations of acceptable standards that through the  
8 behavior ever non-state actors, like corporations, are  
9 becoming more and more accepted as the standards by  
10 which corporations should operate and in fact the  
11 framework principles which I'll talk to in my next  
12 presentation, endorse and encourage and embody and apply  
13 those standards.

14           I think I have gone over my time. I'm pretty  
15 much at the end and I just wanted to finish off -- and,  
16 sorry, talking about the Guiding Principles On Business  
17 And Human Rights, particularly Guiding Principle 25,  
18 which stipulates as part of their duty to protect  
19 against business related human rights abuse states must  
20 take appropriate steps to ensure through judicial,  
21 administrative, legislative and other appropriate means,  
22 that when such abuses occur within their territory in  
23 all jurisdictions those affected have access to  
24 affective remedy. And that is what we need, urgently,  
25 in Queensland and in Australia.



1 I think might leave it there but all of what  
2 I've said will inform our recommendations to the  
3 Tribunal in its considerations and deliberations on this  
4 petition.

5 Thank you very much.

6 MS. SHAY DOUGALL: Thank you very much for  
7 that, Benedict. Thank you.

8 What we'll do now is start our first  
9 presentation on the sub-case of Health. I'll just start  
10 that presentation now. Share my screen and give Geralyn  
11 control. So just bear with me one minute.

12 So now in our first sub-case it is about  
13 Health and I would like to introduce Dr. Geralyn  
14 McCarron who will be taking this sub-case.

15 Geralyn, over to you.

16 DR. GERALYN MCCARRON: Hello. My name is  
17 Geralyn McCarron. I'm a doctor who works in Brisbane.  
18 I would like to talk about the sub-case of Health.

19 Health, as we know, is a state of complete  
20 physical, mental and social well-being and not nearly  
21 the absence of the seeds of infirmity. And the basic  
22 requirements for physical good health are clean air,  
23 clean water and other food supplies of uncontaminated  
24 nutritious food, but physical requirements are not  
25 enough. To be healthy one needs mental and social

1 well-being.

2           Through all the sub-cases the impact of the  
3 gas industry and the health of vulnerable groups is  
4 apparent. As far as back as 2008 in the exploratory  
5 phase, physical health impacts have been reported to  
6 health authorities in the government here. And these  
7 physical health impacts included mostly eye irritations,  
8 skin irritations, rashes, headaches, nausea, metallic  
9 taste, chest tightness, cough, muscles spasms, severe  
10 fatigue, weakness, pins and needles. And these were  
11 happening even in small children.

12           At the expense of their own health Australians  
13 have spent years embedded in the struggle to protect the  
14 land they love or the well-being of generations to come.  
15 Some of them have likened their experience to post-  
16 traumatic stress disorder but the trauma goes on.

17           And for the first peoples of this country  
18 whose connection to country and their responsibility for  
19 protecting it is an intrinsic part of who they are. An  
20 invasion by the gas industry has devastated it.

21           In this framework in terms of what I would  
22 like to do I would like to frame the issue of health in  
23 terms of principles to the Australian government's  
24 failure to respect, protect and fulfill human life in  
25 order to ensure a clean, safe, healthy and sustainable

1 environment.

2           The means they used to do this was through a  
3 cultural of no data, no problem. The unconventional gas  
4 industry has been allowed rapid unprecedented expansion  
5 to Queensland with little regard for the public health  
6 consequences.

7           Industry and government failed to establish  
8 base lines. Communities have continuously raised  
9 concerns regarding impacts on health, both direct and  
10 indirect.

11           Public health concerns have been trivialized  
12 and ignored by government and industry and to date no  
13 formal comprehensive health study have been undertaken  
14 to determine impacts of the industry. But despite the  
15 lack of specific official data the residents who lived  
16 with it know and can demonstrate the impact of the  
17 fossil fuel industry.

18           I would just like you to look at this time  
19 line. By 2010 complaints of ill health in the heart of  
20 the emerging industry were gaining traction in the  
21 media. Finally in 2013 the Queensland government  
22 produced the only publicly available assessment of  
23 health impacts of coal seam gas which was commissioned  
24 by the state.

25           In the same year I produced a report

1 documenting the health complaints and critiquing the  
2 Queensland really inadequate report and recommended  
3 action.

4 By about 2016, Morgan, et al, had recognized  
5 the mental health impacts and published research  
6 indicating coal and gas concerns were a significant  
7 contributors to psychological morbidity.

8 In 2017 Werner, et al, documented increased  
9 hospital admission rates for neoplasms and blood immune  
10 diseases in coal seam gas areas compared to other study  
11 areas in Queensland.

12 And then earlier this year I published a paper  
13 using gas industry and acknowledged emissions on  
14 Queensland health own data of hospitalization to  
15 indicate that there is very possibly a very large public  
16 health issue.

17 And then in 2018 also this year Claudio, et  
18 al, published a paper looking very closely at the 2013  
19 Queensland government report the one that's listed  
20 there. It is really important to understand that the  
21 Queensland's government report from 2013 had one very  
22 important recommendation.

23 That recommendation was to monitor total gas  
24 field emissions and the exposure of the community to  
25 those emissions. And it's important to understand that

1 in that 2013 report that not only did the government  
2 fail to follow-up on that Queensland health  
3 recommendations but that the regulator actively blocked  
4 that recommendation.

5 So in 2018 Claudio, et al, published a paper  
6 looking at the Queensland government 2013 report from  
7 the point of view of international best practice health  
8 impact assessment methodologies. And what they found was  
9 that it failed to meet these international best  
10 practices because seven out of nine steps were omitted.

11 Also in 2018, this year, GISERA, which is a  
12 government and industry funded research study, they  
13 undertook a project to review the state of knowledge  
14 about health impacts on coal seam gas, identify the gaps  
15 and develop a framework that can be used to design and  
16 study.

17 And this report now 13-years after the start  
18 of the industry acknowledges that an in-depth health  
19 impact study has yet to be conducted in Australia. A  
20 coordinated data base of chemicals used by the Australia  
21 coal seam gas industry is not currently visible. And  
22 inventories of emissions resulting from the extraction  
23 process which is VOCs, NORMs, metals and salts are also  
24 not available and access on the data owned by industry  
25 is restricted.

1           The problem then is what is the difference  
2 between alternative truths and straight lies?

3           The significance of the evidence on the time  
4 lines is that on the basis of their totally inadequate  
5 2013 report the government actively promoted the  
6 outright lie that they had comprehensively investigated  
7 the health complaints. And on the back of that lie they  
8 promoted massive expansion of the coal seam gas industry  
9 in Queensland.

10           The expansion of the coal seam gas industry  
11 into Auckland, which is a beautiful productive  
12 agricultural land which has been the site of yet another  
13 type of unconventional gas exploration and it has been  
14 the site of various environmental harms caused by LINC  
15 Energy's underground coal gasifications. And for years  
16 local people have been reporting serious environmental  
17 and health harms to people.

18           Just last week LINC Energy was fined a record,  
19 for Australia, 4.5 million dollars, with Judge Shanahan  
20 saying, that the offending was carried out over seven  
21 years and was persistent and in clear breach of its  
22 obligations.

23           But one might ask what on earth were the  
24 regulators doing for years?

25           The government itself was a partner at the

1 beginning of this project. And although LINC Energy has  
2 been fined 4.5 million dollars, no compensation and no  
3 rehabilitation is proposed for the landholders in the  
4 extensive area of the environmental contamination.

5 Instead, the government, ignoring all pleas to  
6 the contrary, has given coal seam gas companies  
7 permission to drill hundreds of gas wells into the same  
8 coal seam through the contaminated land under Hopeland.

9 It's not just failure, it's willful failure.  
10 The government has ignored all evidence on coal seam gas  
11 and underground gasification. They also have willfully  
12 ignored the industries contribution to the health  
13 impacts of climate change.

14 They have also actively sought industry  
15 participation in the shale gas development and they did  
16 this despite the mounting international evidence of  
17 serious adverse health impacts, which includes increased  
18 hospitalization for asthma, cardiac, neurological and  
19 skin condition, increased incidence of congenital heart  
20 defects, increased childhood leukemia, low birth weight  
21 and early infant death.

22 Our government has failed to protect human  
23 rights of health. There's been a failure of the  
24 government to identify the health risks. There's been a  
25 failure to assess the health risks in association with

1 impacts on the environment. There's been a failure to  
2 properly assess the environmental impact and, therefore,  
3 to integrate the environmental assessment with the  
4 well-known associated health risks. There's been a  
5 failure to monitor and to measure the impact on the  
6 health risks. There's been a failure to protect people  
7 when people have raised concerns with the government  
8 regarding the experience of health risks.

9 The health risks are known from the gas  
10 fields. The residents themselves can identify the  
11 impacts. So I would like to hand you back to Shay who  
12 will show you some visuals.

13 MS. SHAY DOUGALL: Thank you very much,  
14 Geralyn. I appreciate that.

15 I thought I would start by showing us a map of  
16 Australia with an insert of the shape and size of the  
17 State of Oregon. And just to give you some comparison  
18 to the next image, which is broadly the same sort of  
19 size and shape as the State of Oregon, in the State of  
20 Queensland this is our community here. This is where I  
21 live. This is a vision from Google Earth and you can  
22 see my community of Chinchilla and what you can see  
23 there is colored in red is actually the land that is now  
24 owned by a coal seam gas company.

25 If we zoom in just a little bit tighter this



1 is a little bit closer view of peoples properties and  
2 homes, our community, state forests and also a bit  
3 closer view of how much of the land is owned by the coal  
4 seam gas industry. No longer owned by individuals,  
5 mothers and fathers and families.

6 That is an image of all of the wells that have  
7 been drilled into our community today and overlapping  
8 the homes and the backyards of families.

9 And that, you can see, scattered through there  
10 is a few little red dots that show the acknowledged  
11 industry contributions to the atmospheric emissions and  
12 the atmospheric toxins that are produced by the  
13 industry. They are called the National Pollution  
14 Inventory Sources.

15 And this is what the industry admits and  
16 acknowledges that they're producing and this is just in  
17 one year as emissions into the atmosphere in that  
18 particular community there.

19 Now this is an even closer image of just one  
20 family's home, that black star there, in a two kilometer  
21 radius of their home. Certainly the wells -- but the  
22 wells aren't shown in this image. What is shown in this  
23 image is the points of emissions that are coming from  
24 those infrastructure from the industry but are not  
25 accounted for in any of the National Pollutant Inventory

1 Data.

2           And this is what we see when we use a fluro  
3 camera forward looking infrared camera to identify these  
4 emissions that aren't being counted. They can't be seen  
5 by the naked eye but when you look at your fluro camera  
6 you can see the see the volume of gases being emitted in  
7 a manner that is not monitored, is not measured, not  
8 mitigated and certainly not recorded.

9           And when we do our own testing of those  
10 emissions that we just showed you footage of this is  
11 what we find is coming out of those points of emissions.

12           So what I would like to do is now introduce  
13 you to our next speaker which is Dr. Mariann Lloyd-Smith  
14 who is going to address the issues of the toxics  
15 associated with unconventional gas and the human rights  
16 impact.

17           So I'll start sharing my screen and introduce  
18 you to Dr. Mariann Lloyd-Smith.

19           DR. MARIANN LLOYD-SMITH: Good morning.  
20 And thank you for this opportunity to add to what you  
21 have already heard from the National Toxics Network in  
22 our testimonies and written submissions which have been  
23 provided to you.

24           This time, however, I'd like to speak to you  
25 as the Chair of the IPIN Toxic Fracking Working Group.

1 IPIN is a Global Public Interest Network representing  
2 many hundreds of NGOs and community organizations across  
3 100 countries all committed to achieving a toxic free  
4 future.

5           And I'd like to highlight three important  
6 chemical issues of global concern related to the  
7 unconventional gas industry.

8           Firstly the international failure of the  
9 industry to adequately assess the chemicals used and  
10 released. The climate induced impacts on the industry's  
11 wastes practices and finally the role of unconventional  
12 gas and the manufacture of the plastic and the resultant  
13 marine plastic wastes. We consider these three issues as  
14 seriously impacting on basic human rights, particularly  
15 our right to live in a pollution free world.

16           This right was acknowledged by the United  
17 Nations Human Rights Commission in 2001 and they  
18 established that the fundamental right to life is  
19 threatened by exposure to toxic chemicals, hazardous  
20 wastes and contaminated drinking water.

21           So, first, the failure to adequately assess  
22 the chemical impacts.

23           I'm sure many of you have had governments from  
24 countries including the UK, US, Australia, New Zealand,  
25 South Africa, all regularly claim that the industry's

1 fracking and drilling chemicals have all been fully  
2 assessed and government regulators know all the products  
3 constituents and all their impacts.

4 This claim is naive at best and dishonest at  
5 worst. You may have heard in my earlier testimony of the  
6 significant failures of the Australian's government  
7 assessment of fracking chemicals. The situation is  
8 similar across all of OECD countries.

9 Much of the information on the potential  
10 environmental impacts of unconventional gas chemicals  
11 has still not been generated and what is available much  
12 is protected under confidentiality regimes.

13 Governments and industries have not evaluated  
14 the impacts of hydraulic fracturing mixtures,  
15 particularly their long term effects, nor their  
16 interactions with each other or with the natural  
17 contaminants of the coal and shale seams.

18 As it was put so well by one chemical  
19 regulator attending an OECD workshop for those  
20 responsible for the assessment of the industries  
21 chemicals, and I quote, "We do not have adequate  
22 information to undertake even the most basic hazard and  
23 exposure assessment."

24 A couples of years ago when I was  
25 participating in a debate over access to information on

1 fracking chemicals organized by the OECD representatives  
2 of Halliburton, our major producer as you know of the  
3 industry's chemicals products, repeatedly told the  
4 audience that the full information on product  
5 constituents would not be provided as this was their  
6 confidential commercial business information.

7 Commercial confidentially regimes exist in all  
8 countries, and while they may vary according to domestic  
9 law, the overwhelming protection they gave for the  
10 secrecy of product details appears universal.

11 Nevertheless, we are aware that fracking and  
12 drilling products can include persistent  
13 bio-accumulative toxins, for example fluorocarbons  
14 surfactants, bromiate herbicides and chlorinated  
15 paraffins used in drilling.

16 Fluorinated chemicals, often nicknamed for  
17 every chemical, are extremely persistent and some simply  
18 never breakdown.

19 These very persistent chemicals interact with  
20 each other and with the natural chemicals in coal and  
21 shale seams forming a range of very toxic persistent  
22 by-products, some of which are recognized ozone  
23 depleters.

24 For example, dichlorodifluoromethane or  
25 trichlorotrifluoromethane, which is often called Freon 11,

1 it has some of the highest ozone depletion potential.

2 Many of the Freon chemicals that are already  
3 banned for use under the Montreal Protocol but continue  
4 to be released unabated by the industry.

5 We have measured them in flow back at the well  
6 head and, as you know and as you've seen from Shay's  
7 presentation and Geralyn's, volatile and semi-volatile  
8 toxic compounds have been detected in the air, water and  
9 urine of surrounding communities.

10 There remains significant data gaps about the  
11 complete range of product constituents, their  
12 interactions, their environmental fate, their  
13 eco-toxicity, their long term impact on human health and  
14 the environment. And, hence, any attempt at risk  
15 assessment for this industry is bound to fail as it  
16 simply cannot evaluate the full impacts of the  
17 industry's toxic footprint.

18 The impact of this on a child's right to clean  
19 water and to live in a pollution free world are simply  
20 incalculable.

21 Now I know most of you are aware of the impact  
22 the industry has on climate change through its  
23 considerable release of methane. Few are aware that  
24 climate change also can impact on the industry's toxic  
25 footprint.

1           Climate change is altering emissions to air of  
2 the persistent pollutants by changing their rate of  
3 mobilization from materials stockpiles or even the waste  
4 water ponds.

5           The higher temperatures and changes in weather  
6 pattern are also remobilizing historical contaminants  
7 and altering the distributions through long range  
8 transport.

9           Climate change impacts are altering the  
10 degradation, bio-availability and even toxicity of  
11 chemicals.

12           For example, increases in water temperature  
13 have shown to increase the toxicity to aquatic species  
14 of commonly used chemicals while changes in water  
15 acidity have been shown to affect the bio-accumulation  
16 of toxins in fish.

17           Yet none of these impacts are being addressed  
18 by the unconventional gas industry or their regulators.  
19 The use of extensive holding ponds for waste water, the  
20 burying of contaminated drilling waste in situ, the  
21 creation of massive contaminated salt stockpiles and the  
22 ongoing release of thousands of tons of volatile organic  
23 compounds into the atmosphere are all practices that  
24 will be affected by increasing climate change.

25           For an industry generating significance

1 amounts of chemical wastes, which it is currently unable  
2 to manage, ongoing climate change represents some very  
3 serious challenges and some very serious risks.

4           So finally we are deeply concerned about the  
5 rapidly growing use of shale gas for the production of  
6 plastic and resultant plastic wastes.

7           The impacts on vulnerable communities of the  
8 ever increasing amounts of plastic waste contamination  
9 is simply devastating.

10           Natural gas is now the primary source of  
11 chemicals for plastic production in both North America  
12 and in the Middle East. The ethane is used to make  
13 ethylene, which is a feed stock for polyethylene, for  
14 PVC, for PET and for polystyrene, while the propane is  
15 used to make propylene and ultimately polypropylene.

16           The shale and gas boom in the US has made  
17 these plastic feed stocks extremely cheap driving  
18 investment at increasing production.

19           The US industry is planning to invest over 164  
20 billion by 2023 with many new ethane crackers designed  
21 and built specifically to produce ethylene from fracked  
22 ethane.

23           With the over abundance supply of shale gas  
24 analysts expect the production capacity and demands to  
25 increase by one-third in the next five years. This



1 increased plastic production comes at a time when the  
2 global community has recognized the serious and, in some  
3 cases, irreversible impacts of plastic pollution across  
4 the world.

5 Communities and countries are rapidly becoming  
6 aware of the devastating environmental degradation from  
7 plastic and their associated toxic chemicals and as  
8 considerations for the new international treaty to  
9 address marine plastics progress, it has highlighted the  
10 human rights impacts on vulnerable populations,  
11 particularly those dependent on the marine environment  
12 for their only source of protein.

13 We believe the unconventional gas industry can  
14 no longer be allowed to remain silent about its part in  
15 this rapidly expanding catastrophe.

16 So to conclude we're only just beginning to  
17 understand the full implications of the toxic footprint  
18 of the unconventional gas industry and we can only hope  
19 that we are in time to respond to effectively and to  
20 stop the industry's global pollution of our air, soil  
21 and water.

22 So thank you very much for listening.

23 MS. SHAY DOUGALL: Thank you very much,  
24 Mariann. That was excellent. I appreciate your input.

25 What we'll do is now move straight into the

1 presentation on the second sub-case which I'll start the  
2 power point for you now.

3 This second sub-case is on Infrastructure. So  
4 this is our sub-case and the evidence. And the summary  
5 of that evidence that we'd like to provide the judges  
6 based on our second sub-case which is on Infrastructure.

7 My name is Shay Dougall and the basis of our  
8 information and the evidence that we've provided in  
9 testimony already identifies that the vast  
10 infrastructure and the way it has popped up across the  
11 landscape industrializing the rural community has  
12 adverse physical and economic impacts on property and  
13 property values attributable to the activities and  
14 exposures associated with unconventional gas.

15 So what are we talking about as far as  
16 infrastructure goes?

17 Well, there is a starter list that is just a  
18 basic outline of some of the infrastructure including  
19 the arbitrary applications of the tenements,  
20 prefabricated cement, ponds, infield compressing, waste  
21 water trucks but, anyway, this is a list that is much  
22 better told in pictures.

23 So what you see here is that people are not  
24 even a consideration in the arbitrary application of the  
25 tenements. So when the government leases out whole

1 sections of the country to multinational gas companies  
2 they do so in arbitrary shapes like you see on this side  
3 of the screen.

4 But on this side of the screen what is  
5 underneath that is actually peoples homes and the  
6 cadastral boundaries of their property. So there's  
7 absolutely no consideration given from the get-go as to  
8 the people who are underneath this business deal that  
9 has been rolled across the landscape.

10 This is a view of that same area but with the  
11 overlaying the industry's infrastructure, the big parts  
12 of the infrastructure and their names.

13 This is the view from -- as a landholder who  
14 lives in that area exactly what's going on there. What  
15 used to be basic moms and dads and farms is now  
16 scattered with -- the country is now owned by CSG  
17 companies and pockmarked by wealth.

18 Now if we zoom even closer you can see this is  
19 a very good model that is produced actually by Jazeera  
20 in their most recent report and it's very useful in that  
21 it really clearly identifies the massive impact when we  
22 zoom in from a broad view down into the view from the  
23 ground just what this industry does to one particular  
24 area.

25 And if you look at that image there's a vast

1 impact from the sky to the air, to the ground, to the  
2 water, to the underground. It's absolutely intense and  
3 the only thing missing from that image is the families.

4 We zoom in even closer and this is some one's  
5 property. This is an example of some other  
6 infrastructure. This is a prefabricated cement roadway  
7 in what is supposed to be a farmers grazing paddock.

8 That previous picture is actually specifically  
9 taken from this image of what the industry has of that  
10 person's property. So the person who owned that  
11 property this is how the industry sees his property. No  
12 longer his home. No longer his business. Now simply  
13 industry's dash for gas.

14 And this is someone's home. This is more  
15 infrastructure being installed.

16 This is actually a public road. And this is  
17 another example of the government -- of the industry  
18 taking advantage of the entire area becoming their work  
19 place, their lay-down yard. This is a public road. It  
20 used to be my kids' bus stop. Apparently on that day it  
21 didn't matter.

22 This is an example of a multiple-pad gas  
23 well. More infrastructure.

24 This is an example of the type of things that  
25 are in peoples' backyards.

1           This is an example of the vents, uncontrolled,  
2 unmitigated, unreported in peoples' backyards, in their  
3 businesses. More the industry's infrastructure.

4           The core infrastructure has leaks and spills,  
5 which we also need to deal with, and you can see the  
6 boundary fence on that particular piece of  
7 infrastructure isn't doing a lot to contain the leak.

8           And then there's the impact that  
9 infrastructure has on the night's sky.

10           And that, of course, there is the massive high  
11 voltage powerlines that are installed for the sole and  
12 express use of the industry. It's not a public asset.

13           And then there's all the trauma that goes into  
14 actually having those things rolled out across peoples'  
15 homes.

16           And then there's the massive exporting  
17 facilities that they're wanting to roll up and down the  
18 coast of the entire country of Australia.

19           And then, of course, once you take into  
20 account all of the industry's infrastructure, of course,  
21 the farmers' infrastrucure is no longer useful and is  
22 destroyed.

23           There is a photo of a kicking gas bore that is  
24 kicking farmers stock and domestic water bore that is  
25 now producing so much gas that the gas lifts what's left

1 of the water.

2 Basically in this particular sub-case we  
3 address the framework principle No. 8 where the  
4 government has actually, our evidence proves, that the  
5 government has undertaken or authorized actions with  
6 environmental impacts that we've just shown you, that  
7 interfere with the full enjoyment of human rights.

8 The government has not required prior  
9 assessment of the possible environmental impacts of  
10 these projects and their policies including their  
11 potential affect on the enjoyment of human rights.

12 How could it possibly have been when you look  
13 at those images?

14 Principle No. 12, however, also shows that the  
15 government has not ensured that the effective  
16 enforcement of their own environmental standards are  
17 undertaken against public and private actors.

18 That evidence also shows that, under Principle  
19 10, that the government has not provided for access to  
20 effective remedies for violations of these human rights  
21 and domestic laws relating to the environment.

22 So as this infrastructure is rolled out and as  
23 impacts of the infrastructure is born by the landholders  
24 there is no remedy.

25 So that is the end of our presentation on

1 Infrastructures, our sub-case of Infrastructure. And  
2 what I'll do now is just move on to the next  
3 presentation if that's all right.

4           Okay. So this third sub-case that we're  
5 addressed the evidence we've provided is based on the  
6 Climate Change And Environmental Impacts Of The  
7 Industry.

8           So the Environment Climate Change sub-case is  
9 addressed -- we address the Principles 1, 11 and 16.  
10 And basically what we're talking about here is the scale  
11 of the industry.

12           The scale of this industry and its footprint  
13 as we talked about in that very first picture I showed  
14 you that shows the vast big business across Australia of  
15 this industry as it rolls -- the footprint rolling  
16 across ground water, dependent eco-system, agricultural  
17 land, peoples homes, does not -- it can not ensure a  
18 safe clean, healthy and sustainable environment.

19           And it's anything but a precautionary approach  
20 that's being taken for this industry in Australia. The  
21 technology is novel. It's not yet standardized. It's  
22 poorly understood. There's uncertainty about the  
23 consequences and, what's worse, is that the worst case  
24 potential for harm is enormous and on the scale that  
25 it's planned it's so large that the cumulative impacts

1 aren't even part of the permitting process.

2           So surely this is the very definition of human  
3 rights and how it impacts. The government has made  
4 these choices deliberately. They have decided to choose  
5 fossil fuels over renewables. They've chosen to create  
6 a gas industry. They've legislated that a portion of  
7 electricity must be made from gas. And the governments  
8 were so led by their desire of multi-nationals instead  
9 of the good of the country that they've dashed to create  
10 an export industry they've destroyed the supply and  
11 demands basis completely for the product that they had  
12 previously legislated must be used.

13           Exporting not only the gas but what  
14 Australia's government is exporting the damage as well.  
15 So there is such a thing as Australian companies  
16 inflicting human rights impacts in this industry in  
17 other countries, in particular in Latin America.

18           We have evidence provided to us from Latin  
19 America that shows a previous company from Australia who  
20 were responsible for the damage done to the Pilliaga  
21 State Forest. That managing director is now in control  
22 of a company who is working Uruguay.

23           And they are undertaking this activity and  
24 putting at risk the major aquifer in Uruguay which is  
25 one of the largest underground drinking water reserves



1 in the world. So we' managing to export the damage as  
2 well, which is bringing into hilighting the issues  
3 associated with the guiding principles of business and  
4 human rights.

5 The environmental impact on large scale  
6 developments with a extensive kettle of environmental  
7 impacts and now evidence describes all the environmental  
8 impacts as can be seen here.

9 And the environmental impacts, the planned  
10 scale and the scope of the development in itself makes  
11 the whole question of impacts really complex. The  
12 projects are only licensed on a piece meal method but  
13 the cumulative impacts are not even potentially  
14 predicted and they may even be worse than you could even  
15 imagine given that it's the environmental system is  
16 subject to this sort of disturbance on such a massive  
17 scale.

18 Also we've already identified in our evidence  
19 and in the first sub-case of Health that the fugitive  
20 emissions of this industry, along with the ones that are  
21 actually acknowledged, doesn't mean that this -- proves  
22 that this industry does not wash up as the spin  
23 indicates as being cleaner than coal.

24 The scientific literature tells us that people  
25 are already dying from climate change. So this is

1 actually a legal and moral question that climate change  
2 that this industry is contributing to should it go  
3 ahead.

4 Governments and industries are already being  
5 sued for their contribution to this. And we already  
6 know we have to leave at least the current -- we can not  
7 start opening up new areas of fossil fuel by any level  
8 of now of commitments from the Paris Agreement.

9 We're supposed to love our neighbor.  
10 Australia's been called out by our neighbors for turning  
11 our back on those who would be the first affected by the  
12 impacts of climate change who have been affected now.  
13 And here we are in this ever expanding CSG industry.

14 Then the climate change capsules are  
15 attributable in the evidence that we've provided such  
16 that there is a current and increasing threat posed by  
17 these climate change conditions that means that they  
18 will exceed the human capacity to deal with heat stress.

19 And in Australia, particularly in the Northern  
20 Territory particularly, we're looking at a situation  
21 where they are already very vulnerable to heat stress.  
22 Any changes in climate change will be a huge impact in  
23 that area and yet here it is and our government has  
24 chosen just last month to raise the moratorium on  
25 fracking.

1           So even if the government was to convince us  
2 that their concerns regarding climate change were  
3 meeting the community's concerns and they referred us to  
4 their environmental impact statements as proof of the  
5 rigor in which industry was held, well, they would still  
6 fail.

7           Simone Marsh shares some extraordinary  
8 evidence to the Tribunal regarding her submissions  
9 identifying the lack of baseline data, lack of  
10 scientific rigor, star chamber protective behavior  
11 undertaken within the government in the industry all of  
12 which, of course, brings up the fatally flawed adaptive  
13 management mantra that the government hangs its hat on  
14 that gives this industry permission to continue to be  
15 rolled out.

16           But the environmental impact assessments  
17 address only individual projects as I've already said,  
18 they're missing the cumulative impacts.

19           Also ecologically speaking our evidence also  
20 provides to the Tribunal shows that these approvals were  
21 awarded to the industry without prior adequate  
22 acknowledge of the ecological impacts on terrestrial,  
23 ground water, marine environments. There are serious  
24 flow-on consequences to these.

25           So what it is saying is what's it going to

1 take for our government to hear. The government's  
2 continued response to anything that is raised as far as  
3 concerns in requiring them to have a response that is  
4 reasonable is continued denial and bloody-minded  
5 ignorance.

6 So that's the end of that evidence load  
7 regarding the sub-case No. 3. There's only two more  
8 quick sub-cases left. So I'll move on now to the next  
9 sub-case. And it will just take me a moment and at the  
10 end of those two sub-cases there is time for questions.

11 So this sub-case, this presentation, is about  
12 the evidence that we've provided the Tribunal on the  
13 sub-case about Participation In Government.

14 In this case we looked at Principles No. 4, 5,  
15 7 and 9 basically that the government does not provide a  
16 safe and enabling environment in which we can operate  
17 free from threats, harassment, intimidation and violence  
18 in expressing our concerns for our human rights.

19 Our government did not expect them to protect  
20 the rights of freedom of expression, peaceful assembly  
21 in relation to environmental matters. The government  
22 has not provided public access to environmental  
23 information by providing affordable effective and timely  
24 access to information upon request. And the government  
25 has provided for and facilitated public participation in

1 decision making related to the environment and the  
2 decision making process of this industry.

3           And taken from Benedict and the Australian  
4 human lawyers example of what they've described is  
5 really crystal clear. Our government is supposed to  
6 protect against human rights abuses within our country.  
7 This requires taking adequate steps to prevent,  
8 investigate, punish and redress any abuses through  
9 effective policies, legislation, regulations and  
10 adjudication.

11           This is a significant failure of the  
12 Australian government in relation to this industry.  
13 They have not ensured that our human rights are  
14 incorporated into the judicially enforceable  
15 legislation. They haven't backed that up with  
16 comprehensive implementation of policy and that's  
17 enabled this GCS industry to manipulate the decisions  
18 making process and the outcomes in the manner that basic  
19 human rights have been ignored. Also their breaches have  
20 been subject to inadequate corrective measures.

21           And the importance and the impartiality and  
22 accountability in the management of this government's  
23 resources is really hard to overstate particularly  
24 in this case.

25           Mining licenses represent the largest transfer

1 of assets from the public to private hands where mining  
2 companies stand to gain hundreds of millions of dollars  
3 from any simple decisions that our government makes to  
4 allow mining and gas field to go ahead. And that happens  
5 with no public representation in that decision-making  
6 process but we get to suffer through the negative and  
7 economic impacts and on the non-mining industries, the  
8 communities and the environment.

9           These impacts are devastating and they're not  
10 certainly accounted for in any way that is appropriate,  
11 either by the legislation, by the government or by the  
12 industry.

13           This is what is at the heart of the  
14 fundamental failure of our government to us, it's  
15 people. They have failed in their duty to protect and  
16 represent and facilitate public participation.

17           They have deliberately and relentlessly  
18 pursued the creation of the gas industry, the removal of  
19 red and green tape, the rejection of anything about the  
20 proportionary approach and they avoid investing in  
21 alternative energy industry.

22           The evidence we've provided this Tribunal has  
23 been available at every single level of the  
24 participatory process within our government. There's  
25 been legislative bias. We've provided evidence of the

1 number of inquiries that we've had in this country and  
2 that the outcomes have been clearly ignoring the will of  
3 the people. The lack of the right to say no. The  
4 lobbying and the revolving door. There's been  
5 regulatory failures. There's devastating failure in the  
6 compensation arrangements.

7           The right to information is awful as well.  
8 There's unconscionable conduct demonstrable in the  
9 industry and the individuals. They've failed to  
10 investigate incidents. They failed to adequately  
11 prepare for the industry potential emergencies in the  
12 community. And the burden of proof of having any impact  
13 rests with individuals and the anti-protest laws.

14           The government inquiries that I alluded to you  
15 only have to look at the number of inquiries that have  
16 been held into this one industry across Australia and  
17 see the same outcome time and time again and realize  
18 that the government is not listening to the people.

19           You only need to read the government's own  
20 submissions to see the dismissive attitude that  
21 ministers and senators have on the issue of public  
22 opinion.

23           This slide just shows, in one simple view, the  
24 number of inquiries that have been had. One of those  
25 particular inquiries was the right of the inquiry into

1 the bill for landholders in Australia to have a right to  
2 refuse gas and coal. This is a perfect example of the  
3 people requesting the right to protect our lands and our  
4 homes if the government was not going to do it.

5 So the insulting result of that bill was an  
6 outrageously slippery maneuver on behalf of the  
7 committee responsible for that inquiry. They reneged on  
8 a technicality. They went to a lot of trouble to say  
9 that, yes, sir, we do support the principle that an  
10 agricultural landholders should have the right to  
11 determine who can enter and undertake gas mining on  
12 their priority. But we see all sorts of problems with  
13 the details in the bill.

14 So instead of coming up with recommendations  
15 or examples of fully participating in a meaningful  
16 engaged discussion the committee's report, the one and  
17 only recommendation was, we recommend that they don't  
18 pass the bill, the end.

19 We provided evidence as well that, you know,  
20 the government has focused on this industry to the  
21 detriment to any alternative industry. And a really  
22 disturbing aspect of this lack of participation that we  
23 provided evidence about has been the rampant and out of  
24 control cozy relationship that is between senior  
25 government representatives, not just in the ministry



1 but, also in the important depths responsible for  
2 enforcing and the industry. It's completely at odds  
3 with the fundamental principle that all interested  
4 parties get to be treated equally in the decision  
5 making.

6           There's been regular untruthfulness and we've  
7 identified it in previous sub-cases. These projects  
8 have been pushed through with broad regulatory tools,  
9 multiple land use frameworks legislation, broad lengthy  
10 and inconsistent conditioning, all of which means  
11 cumulative impact isn't considered and the public  
12 ultimately is prevented from participating in the  
13 decision making.

14           Very specific evidence we have provided about  
15 the combating compensation agreement which is a really  
16 significant abuse of human rights. The government  
17 licenses the industry to get the gas off of peoples own  
18 private property. These multi-national companies access  
19 our private properties and put infrastructure in their  
20 place.

21           The government refuses to give us permission  
22 to deny them access, forces us to the table to negotiate  
23 a compensation process that is constrained to a limited  
24 pool to a number of issues that certainly don't have any  
25 way close to representing the realities of what the real

1 impacts are.

2 The government forces individuals to deal with  
3 these multi-national companies and sign the contracts  
4 giving access.

5 The government gives each of these individuals  
6 no assistance. They leave them to enter into these long  
7 term contracts with no information, no rights and no  
8 data.

9 But the government does draft a sample  
10 contract for use in this process and, of course, that  
11 sample contract is heavily biased in the favor of the  
12 multi-national gas companies.

13 The problem with this is, again, one of those  
14 framework principles that should be a fair and balanced  
15 approach to land use access and compensation.

16 Well, we've provided evidence requiring the  
17 contract to be signed does that mean that there is an  
18 agreement. There is lack of requirement for the  
19 companies to disclose information that is really  
20 important to the individual expected to live with it.

21 The contract requires individual to provide  
22 full disclosure about their plans for their own  
23 property. It lacks any helpful information to provide  
24 individuals about what types of additional conduct  
25 requirements that might be useful for them to demand

1 from the company which is, again, advantageous to the  
2 company.

3           These contracts encourage confidentiality  
4 which is not in the best the interest of the individual  
5 but certainly works for the tactic of dividing  
6 communities.

7           We have provided evidence that shows that  
8 these contracts fail to even encourage basic payment  
9 terms regarding implications of when the industry  
10 doesn't pay the individual.

11           It places an undue burden on the landholder to  
12 protect the company's infrastructure and it proves that  
13 the government knows about the poor insurance agreements  
14 that exist and enshrines that poor arrangement into  
15 these contractual clauses.

16           So basically their right to information is  
17 non-existent. The landholder gets access to a handful  
18 of information that is industry-centric and propaganda  
19 and that's prior to being expected to sign this long  
20 term contract for access and impacts to your life and  
21 your property.

22           And I'll show you on the next slide the type  
23 of documentation that you should really be requesting as  
24 an individual from these companies just to begin to  
25 understand what the real impact to you and your property

1 will be. And this suite of documents are not listed  
2 anywhere. It's something that the individual is  
3 required to identify and specifically request.

4 And then, of course, the company has to be  
5 relentlessly pursued to get that documentation. And, of  
6 course, if you ever do get it as a normal person you  
7 then need to understand it.

8 So here's your example of the framework  
9 principle requiring easy, prompt, effective and  
10 practical access to information.

11 We provide evidence that shows that while the  
12 gas company -- and this is one particular example -- the  
13 gas company is pursuing a landholder, I personally dealt  
14 with this, for access and an alternative arrangement.

15 The landholder requested a copy of the current  
16 plan of operations, any pre-clearance surveys,  
17 environmental reports listing non-compliances, any  
18 emergency procedures, very reasonable things; noise  
19 modeling, emissions modeling, risk assessments relating  
20 to the current contamination incident you have when  
21 you're not having a contamination incident and the  
22 concurrent undertaking of CSG activities.

23 And the response from the industry was, yeah,  
24 we don't consider it would be useful to get bogged down  
25 in reams of paperwork. So, there you go.

1           So, say the landholder does sign this  
2 ridiculous contract, well, an individual landholder is  
3 then required to undertake their own preparation to  
4 prove that there's been an impact in the future.

5           Me, I'm supposed to go out and undertake my  
6 own surveys, atmospheric monitoring, water testing, weed  
7 auditing, overland flow assessments, all of this, in  
8 order to establish my own baseline in order to be able  
9 to prove that there's been an impact in the future which  
10 is, of course, prohibitive.

11           And not to mention important contributory data  
12 is the domain of the companies and the stuff that I'll  
13 never have access to. And when I do want to make a  
14 complaint I have to make an approved complaint in order  
15 for it to be recorded or any action to be taken.

16           We provided evidence that the industry is  
17 dealing with individuals on his land they're trying to  
18 access but none of this, none of these arrangements  
19 consider the impact on neighbors.

20           Alternative arrangements is another completely  
21 inconsistent issue in relation to human rights. An  
22 alternative arrangement is something that the government  
23 has permitted the industry to have access to and  
24 effectively means that the industry, if they can get  
25 individuals to sign an alternative agreement, they don't

1 need to comply with the legislative environmental  
2 authorities.

3           So this is a really slippery slope which  
4 enables the industry to breach and those breaches to  
5 become the norm. And it's a loophole then for  
6 compliance in the future.

7           And, also, as far as individuals are  
8 concerned, again, if I don't sign an AAA but everyone  
9 else around me does I'm the last man standing. I'm a  
10 vexatious landholder because no one else is complaining.

11           Of course the anti-protest laws is another  
12 example of this government failing in protecting our  
13 human rights.

14           So basically, to summarize this particular  
15 amount of evidence that we have provided on this  
16 sub-case, our government has failed us by not providing  
17 and actively avoiding the democratic and judicially  
18 supported process to have our rights considered and our  
19 concerns addressed and the individual people at the coal  
20 face who are expected to host this industry are  
21 literally left on their own to navigate this gargantuan  
22 prospect of letting the industry into their home.

23           So there's only one sub-case that is left and  
24 that is the sub-case on Culture. So it wouldn't take  
25 very long either, the summary of that evidence provided

1 there. At the end of that sub-case Benedict will  
2 complete his summary of our submission and then there  
3 will be sometime for some questions.

4 So this is our last presentation that  
5 summarizes the evidence that we have provided on the  
6 social and cultural impacts of this industry.

7 In this framework the framework principles we  
8 used in this sub-case were Principles 3, 6, 13, 14, and  
9 15. And effectively the transformation of the rural  
10 landscape into an industrialized gas field profoundly  
11 changes the lives of the people who live here.

12 The people threatened by or who suffer losses  
13 or injuries from gas field development, they're the one  
14 who suffer the symptoms of emotional, economic distress  
15 and physical ill health.

16 Those people, though, are not the  
17 multi-national gas companies. They are well-funded  
18 lobbyists or the politicians of government departments  
19 responsible for this industry.

20 The evidence we've provided we gathered on our  
21 web site says it all. It speaks of the horrendous  
22 impact that this industry has had on the people and this  
23 is but a small portion of the other thousands of similar  
24 stories happening across this land at kitchen tables  
25 everywhere and some that I get phone calls about each

1 week.

2           This evidence is the stuff that never ever  
3 seems to be able to be heard over the thin and selfish  
4 rhetoric over the industry lobbyists and the  
5 government's greed.

6           It's in things like the Social Impact  
7 Assessment, and the only one that the government ever  
8 did in the ten years of the industry. And in that one  
9 particular time they had the chance to do it they made a  
10 conscious decision, as they wrote in their own report,  
11 not to meet with local landholders and community groups.

12           What this impact on social and culture is  
13 about it's the booms and busts. And we've provided the  
14 evidence of the impact that that has on communities.

15           The social and cultural impacts include the  
16 traditional owners of this land which is really  
17 important to note that the effective and genuinely  
18 representative involvement in the approval process of  
19 the traditional landholders has not occurred and this  
20 has a massive and direct impact on them.

21           The social and cultural impacts include  
22 insurance impacts. Farmers can't get any insurance  
23 product to protect them inches against CSG impacts. And  
24 the industry won't insure the farm either.

25           Social and cultural issues are associated with



1 the National Vendor Declaration where the farmer is  
2 expected to assure a product that is supplied in an  
3 environment that he doesn't have 100% control of.

4           The social and cultural issues and evidence  
5 that we have provided are about a change to the very  
6 fabric of our community. It's proved by movies that are  
7 made and songs that are written. Its impact is shown by  
8 the evidence we have provided of the water that bubbles  
9 with gas and is taken from the people.

10           So you know the social and cultural impacts of  
11 this industry are also in the meetings that we are  
12 forced to hold as communities. The submissions that we  
13 make over and over and again. The time that's stolen  
14 from being with our families.

15           It's shown and evidenced by entire change to  
16 lexicon that we now have into the development of new  
17 terms such as fracktivist, gas flu -- that's we call it  
18 when you feel sick in the gas field -- gas hole,  
19 sacrifice zone, frackwit, glow worm, land and lying  
20 officers, collateral damage which, interestingly, was  
21 the term that the industry used to describe us, ecocide,  
22 land spraying, intergenerational theft, ecocrime, gas  
23 fields refugee, produced water, and coexistence, of  
24 course. The social impacts are also in the shocking use  
25 of the then blue line by the government to try and

1 contain the thin green align.

2           The documented effects on the people living in  
3 close proximity to unconventional gas are multiple and  
4 they're listed here and include all of the things that  
5 we have discussed and provided evidence for in our  
6 testimony. Distress related to concern to our health  
7 impacts. Cost associated with environmental damage,  
8 increased stress, change to sleep patterns, impacts to  
9 health by noise, anxiety, social division,  
10 disempowerment, changes to community. Increase in all  
11 of the demands but certainly no increase in the  
12 infrastructure to cope with it.

13           So basically the summary of our evidence is  
14 that it shows that the unconventional gas industry is at  
15 the absolute coal face of the infringements on our basic  
16 rights and the government fails, at every turn, to set  
17 the bar at a standard that even attempts to balance the  
18 perceived benefits from royalties and jobs against the  
19 obvious intrusion on basically essential human rights  
20 and freedoms.

21           As I was saying the documented effects there  
22 to be seen in our evidence and our evidence shows that  
23 the unconventional gas industry is at the absolute coal  
24 face of the infringement on our basic rights. And the  
25 government's failed at every turn to set the bar at a

1 standard that even attempts to balance the perceived  
2 benefits of royalties and jobs against the obvious  
3 intrusion on our basic rights and the essential human  
4 rights and freedoms. So we have no rights and we have  
5 no remedies.

6 So what is missing is an independent and  
7 impartial judiciary, good democratic institutions and  
8 democratic processes that are, in themselves, the  
9 embodiment of these human rights.

10 I want to thank Tom, Carly and this steering  
11 group and all of those behind the scenes. The Global  
12 Network For The Study Of Human Rights And The  
13 Environment, Environment And Human Rights Advisory,  
14 Oregon State University and students in the master's  
15 degree and the Spring Creek Project. And I want to  
16 think the Permanent Peoples' Tribunal and judges.

17 Thank you for being the first institution in a  
18 decade that has listened to those of us impacted by this  
19 industry.

20 I would like to now hand it over to Benedict  
21 Coyne to close our summary.

22 MR. BENEDICT COYNE: Thank you, Shay, for  
23 an incredibly comprehensive assessment and probably the  
24 most comprehensive assessment that we've seen in a  
25 decade as well. So thank you for all of your hard work

1 on this. And I reiterate Shay's thanks to everyone  
2 who's made this possible.

3 From all of the evidence provided in the five  
4 sub-cases that Shay has outlined and Dr. McCarron's  
5 evidence and Dr. Lloyd-Smith's evidence and all of the  
6 evidence provided and available to the Tribunal it is  
7 very clear that the fracking industry in Australia and  
8 its destructive consequences has been enabled by a  
9 perfect storm of democratic dysfunction, comprising from  
10 the disproportional political power of the energy lobby  
11 left unregulated and unfettered. And the frail corrupt-  
12 ability of political regulations as well as the lacunae  
13 of scientific evidence and baseline data and ongoing  
14 assessments and monitoring to demonstrate how harmful  
15 fracking is.

16 As I stated before fracking spotlights the  
17 glaring inadequacies of our centuries old legal systems  
18 and has seen a remarkable phenomenon of corporate might  
19 with wanton disregard for our democratic foundations,  
20 thundering even the most sacred creeds of capitalism  
21 being private property ownership and the common law  
22 right to the quiet enjoyment of your land without  
23 arbitrary interference of the state or any non-state  
24 actors.

25 I thought I might also, just on that note, in

1 terms of Australia, once again borrowing from the very  
2 tainted and stained law books of other jurisdictions and  
3 other more powerful jurisdictions, notably the U.S. and  
4 the United Kingdom and particularly in regards to  
5 policy, the industry's, I guess, emergence was ordained  
6 by George W. Bush's passage of the Energy Policy Act of  
7 2005 which exempted fracking from the Safe Drinking  
8 Water Act of 1974 and the Clean Water Act of 1972. That  
9 was also colloquially known as the Halliburton loop hole  
10 and Dick Cheney was probably chuffed although, perhaps,  
11 he should have been handcuffed.

12 More recently the UK government has even  
13 attempted to dilute the ancient law of trespass so  
14 companies can frack under peoples homes without consent.  
15 And it seems again -- and the reason I say that because  
16 the international dimensions, notwithstanding that Shay  
17 might be out near Chinchilla and out near Tara and out  
18 near all of those areas, make no mistake that the advent  
19 and rapid expansion of the destructive consequences of  
20 fracking is effecting democracy and human rights  
21 globally and the solution needs to be found globally.

22 And, again, that's why we're so pleased and  
23 excited and honored that the Permanent Peoples' Tribunal  
24 has taken this opportunity to hear this petition.

25 Now the impacts, of course, are well-known and

1 have been provided evidence in all of the sub-cases,  
2 especially Shay's incredible and comprehensive  
3 presentations and all of the work that she's put in over  
4 the past many years and looking at the Health impacts in  
5 sub-case 1;

6 Infrastructure impacts sub-case 2;

7 Climate Change Environmental Impact sub-case 3;

8 Participation in Government or lack thereof in  
9 sub-case 4;

10 Social and Cultural Impacts in sub-case 5.

11 Then Dr. McCararon's evidence and many, many  
12 being years of research in the impacts, significant  
13 debilitating impacts on human health and those impacts  
14 on local communities and especially the abject failures  
15 by governments and the responsible authorities to  
16 assess, monitor, measure and protect against the very  
17 adverse and sometimes unknown health impacts of all of  
18 the constituents and citizens and non-citizens of  
19 Australia including, of course, the rights of children  
20 the most vulnerable, the rights of women, of course the  
21 rights of men, of course the rights of people with  
22 disabilities, indigenous people and all of the noted  
23 consistently vulnerable populations of demographics that  
24 are noted consistently in our International Human Rights  
25 Law and certain in all of those documents I outlined.

1           We then, of course, hear from the amazing Dr.  
2 Lloyd-Smith on her evidence about the toxic footprint of  
3 the industry in terms of its contributions to, I guess,  
4 end of pipeline pollutions as well as in terms of  
5 plastics and creating a dirty unsustainable toxic  
6 international industry whose products, as well as the  
7 by-products, as well as the fugitive emissions, are just  
8 creating a very significant time -- global time bomb of  
9 toxicity.

10           And Dr. Lloyd-Smith also discussed in detail,  
11 and coming from an organization that represents  
12 concerned communities in some hundred of countries and  
13 academics and experts, about the air, soil and water  
14 contamination by the fracking industry. And, of course,  
15 the blood and urine contamination by this industry.

16           And the most concerning evidence, of course  
17 about the significant unknowns. The companies, these  
18 multi-national companies have not only turned democracy  
19 on its head but they've actually turned the  
20 international architecture of International Human Rights  
21 Law on its heads in this sense, and even the common law  
22 at the heart of the western liberal democratic legal  
23 system and the Judeo-Christian, you know, philosophical  
24 model that underpins our legal system is this sacrosanct  
25 respect for private property of human being and rights

1 of human beings.

2           You can look at the 10 Commandants. You can  
3 look at all the different, you know, instruments that  
4 formed religions as I talked about them that kind of  
5 distillations and developments and evolutions of them  
6 down to the present day and how they've formed  
7 everything in our kind of existential outlook on planet  
8 earth.

9           Human rights have never been attributed to  
10 non-human entities. And I'm talking about corporations  
11 here. So it seems absolutely remarkable from Dr.  
12 Lloyd-Smith's evidence, and particularly that anecdote  
13 about Halliburton talking about commercial and  
14 confidence that the product rights of corporations are  
15 being prioritized very highly over that of human beings  
16 when, you know, even if broader human rights are not  
17 quite the foundation of our democratic systems and even  
18 our modern kind of corporate capitalists systems, the  
19 fact that private rights of humans are being sacrificed  
20 for the private rights of corporations is hugely  
21 concerning and, again, has that very, very potent global  
22 impact.

23           So universal fundamental human rights,  
24 including the right to safe, clean, healthy and  
25 sustainable environment, whether it's expressed in



1 national or international law or in national and sub-  
2 national constitutions are often insufficiently brought  
3 to bear or protected by standard state based enforcement  
4 mechanisms.

5 The failure of states to respect and enforce  
6 environment rights can open the door for intervention by  
7 non-states actors such as this Tribunal.

8 The decisions and actions by this Tribunal,  
9 less influenced by the pressures of national politics  
10 and economic interests can robustly articulate and stand  
11 up for the environmental human rights standards when  
12 states and international bodies fail to do so. This  
13 session is replete with evidence as to that.

14 In March of 2016 the Sisters of Mercy  
15 delivered a joint statement with Australian landholders  
16 at the United Nations Human Rights Council addressed to  
17 the Special Rapporteur on Human Rights And The  
18 environment stating, "From Australia to the U.S. to  
19 Argentina our communities report violations related to a  
20 safe, clean, healthy and sustainable environment."

21 In late 2016 the UN Special Rapporteur on the  
22 Situation Of Human Rights Defenders visited Australia  
23 and met with anti-fracktivists and anti-frack  
24 campaigners and community members. I think it's  
25 important to note that people aren't anti. People want

1 to protect their communities, their pro-sustainability,  
2 their pro-basic health rights. And they condemn the  
3 anti-protest legislation that our Shay referred to  
4 targeting environmental activists which would contravene  
5 Australia's international obligations.

6 I think it's very important on the  
7 international context, our platform of international  
8 law, that the Tribunal also consider and look further  
9 into, and I'm happy to provide a supplementary  
10 submissions on this if required, the movement for a  
11 codification of the international crime of ecocide to be  
12 amended into the 1998 Rome statute on the International  
13 Criminal Court.

14 And that has been the subject of quite a big  
15 movement in fact, little known about, not really made  
16 visible. Perhaps a note for another petition for the  
17 Permanent Peoples' Tribunal, who knows. But it's been  
18 considered for a long time by the UN and it's been seen  
19 as very controversial and it's yet disappearing and  
20 keeps kind of coming up and getting a gasp of breath.

21 In September 2016 the International Criminal  
22 Court's chief prosecutor issued a policy paper widening  
23 the court's remit to focus on environmental crimes.

24 Further action has been taken in the court-  
25 rooms of the world but mostly gaining little fruit as

1 anthropocentric legal systems are increasingly proving  
2 impotent to the challenges of vast environmental  
3 destruction.

4 I also think it's very important to bear in  
5 mind whilst everything I say may be considered, perhaps,  
6 unnecessarily hyperbolic or even hyperbolic --  
7 actually, I would withdraw that and I'll state it as  
8 this.

9 Even though the way that I describe what I see  
10 happening may be construed as hyperbolic I would  
11 encourage the tribunal and the judges, respectfully, to  
12 really look beyond this seemingly innocuous pictures of  
13 little gas valves and invisible gas and things that you  
14 don't see and pictures of the countryside and cross  
15 woven tapestries of, you know, gas wells that I think  
16 to, in some eyes, and certainly in some non-expert eyes  
17 and layperson's eyes may seem innocuous but, the reality  
18 is this is a proven deadly industry and it's important  
19 that -- and I'll say even though I'm a slime hole in my  
20 other life and I, perhaps, have had some tendencies to  
21 go into the hyperbolic I would encourage the Tribunal to  
22 look at a strict conservative black letter reading of  
23 international human rights law and even domestic law  
24 which doesn't even engage in international human rights  
25 law in Queensland, Australia in many ways.

1           And that, even of itself, even in the  
2 strictest most conservative black letter reading of the  
3 law all of the sub-cases, evidence of flagrant breaches  
4 of the rule of law and of democratic, you know,  
5 principles. So in that regard the movement against the  
6 fracking industry represents a veritable final frontier  
7 and fight to save the integrity of our democracies from  
8 the clutches of unrelated corporate power.

9           One could perhaps describe it as a lawless  
10 lacunae or a gas land Guantanamo where the dismissive  
11 attitudes of politicians and government representatives  
12 that Shay described have really put us in this no  
13 person's land of lawlessness.

14           The rule of law doesn't seem to need to be  
15 considered. They have all of these kind of pantomime  
16 inquiries after the fact usually and, you know,  
17 thankfully in some of the states and territories we've  
18 had success in upholding those moratoriums but those  
19 moratoriums are very, very, fragile and are delicately  
20 in place.

21           So, I mean, it may even be the case and it's  
22 always easy to look back on history as we learn from  
23 history that the governments have already sold out  
24 democracy to the highest bidder and lost control. It  
25 certainly seems like that from the evidence.

1           And if that is the case then it's time to put  
2 all of this evidence on the record, which is why we're  
3 here, and it's time for people, community members,  
4 community advocates, everyone, to wrestle back control.

5           We've all heard the term and the adage power  
6 corrupts. Absolutely. As much as we might want to love  
7 and trust all of our political representatives,  
8 unfortunately, there is a well-established historical  
9 fact that concentrations of power in a ruling of late  
10 without regulation tends to result in corruption,  
11 nepotism and human rights violations, even in Australia  
12 and Queensland as detailed in the evidence provided.

13           Politics, it has been said is "The arena where  
14 conscience and power meets and will be meeting until the  
15 end of time."

16           However it has been noted that "Conscience so  
17 often fails poorly in such encounters." That we  
18 celebrate the occasion where power is more than a tip of  
19 the hat, such as drafting the adoption of the Universal  
20 Declaration Of Human Rights and all of the international  
21 human rights laws that have emanated from there.

22           While it's easy to be cynical and dismissive  
23 of the UN as not having any teeth or not, you know,  
24 being able to encourage and influence governments I  
25 think it's important to note that even having that

1 consensus there were 48 nations that adopted the  
2 Declaration Of Human Rights in 1948 and there were 56  
3 nations in the "international community" at the time.  
4 Eight abstentions. No one voted against.

5 Fast forward many years to 1993 and the Vienna  
6 Conference on Human Rights passed the Vienna Declaration  
7 Program Of Action which was endorsed by over 170 nations  
8 reaffirming the Principles of the Universal Declaration  
9 of Human Rights.

10 So there's absolutely this kind of very, very  
11 stark duality between the aspirations of human kind for  
12 a better world and then the kind of vulnerabilities of  
13 human nature to greed and corruption and those kind of  
14 things.

15 So democracy is not a static state. It is a  
16 continuum of socio-political interaction requiring  
17 constant vigilance by civil society to ensure that the  
18 lines of acceptable civil power are properly and  
19 responsibly held and discharged by the executive,  
20 legislative and judicial arms of government.

21 Human rights are exactly the same. Rights  
22 exist and arise infinitely and naturally in every human  
23 being by virtue of being human. However, in the words  
24 of our former federal attorney general George Brandis,  
25 "I do not think rights are conferred by the state. I

1 think rights need to be protected by the state but they  
2 are not conferred by the state."

3 This is why it's so crucial that human rights  
4 be legally protected and enforceable through the courts,  
5 in Queensland, Australia and around the world.

6 Laws are implemented to create standards by  
7 which we judge and regulate our own behavior and that of  
8 others, behavior that we consider as socially acceptable  
9 and in the best of interests of not only one another but  
10 also our children and future generations.

11 The current gaping deficit in regulating  
12 fracking is the consequence of a significant lack of  
13 political will to act in our best interest.

14 What Australia urgently needs is a human  
15 rights act framework at both federal and state levels to  
16 be implemented and utilized as a legislative framework  
17 through which we implement laws that regulate fracking  
18 as well as enhancing existing laws for environmental  
19 impact assessments, health assessments, social and  
20 cultural assessments, et cetera.

21 Laws that will properly protect the rights of  
22 citizens from arbitrary interference by the state and  
23 private corporations and laws that will proactively  
24 protect the integrity of our democracy, the rule of law,  
25 the air environment and the rights of future

1 generations.

2           And I'll requote Shay here because I think  
3 this is a particularly powerful summary of our position  
4 to the Tribunal. "We have no rights and no remedies.  
5 We need an independent and impartial judiciary, good  
6 democratic institutions and democratic processes that  
7 are themselves embodiment of various rights."

8           Now, in closing, I want to come to giving our  
9 submissions on what we want the Tribunal to do and our  
10 recommendations to the Tribunal in its considerations of  
11 formulating it's advisory opinion on the four central  
12 questions to this petition.

13           I also want to preface that I would, and we  
14 would, like to really encourage the Tribunal that when  
15 it comes to its deliberations to consider whether -- or  
16 at least to consider the efficacy and utility in sending  
17 those recommendations to the prime minister of  
18 Australia, to the opposition minister of Australia, to  
19 the minister of the Environment And Energy of Australia,  
20 to the Queensland prime minister, to the Environmental  
21 Minister of Queensland, Leeanne Enoch, to the media, to  
22 all premiers in Australia, including those would who  
23 have, up until now, done the right thing and maintained  
24 the moratorium and to all environmental ministers  
25 throughout Australia, because I think it will have a



1 huge impact and I think, and I know from my interactions  
2 with politicians, that if they have something to grab  
3 hold of to justify a conscious and conscientious moral  
4 and legal position, such as the consensus of an  
5 international tribunal, that will really help and assist  
6 the advocacy in Australia.

7           So, No. 1, we would respectfully request a  
8 Declaration Of The Human Rights Dimensions Of Fracking.  
9 Consider a number of risk impacts and contentious issues  
10 relating to the fracking activities. And that all of  
11 that that should be weighed before allowing any  
12 hydraulic fracking operation goes forward.

13           Apologies. That was not particularly  
14 articulate but in terms of enhancing preliminary  
15 assessments to assess the human rights dimensions of  
16 fracking.

17           No. 2. A declaration that the human rights of  
18 numerous and various landholders have been violated by  
19 the Australian government, the Queensland government and  
20 private companies as detailed in the case studies  
21 outlined.

22           No. 3. That without delay and as  
23 expeditiously as possible the Australian government  
24 urgently introduce, (A) a Federal Human Rights Act which  
25 includes express rights to the enjoyment of a safe,

1 clean, healthy and sustainable environment in adherence  
2 to the 2018 Primary Principles On Human Rights And The  
3 environment.

4           No. 2. A national plan of action for the 2011  
5 United Nations Guiding Principles On Business and Human  
6 Rights, which include specific provisions of fracking  
7 companies and their interaction with landholders, the  
8 rights of landholders against private companies and the  
9 state including with regards to access to information  
10 and access to justice.

11           No. 4. That we have without delay as  
12 expeditiously as possible a recommendation that every  
13 state and territory government throughout Australia  
14 urgently introduce a human rights act or human rights  
15 framework which includes express rights to the enjoyment  
16 of a safe, clean, healthy and sustainable environment in  
17 adherence with the framework principles.

18           No. 5. That without delay and as  
19 expeditiously as possible the Australia government and  
20 every state and territory government implement the 2018  
21 framework principles on human rights and the  
22 environment, especially and specifically all of the  
23 principles referred to the case studies by Shay's  
24 submissions.

25           Framework Principle 2. The state should

1 respect, protect and fulfill human rights in order to  
2 ensure a safe, healthy and sustainable environment.

3 Framework Principle 3. States should prohibit  
4 discrimination to ensure equal and effective protection  
5 against discrimination in relation to the enjoyment of a  
6 safe, clean, healthy and sustainable environment.

7 Framework Principle 5. States should respect  
8 and protect the rights to freedom of expression,  
9 association and peaceful assembly in relation to the  
10 environmental matters.

11 Framework Principle 8. To avoid undertaking  
12 or authorizing actions with environmental impacts that  
13 interfere with the full enjoyment of human rights.  
14 States should require the prior assessment of the  
15 possible environmental impacts of proposed projects and  
16 policies, including their potential effects on the  
17 enjoyment of human rights.

18 And I just want to pick up a couple of lines  
19 from the commentary of Framework Principle 8 especially  
20 with regard to business enterprises. Should conduct  
21 human right impact assessments in accordance with  
22 guiding principles on business and human rights, which  
23 provide that businesses "should identify and assist any  
24 actual or potential adverse human rights impacts with  
25 which they may be involved either through their own

1 activities or as a result of their business  
2 relationships.

3 Include "meaningful consultation with  
4 potentially affected groups and other relevant  
5 stakeholders."

6 "Integrate the findings from the impact  
7 assessments across relevant internal functions and  
8 processes and take appropriate action." And that is  
9 referable to Guiding Principles 18 and 19 of the Guiding  
10 Principles of Business On Human Rights.

11 And I think actually a separate recommendation  
12 that the Tribunal recommends that all business  
13 enterprises in Australia must conduct human rights  
14 impact assessments including with the Guiding Principles  
15 On Business And Human Rights with those companies in any  
16 way involved in the fracking industry or the supply  
17 chains of the fracking industry.

18 Framework Principle 9. States should provide  
19 full and facilitate public participation in decision  
20 making related to the environment and take the views of  
21 the public into account in their decision-making  
22 process.

23 Framework Principle 10. States should provide  
24 for access to effective remedies for violations of human  
25 rights and domestic laws relating to the environment.

1 Framework Principle 12. 1 and 12 Shay also  
2 mentioned. Obviously we covered the field. We want all  
3 the framework principles but I'm just picking out ones  
4 that are particularly relevant.

5 And Framework Principle 14 is in relation to  
6 vulnerable peoples, including children, women, people  
7 with disability, indigenous peoples, et cetera.

8 And I would particularly like to give an  
9 acknowledgment and a shout out to a former client of  
10 mine, John Jenkin and his family. He had two children  
11 with disability who, unfortunately, were stuck right in  
12 the heart of the gas industry and all of its toxic  
13 pollution for about a decade before finally being able  
14 to move.

15 Moving on to the 6th recommendation. That  
16 without delay and expeditiously as possible the federal  
17 Australian government urgently implement all the  
18 outstanding recommendations of UN treaty bodies and  
19 special rapporteurs including, but not limited to the  
20 following: The Human Rights Committee;

21 The Committee On Economic And Social And  
22 Cultural Rights,

23 The Committee On The Elimination of  
24 Discrimination Against Woman;

25 The Committee Against Torture;

1           The Committee On The Elimination Of Racial  
2     Discrimination;

3           The Committee On The Rights Of The Child;

4           The Committee On Rights Of Persons With  
5     Disabilities;

6           The UN Special Rapporteur On Indigenous  
7     People;

8           The UN Special Rapporteur On Health;

9           The UN Special Rapporteur On The Situation Of  
10    Human Rights Defenders.

11           And I would specifically ask the Tribunal to  
12    consider making that declaration with regards to all of  
13    the recommendations that the Special Rapporteur On Human  
14    Rights Defenders make in his report on his country visit  
15    to Australia earlier this year.

16           And I won't read through them all now because  
17    I'm probably out of time but I think that is all.

18           Thank you very much everyone and I look  
19    forward to watching the remainder of the Tribunal.  
20    Thank you.

21                   MS. SHAY DOUGALL: Thanks. Any questions,  
22    Gill?

23                   MR. GILL BOEHRINGER: No. That was an  
24    absolutely wonderful presentation. I've read the 30  
25    page -- 33 page document -- actually 34 but there's

1 actually not much on the 34.

2           What bothers me is how do I get a hold of all  
3 the information that I've been exposed to now,  
4 particularly since I was, apparently, the only judge  
5 able to make this session?

6           I like to work with hard -- hard copies. So  
7 I mean it's just overwhelming the work that has gone  
8 into it. It was so impressive. I mean I've sat on a lot  
9 of tribunals and this was tops.

10           So, yeah, that's my basic question. I've got  
11 some other questions but, I mean, there's so much there.

12           MS. SHAY DOUGALL: So you're asking for  
13 access to hard copies of the evidence. I mean we've got  
14 all of the evidence we provided is hosted on the web  
15 sites.

16           MR. GILL BOEHRINGER: The evidence -- I  
17 have this web site although it seems to be different  
18 every time somebody mentions the web site they give a  
19 different name to it.

20           MS. SHAY DOUGALL: No, no, it's our web  
21 site.

22           MR. GILL BOEHRINGER: From the viewers,  
23 yeah, I have that. But the evidence is fine and we need  
24 that. A lot of it is similar to what we heard from the  
25 Ohio folks and probably will from Charleston but

1 different but similar.

2 MS. SHAY DOUGALL: Yes.

3 MR. GILL BOEHRINGER: But it's --  
4 there's just so much in the power point presentations  
5 and in Benedict's two submissions.

6 MS. SHAY DOUGALL: Oh yeah, I can give you  
7 hard copies of that.

8 MR. GILL BOEHRINGER: If I want to sit  
9 down with the rest of the judges and discuss these  
10 matters we need that kind of information as well as the  
11 evidence. So it's kind of -- with analysis and  
12 recommendations that we need.

13 MS. SHAY DOUGALL: So do you want me to  
14 e-mail you copies of those presentations, which I can  
15 do.

16 MR. GILL BOEHRINGER: Yeah.

17 MS. SHAY DOUGALL: Would that fullfil  
18 your need? And Benedict can send you his.

19 MR. GILL BOEHRINGER: He's already  
20 agreed. I have chatted with him a little bit. We're old  
21 friends.

22 MS. SHAY DOUGALL: I'm more than happy to  
23 send you those power point presentations.

24 MR. GILL BOEHRINGER: Okay.

25 MS. SHAY DOUGALL: And anything else that



1 you need I can send, yeah. Is that what you need?

2 MR. GILL BOEHRINGER: Yeah.

3 MS. SHAY DOUGALL: No worries.

4 Absolutely. Actually I've already made sure that Emily  
5 Grubby has copies of all of them.

6 MR. GILL BOEHRINGER: Okay. So.

7 MS. SHAY DOUGALL: But I'll just include  
8 you. I'll ask Emily how to go about making sure that  
9 you have access to that data. And make sure -- or I  
10 can just give you access to a drop box or whatever.

11 MR. GILL BOEHRINGER: Well, yeah, I need  
12 it by e-mail.

13 MS. SHAY DOUGALL: Okay. I can e-mail you  
14 to the -- see, they're quite big. I'll upload them to  
15 the web site and --

16 MR. BENEDICT COYNE: If you e-mail -- if  
17 you share the drop box it will go to your e-mail, Gill,  
18 and you can just press on it and going into a drop box  
19 is the same as going to an e-mail address. It's  
20 effectively the same.

21 You might have to set up a drop box but it's  
22 just like setting up an e-mail.

23 MS. SHAY DOUGALL: I'll just post it on  
24 the web site.

25 MR. GILL BOEHRINGER: The least

1 involvement with technology the better as far as I'm  
2 concerned.

3 MS. SHAY DOUGALL: No worries. I will  
4 deal with that.

5 MR. BENEDICT COYNE: We'll send it by  
6 carrier pigeon from Chinchilla.

7 MS. SHAY DOUGALL: I'll get that  
8 organized, Gill, no worries.

9 Did you have any other questions?

10 MR. GILL BOEHRINGER: No. Well, one is a  
11 very simple one.

12 Who were the two people in 1932 who prophesied  
13 all of this?

14 MS. SHAY DOUGALL: Bell and -- geez, I  
15 can't remember.

16 MR. GILL BOEHRINGER: If you have a  
17 reference send it to me.

18 MS. SHAY DOUGALL: Yeah, I will. I'll  
19 send you the reference. No worries.

20 MR. GILL BOEHRINGER: Of course, Carl  
21 Marx predicted most of what's happening today even  
22 before 1932.

23 The other thing I'm not exactly sure what the  
24 context was, and this is just a comment and, you know,  
25 with respect as we say, it's not a criticism really, but

1 lately I've been thinking of the use of the word  
2 "shareholders" and I've seen some commentary about that  
3 and it seems to me that that's a very benign way of  
4 referring to corporate capital and, you know, what is  
5 good for the shareholders and we're all shareholders.  
6 It's good for the country blah, blah, blah.

7           But, in fact, not all shareholders are equal  
8 and we know that there's a small group that dominate  
9 corporate capital. And the corpor -- you know,  
10 shareholders, many of them are very nice. Some of my  
11 best friends. But the corporations, as you've  
12 demonstrated, are not very nice. And those who control  
13 the corporations are shareholders but they're the ones  
14 who have most of the shares.

15           So just as kind of an ideological suggestion  
16 about, you know, educating the public as we're all  
17 trying do I think we need to be careful of that word and  
18 how we use it.

19           MS. SHAY DOUGALL: Fair enough.

20           MR. GILL BOEHRINGER: Kind of disguises  
21 what's going on.

22           MS. SHAY DOUGALL: Yeah. Absolutely. I  
23 get you.

24           MR. GILL BOEHRINGER: It's too fuzzy and  
25 warm towards the real shareholders.

1 MS. SHAY DOUGALL: Got you. I got you.  
2 Thank you for that feedback.

3 MR. GILL BOEHRINGER: Yeah, yeah. Sure.  
4 Okay. I'm going to bed now. I've been up since about  
5 ten hours ago.

6 MS. SHAY DOUGALL: I'm sorry and I so  
7 apologize for the technical difficulties but, Gill,  
8 thank you so much for being here and lending us your  
9 ears.

10 MR. BENEDICT COYNE: Thank you, Gill.

11 MR. GILL BOEHRINGER: Thank you.

12 [youtube.com/watch?v=CY4YB\_tR6dE]

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