Mediation in the coal-seam gas industry: Improvements made for local stakeholders to grant a social licence

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The coal-seam gas industry in Queensland and New South Wales has exploded with economic prosperity since 2012, but what prosperity will reach the local people if the drilling activity associated with it is largely unsupported? Local stakeholders have reacted strongly to the coal-seam gas industry, and the State governments have provided no platform upon which to voice local concerns. Coal-seam gas companies are made to look like unbridled corporate actors when in actuality they bring jobs and economic growth to the local communities in which they drill. In order to quell local hostility and ensure that coal-seam gas companies gain a social licence to operate, mediation should be mandated by the state governments in resolving coal-seam gas-related disputes for landholders, community members, and all local stakeholders. Mediation is the most effective vehicle available to communicate local concerns, resolve contentious issues, and finally allow local stakeholders and companies to unite around the benefits of the coal-seam gas industry.

INTRODUCTION

The coal-seam gas industry has been exploding with economic prosperity in Queensland and New South Wales since around 2012.[1] Many have called it a "revolution",[2] similar to the shale boom in the Midwest United States.[3] As of 2013, the US Energy Information Administration estimated that Australia's total coal-seam gas resources are 235 trillion cubic feet and out of that, already 33 trillion cubic feet are proven resources.[4] This amount of resources would essentially power Queensland and its people's gas needs.[5] The estimated amount would also provide approximately 13% of Australia's gas needs.[6] But the industry has grown very quickly in Australia, riding in on the coattails of the LNG boom, tapped into off the coast of Western Australia in the Indian Ocean. As the LNG industry has grown, and with Australia being close to replacing Qatar as the leading exporter, investors have been incentivised to cash in on the other side of the country, especially in Queensland.[7] In fact, from 1999 to 2010, coal seam gas production has increased nearly 25 times what it was before.[8]

However, what benefit will this boom bring if the local people in Queensland do not support it? With all of the economic prosperity and drilling activity, the Queensland Government did not update

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[1] ROMA, "Gas Goes Boom", *The Economist*, 2 June 2012 <http://www.economist.com/node/21556291>.

[2] "Revolutionising Oil and Gas: The Future of Energy is Here", *Unconventional Oil & Gas*, 12 May 2015 <http://www.unconventionaloilandgas.com.au/revolutionising-oil-and-gas-the-future-of-energy-is-here> stated "evidence continues to mount for an Australian unconventional boom similar in scale to the shale revolution in the US and Canada"; ROMA, n 1.

[3] Tom Knox, "US Shale Boom 'At Least as Big' as Ohio's Economy", *Columbus Business First*, 11 June 2015 <http://www.bizjournals.com/columbus/blog/ohio-energy-inc/2015/06/u-s-shale-boom-at-least-as-big-as-ohios- economy.html>.

[4] US Energy Administration, "Australia Overview: International Energy Data and Analysis", *EIA*, 28 August 2014 <http://www.eia.gov/beta/international/analysis.cfm?iso=AUS>.

[5] "Revolutionising Oil and Gas: The Future of Energy is Here", n 2.

[6] "Revolutionising Oil and Gas: The Future of Energy is Here", n 2.

[7] ROMA, n 1.

[8] ROMA, n 1.

their legislation or processes in time and locals reacted strongly. Local stakeholders such as other businesses, landholders, farmers, the community and environmental groups were faced with a seemingly unbridled capitalist revolution in the resources industry interrupting their land, lives, and surroundings. To them, coal seam gas is perceived as dirty. It devastates the land. It ruins the water. It disrupts their lives. However, rather than working with these locals, coal seam gas companies did not consult them, and the Queensland government provided no platform upon which locals could voice their concerns. As a result, movements surfaced, such as "Lock the Gate"[9] where people lock their gates in protest to keep coal seam gas mining operations off their properties.[10] The movement currently has over 1,500 farmers opposing the coal seam gas mining operations, in addition to surrounding landowners.[11] Many believe that coal seam gas mining will contaminate the water table and ground water as well as destroy the agricultural industry as mining companies snatch up more and more land leases.[12] Furthermore, in April of 2015, over 500 protesters marched out to state highways in New South Wales and Queensland to oppose coal seam gas, emphasising that they do not want their land turned into industrial, unusable land.[13]

Local stakeholder concerns are warranted, but so is the desire for Australia to become the leading exporter of LNG, economically prosperous, and fully energy independent. There must be balance brought to the table between local stakeholders and drilling companies – who both want to make Australia a better place. The middleman between these two parties is the Queensland Government, which has not put forth adequate regulations as a way to balance public concern with the economic boom in the resource sector. *It shows*.

This article argues that although mediation is suggested as a way to resolve land disputes, it is rarely used with any seriousness as a way for coal seam gas disputes and it is only used with landholders. That should change. This article seeks to encourage the Queensland Government to mandate mediation as a way for local stakeholders – not just landholders – and coal seam gas companies to settle community disputes. This will allow local stakeholders to stop protesting, which detrimentally affects the coal seam gas industry's reputation along with progress on their projects. It will also allow coal seam gas companies to resolve disputes and gain a social licence – one of the most important parts of corporate social responsibility – from the local stakeholders, which will alleviate many of their concerns and the bulk of the issues surrounding coal seam gas. Without mediation, coal seam gas is likely to continue to suffer as a result of its reputation.

BACKGROUND

The largest reserves of coal seam gas are in Queensland, therefore it will be the focus of this article, as opposed to New South Wales. The most economical reserves include the coal seam gas within the Bowen Basin and Surat Basin.[14] There are also still 132 appraisal wells, 1,394 development wells, and 1,573 producing wells. Although methane was known to be in coal, coal seam gas extraction only began occurring in 1976 in the Bowen Basin.[15] However, the wells drilled at that time as part of a joint venture between Houston Oil and Minerals of Australia, the wells failed.[16] A new wave of activity occurred in 1996 at the Moura mine along with the Appin and Tower mines, but the extraction

[9] See Lock the Gate Alliance <http://www.lockthegate.org.au>.

[10] "Opposition to CSG in Queensland Increases", *Coal Seam Gas News* (January 2012) <http://coalseamgasnews.org/qld/opposition-to-csg-in-queensland-increases>.

[11] "Opposition to CSG in Queensland Increases", n 10.

[12] "Opposition to CSG in Queensland Increases", n 10. Spokeswoman for the Lock the Gate movement said "[h]ow stupid are the people in Brisbane who didn't think this thing through? Our politicians are representing overseas companies".

[13] "The Highways of New South Wales and Queensland were the Big Stage for an Anti-coal Seam Gas Protest" *ABC News* (April 2015) <http://www.abc.net.au/news/2015-04-20/csg-highway/6405264>.

[14] "Revolutionising Oil and Gas: The Future of Energy is Here", n 2.

[15] Australian Government, "Coal Seam Gas Fact Sheet", *Geoscience Australia* (2014) <http://www.australianminesatlas.gov.au/education/fact_sheets/coal_seam_gas.html>.

[16] Australian Government, n 15.

method of coal seam gas was simply too expensive to warrant any further activity.[17] At that time, there was no need for regulations. But finally, around 2008-2010, coal seam gas extraction became more economical and the boom began.

In the first section, this article will discuss what a social licence is and why it is important to the Queensland Government, the coal seam gas companies, and the local stakeholders. The second section, will discuss the regulations applicable to the coal seam gas industry, demonstrating that the regulations in place are not equipped to handle the coal seam gas boom nor are the regulations prepared to adequately address local stakeholder concerns allowing them to grant a social licence. The third section, will look at the typical process for coal seam gas disputes, and argue that these avenues will not generate the best outcome for all parties. Finally, this article will conclude that mediation should be adopted as a mandated avenue for local stakeholders and coal seam gas companies to settle their disputes.

WHAT IS A SOCIAL LICENCE?

A social licence is not an actual licence, but it is instead a form of broad support created by local stakeholders, giving "permission" for a company to conduct business in their community or particular geographic area.[18] Over time, it has been increasingly important for companies to gain a social licence. There are several reasons for this. The first reason is cost. Opposition from local stakeholders can lead to protests, which cost money.[19] These protests can cause delays in production on the project, which causes the company to lose out on potential profit.[20] Another reason is reputation and image. A company that constantly disregards protests and public opposition will cause investors to lose confidence in the project being profitable and will cause local governments to lose confidence in the project bringing jobs and money into the area.[21] If investors lose confidence that the project will succeed, the penalties can be financially catastrophic. Many coal seam gas companies operate in both Queensland and New South Wales, so if protests in one state are publicised, it will influence other state and local governments' decisions to allow the company to operate through granting or revoking environmental or operation permits.[22] Also, a rejected social licence will not only affect operations, it will result in tension among local stakeholders and possibly violence.

One example in New South Wales involved a violent protest where Metgasco asked the NSW police to intervene to "uphold law and order".[23] The project was delayed for nearly four months, which caused permits to expire and delays from investors.[24] In fact, the NSW government offered no sympathy, explaining that "Metgasco fail[ed] to properly consult with the community…."[25] From this example, it is clear that it is better to take preventive measures to gain a social licence, rather than after damaging the relationship trying to get local stakeholders to become accepting of the coal seam gas company's presence. Mediation is the best way to do that efficiently and effectively. Ignoring local stakeholders or trying to find loopholes around them will only lead to more hostility.

[17] Australian Government, n 15.

[18] Business for Social Responsibility, "The Social License to Operate", *BSR* (2003) <http://commdev.org/files/858_file_BSR_Social_License_to_Operate.pdf>.

[19] Business for Social Responsibility, n 18.

[20] Business for Social Responsibility, n 18.

[21] Business for Social Responsibility, n 18.

[22] Business for Social Responsibility, n 18.

[23] Anthony Klan, "Metgasco Demands Police Action on Coal-seam Gas Protests in NSW", *The Australian* (28 April 2015) <http://www.theaustralian.com.au/business/metgasco-demands-police-action-on-coal-seam-gas-protests-in-nsw/story-e6frg8zx-1227323682681>.

[24] Klan, n 23.

[25] Klan, n 23.

REGULATIONS

The regulations reflect the history of coal seam gas, meaning that they were not well-developed. The first petroleum-related law passed in Queensland was the *Petroleum Act 1923* (Qld). In short, this law only regulated where drilling was done through land use law and contract law.[26] There were no environmental law provisions included. However this "painfully inadequate"[27] law stood for around 80 years because large-scale drilling operations or petroleum extraction were not economical at the time.[28] In 2004, the Queensland Government passed the *Petroleum and Gas (Production and Safety) Act 2004* (Qld) (PGPSA). Unfortunately, this legislation was passed hastily as a way to handle the dramatic increase of coal production in Queensland.[29] The PGPSA and another piece of environmental legislation, the *Environmental Protection Act 1994* (Qld) work together to identify the environmental impact of drilling activities through an impact assessment and set out environmental commitments to the community.[30] Here, the Department of Environment and Heritage Protection (DEHP) assesses the impact and moves forward with the permit.[31] Again, there is little community involvement with this process, if any.

On the federal side, modern regulation of the coal industry arose, effectively, in 1999 upon the passage of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) and the *Clean Energy Act Regulator Act 2011* (Cth).[32] The *Environment Protection Biodiversity Conservation Act 1999* sets up the "legal framework to protect and manage nationally and internationally important flora, fauna, ecological communities and heritage places".[33] However, this regulation does not actually provide any substantive ways to resolve disputes.

Overall, both the Queensland laws and the Commonwealth laws do not handle the issue of local stakeholder concerns. They instead adopt an "adaptive management approach", which seeks to "learn by doing"[34] and is "implemented primarily through the imposition of layered monitoring and reporting duties on the [coal mining companies] alongside obligations to compensate for harm caused".[35] But this approach is dangerous and creates long-lasting problems.

For example, the disclosure requirements for hydraulic fracturing instituted long after there was community concern for fracturing. This in fact gave birth to the "Lock the Gate Alliance" which continuously protests all coal seam gas activities. Now, there is already hostility inherently created from the adaptive management approach because the law is not equipped to handle foreseeable issues. Additionally, if coal companies' obligations only apply to compensate for harm, it creates a cyclical system which allows companies to throw money at problems and then go back to operating in the same way as before the problem. Alternatively, if the law does change after that, companies will change, but by then local stakeholders or whatever entity was affected by the harm will continue to maintain its opposition, like Lock the Gate.

There are a few areas which do allow for stakeholder participation, but they still fall short of resolving stakeholder disputes. Although the Australian process does allow for some local stakeholder acceptance, the process of creating a strong dispute resolution system specifically for local

[26] Allan Ingelson and Tina Hunter, "A Regulatory Comparison of Hydraulic Fracturing Fluid Disclosure Regimes in the United States, Canada and Australia" 54 *Natural Resources Journal* 217, 243.

[27] Ingelson and Hunter, n 26.

[28] See the section entitled "Background".

[29] Ingelson and Hunter, n 26.

[30] Ingelson and Hunter, n 26.

[31] Department of Natural Resources & Mines, *Intended Hydraulic Fracture Activities: Information for Landowners and Occupiers* <http://mines.industry.qld.gov.au/assets/land-tenure-pdf/PGGD03-Intention-fraccing-infosheet.pdf>.

[32] *Clean Energy Act 2011* (Cth).

[33] Australian Government, Department of the Environment, *Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)* <http://www.environment.gov.au/epbc>.

[34] Ingelson and Hunter n 26.

[35] Ingelson and Hunter n 26.

stakeholders in Australia is limited. In general, it does not proscribe platforms where stakeholders can voice their concerns beyond negotiation or mere participation in different decisions. One particular example is Queensland's Aurukun Sustainability Framework,[36] which affords local stakeholders the opportunity to participate in feasibility studies and planning or "Conduct and Compensation Agreements".[37] These studies do allow landholders to negotiate agreements concerning mining land use in advance. However, the Aurukun Framework is not actually about voicing concerns and finding a resolution, more than it is about planning out operations which have already been endorsed by the Queensland Government.[38] It is unclear to what extent participating in feasibility studies or the agreements are mutually binding because they are negotiated agreements, which as will be mentioned later are inherently different than mediation. If the government were to carry out the mediation, the "Conduct and Compensation Agreements" would be perfect. However, in addition to the fact that it does not require mediation, the "Conduct and Compensation Agreements" are specifically meant for *landholders* as opposed to *stakeholders*. People in the local community who may be affected by coal seam gas drilling projects would not necessarily participate.

Another area where the Queensland Government allows for some mediation or participation is through an election notice, which states that "[i]f at the end of the minimum negotiation period, the parties have not entered into a conduct and compensation agreement… either party may by a notice…call upon the [other party] to agree to an alternative dispute resolution process…to negotiate a[n]…agreement".[39] This election notice[40] can be found on the Queensland "Business and Industry Portal",[41] which contains information on coal seam gas and liquefied natural gas information for landholders. Unfortunately, as the name indicates, these election notices and the laws which give landholders the ability to use them is limited to those landholders, not local stakeholders. There is certainly overlap between landholders and local stakeholders–this article does not attempt to discount the opportunities available for landholders. But the problem with allowing only landholders to participate in mediation or negotiation is that it locks out the greater community who would encounter coal seam gas drilling on a personal basis everyday. Environmental groups, businesses, politicians, and local community groups are all affected by coal seam gas drilling. It would be limiting and narrow to not allow them to participate in addition to landholders. For example, the Greens party in Australia elects representatives from local communities.[42] While they can make some changes, the governmental process slows them down. If local community members could circumvent the political and legal process, it would prevent the onslaught of protests and create harmony in the community. Better yet, it would give a medium for drilling companies and locals to create dialogue. This topic of dialogue will be further touched upon when discussing why litigation and mere negotiation are not ideal in solving the issue of local stakeholder unrest and building up the reputation of drilling companies.

The final and most inspiring area of law in Australia which does offer some local stakeholders to participate in coal seam gas drilling projects through a type of mediation is pursuant to the *Native Title Act 1993* (Cth). Mediation in this case is mandated, which would resolve the issues of stakeholders or

[36] "Opposition to CSG in Queensland Increases", n 10.

[37] "Opposition to CSG in Queensland Increases", n 10.

[38] "Opposition to CSG in Queensland Increases", n 10.

[39] See *Mineral Resources Act 1989* (Qld), *Geothermal Energy Act 2010* (Qld), *Greenhouse Gas Storage Act 2009* (Qld), *Petroleum Act 1923* (Qld) and *Petroleum and Gas (Production and Safety) Act 2004* (Qld). These Acts give authority for either party to call for negotiation, mediation, or arbitration.

[40] Queensland Government, *Election Notice Form* <https://www.dnrm.qld.gov.au/__data/assets/pdf_file/0003/193080/election-notice-mines-05.pdf>.

[41] Queensland Government, *Business and Industry Portal: CSG-LNG Information for Landholders*, (6 February 2015) <https://www.business.qld.gov.au/industry/csg-lng-industry/csg-lng-information-landholders/csg-land-access-laws/csg-resources-contacts-landholders>.

[42] Greens Party Australia, *Schedule B – The Charter and Constitution of the Greens*, Ch 1 (November 2014) <http://greens.org.au/sites/greens.org.au/files/AG-Constitution-Nov-2014-1-2.pdf>.

companies refusing to go to negotiation. However, it only applies to indigenous people, but it serves as a good model for what Queensland should implement for coal seam gas drilling companies and local stakeholders.

The *Native Title Act 1993* was passed by Parliament following a landmark decision which held that indigenous people in Australia have a common law right to compensation for use of their former land because they possess title as the native owners.[43] In 2009, an amendment was passed which implemented an ADR process, focusing on mediation. Thereafter, mediation became mandatory.[44] The process for mediation involves registering the land in which the indigenous person or tribe believes they possess native title, then The National Native Title Tribunal goes through an evidentiary form of discovery. Finally, the tribunal will refer the registration or application to mediation, where an agreement can be made between the company attempting to profit off the land and the indigenous group.[45] More often than not, an agreement is reached in the form of an Indigenous Land Use Agreements (ILUAs).[46] In fact, a coal seam gas or any other natural resource company must have both a mining licence and an ILUA before proceeding.[47] After an agreement is made and signed, one or both of the parties registers the ILUAs within 6 months and then mediation follows.[48] Since the amendment and mandatory mediation, around 1,100 ILUAs are registered on the website.[49] Most of these agreements cover the mining and drilling sector, not surprisingly. For example, there is a registered ILUA between Cockatoo Coal Limited and the Iman People dated 5 October 2012.[50] The agreement covers mining and exploration for coal seam gas in Queensland.[51] This IULA establishes the geographic area of the native title, and seeks to reconvene for royalty payments at a later date.[52] It is true that the *Native Title Act 1993* has been heavily criticised. For instance, there are a few recent registered IULAs in Queensland dated in 2015 between indigenous groups and Adani Mining in the North Galilee Basin for the Carmichael Project,[53] when news reports in Australia show that there are continued protests from indigenous communities regarding the Carmichael project with Adani Mining.[54] However, this article does not attempt to give an idealistic view or argue for a perfect system. Although the *Native Title Act 1993* has several problems with it, it does *in some instances* help

[43] *Mabo v Queensland (No 2)* (1992) 175 CLR 1.

[44] *Native Title Act 1993* (Cth) 86B(1) as inserted by the *Native Title Amendment Act 2009* (Cth).

[45] National Native Title Tribunal, *About Indigenous Land Use Agreements (ILUAs) Fact Sheet 1: A General Guide to ILUAs* <http://www.nntt.gov.au/Information%20Publications/1.About%20Indigenous%20Land%20Use%20Agreements.pdf>.

[46] National Native Title Tribunal, *About Indigenous Land Use Agreements (ILUAs)* <http://www.nntt.gov.au/ILUAs/Pages/default.aspx>.

[47] National Native Title Tribunal, *About Indigenous Land Use Agreements (ILUAs)*, n 46.

[48] National Native Title Tribunal, *About Indigenous Land Use Agreements (ILUAs) Fact Sheet 1: A General Guide to ILUIA's*, n 45.

[49] National Native Title Tribunal, *Search Register of the Indigenous Land Use Agreements* (as at 18 April 2016) <http://www.nntt.gov.au/searchRegApps/NativeTitleRegisters/Pages/Search-Register-of-Indigenous-Land-Use-Agreements.aspx>.

[50] National Native Title Tribunal, *Extract from Register of Indigenous Land Use Agreements: QI2012/060 Cockatoo Coal Limited and Iman People ILUA* (2012) <http://www.nntt.gov.au/searchRegApps/NativeTitleRegisters/Pages/ILUA_details.aspx?NNTT_Fileno=QI2012/06 0>.

[51] National Native Title Tribunal, *Extract from Register of Indigenous Land Use Agreements: QI2012/060 Cockatoo Coal Limited and Iman People ILUA*, n 50.

[52] National Native Tribunal, *Extract from Register of Indigenous Land Use Agreements: QI2012/060 Cockatoo Coal Limited and Iman People ILUA*, n 50.

[53] See National Native Title Tribunal, *Register of Indigenous Land Use Agreement Details: QI2014/065 - Bulganunna Aboriginal Corporation and Adani Mining Carmichael North Galilee Basin Rail Project ILUA* (2015) <http://www.nntt.gov.au/searchRegApps/NativeTitleRegisters/Pages/ILUA_details.aspx?NNTT_Fileno=QI2014/065>; see also National Native Title Tribunal, *Register of Indigenous Land Use Agreements Details: QI2014/080 - Birriah People and Adani Mining North Galilee Basin Rail Project ILUA* (2015) <http://www.nntt.gov.au/searchRegApps/NativeTitleRegisters/Pages/ILUA_details.aspx?NNTT_Fileno=QI2014/080>.

[54] See news reports Lisa Cox, "Indigenous Groups Take Adani Carmichael Mine Battle to the United Nations", *The Sydney Morning Herald*, (3 October 2015) <http://www.smh.com.au/federal-politics/political-news/indigenous-groups-take-adani-carmichael-mine-battle-to-the-united-nations-20151002-gjzzh6.html>; Emma McBryde, "Indigenous Group Urges UN to Help

ease tension between mining and drilling companies and indigenous people. In many cases, after an ILUA is mediated, the local indigenous tribe will participate in decision-making, leading to harmony.[55] In one case, the Wik Waya people have two of their own in board of director positions for a Glencore subsidiary, giving them a real opportunity to represent their interests and ultimately lead to their people granting a social licence to operate in the community.[56] The once "dysfunctional" community, constantly erupting with protests and violence, is now moving towards peace and harmony.[57] And although the peace is not all owed to the ILUA, it did move the local stakeholders and Glencore in the right direction. Mediation was central to it.

WHY LITIGATION DOES NOT LEAD TO A SOCIAL LICENCE

Running to the courthouse to file a lawsuit will not move local stakeholders closer towards granting a social licence and will not create the synergy necessary to avoid local unrest between protesters such as Lock the Gate with coal seam gas drilling companies. This article argues that it will actually create more unrest and move local stakeholders farther away from granting a social licence to operate. The earlier section entitled "What is a Social Licence", discussed an example of an especially violent protest with Metgasco's coal seam gas project in New South Wales. Eventually, the company asked the NSW Government to intervene to "uphold law and order". However, the background of that matter was not mentioned. There, Metgasco had obtained its coal seam gas and mining permits, but the NSW government revoked the permits, accusing the company of not "properly consulting the community". Metgasco contested this revocation by filing a lawsuit in the NSW Supreme Court alleging that they properly consulted, and although the court "overwhelmingly" held in favour of the company against the Government,[58] protests have continued. In fact, shortly after the ruling, protestors began preparing for a second blockade.[59] At the same time, after the ruling, Metgasco's chief executive, Peter Henderson, came out with a statement which said that "[w]e really want to talk to government and police, we would like to do everything we can to manage community relations".[60] Unfortunately, managing community relations is not going well. As of September 2015, the Lismore Mayor Jenny Dowell came out with a statement that Metgasco's presence is an "insult to the community". She added that "it's clear that our community does not want Metgasco here". Unfortunately, Peter Henderson, the Chief Executive of Metgasco, fired back, reminding protesters of the recent lawsuit Metgasco won and emphasising that the company has "a lawful right to do our work…".[61]

As the "Metgasco Fiasco", coined by protesters, plays out, it is easy to see that when a company pushes back against the community it produces disastrous results. Rather than being willing to actually work (and by actually work, it does not mean releasing a statement that the company "really want[s] to talk") with the community, companies need to work with the community in a meaningful way. Otherwise, as with Metgasco, a lawsuit led to the local stakeholder tension spiraling out of control. In turn, the eruption of protestors and community pushback makes it harder for the coal seam gas company to make a profit. Additionally, Henderson's adamance about his legal right was the precisely wrong thing to say. Once again, if he and Metgasco wanted to focus on repairing community

Halt Adani Mine", *CQ News* (5 October 2015) <http://www.cqnews.com.au/news/indigenous-group-urges-un-help-halt-adani-mine/2796225>.

[55] Ron Boswell, "Native Title Key to Indigenous Communities' Wellbeing", *The Australian* (6 June 2015) <http://www.theaustralian.com.au/opinion/native-title-key-to-indigenous-communities-economic-wellbeing/news-story/a38531df1e862382e145e9b522bff514>.

[56] Boswell, n 55.

[57] Boswell, n 55.

[58] Klan, n 23.

[59] Samantha Turnbull, "Coal Seam Gas Protesters Prepared for Second Bentley Blockade", *ABC North Coast NSW* (28 April 2015) <http://www.abc.net.au/local/stories/2015/04/27/4224393.htm>.

[60] Klan, n 23. See also the section of this article entitled "What is a social licence?"

[61] Hamish Broome, "Lismore Mayor: Metgasco's Seismic Testing Not Wanted Here", *Northern Star* (30 September 2015) <http://www.northernstar.com.au/news/plans-by-metgasco-to-carry-out-seismic-testing-in-/2791003>.

relationship, throwing a favorable judgment in the opposition's face will almost certainly not aid in that end. Overall, litigation is not the best route for the coal seam gas industry.

NEGOTIATION IS NOT A BETTER CHOICE

A conclusion that litigation is not a good choice to resolve coal seam gas disputes with local stakeholders might lead one to believe that negotiation is a better choice. However, negotiation often fails for a variety of reasons, the most prominent being the lack of bargaining power local stakeholders possess against large, sometimes internationally-held coal-seam gas companies.

First, there is a power gap between the resource sector and local stakeholders. Often, coal seam gas and other resource companies are multi-million and multi-billion dollar companies. They have all the legal counsel money can buy, all the master negotiators at hand, and sophistication that local stakeholders, who do not work in the resource sector but care about their community, do not have.[62] While some environmental groups can have a large amount of power, many coal seam gas companies have a financial advantage over environmental groups by many millions of dollars, along with sophisticated legal counsel. Additionally, when a coal seam gas company arrives in town, it is likely to bring jobs and revenue to the community. The sheer power imbalance between community members and giant gas companies is staggering and it often leads to local stakeholders feeling weak.[63]

Secondly, there is an information gap at the negotiation table. In most cases, "not all information is given to landholders in regards to the 5-10 year production plan on their properties…[and] initial negotiation meetings maps produced by the resource operator cover the exploration phase only".[64] Therefore, communities are left with limited information when arriving at the negotiation table and if a deal is reached, must live with the consequences later.

Finally, there is a gap in certainty. Coming to an agreement in negotiations is not certain, and many times mining companies will conduct them as a formality without anything more than wanting access to the landholder's land or a basic agreement to show they fulfill Corporate Social Responsibility.[65] Alternatively, many companies, like Metgasco in the earlier example, will abandon negotiations and turn to litigation.

Overall, negotiation accomplishes very little. All of the above "gaps" create hostility, tension, and feelings of inadequacy. When local stakeholders in their own community feel powerless, they feel as if they are edged out of their own home.

WHY MEDIATION IS THE BEST CHOICE

Mediation fills the gaps which negotiation leaves out, and it takes away the tension created by litigation. This article has addressed most of the reasons why mediation is superior to negotiation and litigation in the coal seam gas industry, but it is worth reviewing briefly. First, mediation is inexpensive and fast.[66] This is a huge advantage in bargaining power to local stakeholders who do not have millions of dollars to spend like mining companies do. Also, it helps mining companies, too. Even if mining companies have millions of dollars to spend, litigation slows down their project, so a route that is fast and inexpensive is advantageous to them as well. It also fills the power gap because there is a third neutral party in the room. It is the mediator's job to level the playing field.

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[62] Daniel Shapiro, Bonita I Russell and Leyland F Pitt, "Strategic Heterogeneity in the Global Mining Industry" (2007) 16 *Transnational Corporations* 1, 24.

[63] Shapiro, Russell, and Pitt, n 62.

[64] AgForce Queensland, Submission No 106 to Senate Standing Committees on Rural and Regional Affairs and Transport, *Management of the Murray-Darling Basin*, June 2011, 6 <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Rural_and_Regional_Affairs_and_Transport/Completed_inquiries/2012-13/mdb/submissions>.

[65] AgForce Queensland, n 64.

[66] Louise Sylvan, "Opportunities for ADR in Business" (Summary of a panel session held at the National Alternative Dispute Resolution Advisory Council Conference, Sydney, Australia, 4-5 September 2003) published as National Alternative Dispute Resolution Advisory Council Conference, *ADR: A Better Way to Do Business: Summary of Proceedings* (2003) <https://www.ag.gov.au/LegalSystem/AlternateDisputeResolution/Documents/NADRAC%20Publications/ADR%20A%20Better%20way%20of%20Doing%20Business%20Summary%20of%20Conference%20Proceedings.pdf>.

Second, mediation does not actually hand down a final and binding decision.[67] This is a huge advantage to ease tensions between parties. Unlike with Metgasco, there is no lawsuit to intimidate the other party with. There is simply a mutual agreement decided by both of the parties; not a judge. This second advantage also fills the certainty gap because mediation allows for parties to have a meeting of the minds, with all information on the table and resolved by the parties; not made up by a judge using the remedies available through the legal system.

Furthermore and finally, it is the express job of the mediator to facilitate discussion and find areas of common ground.[68] This fills the information gap because it is the mediator's job to encourage the parties to tell each of their sides fully and honestly. Confidentiality also helps because litigation is public and negotiation can be public. Mediation is confidential, which protects both parties' images and information, and therefore it encourages them to release information.[69] Overall, mediation fills many of the gaps negotiation has and eases the tension litigation creates.

CONCLUSION

This article has mostly been a critique of the current Australian way of handling the coal seam gas industry. The adaptive management approach has largely failed to address local stakeholder unrest and has created an atmosphere of tension – a David and Goliath view – of the local stakeholders and the large mining companies. This needs to be resolved. Using mediation is the first step in doing that, and also mandating that both local stakeholders put down their picket signs and coal seam gas companies walk away from the drill site to come to the table to resolve issues is the key to creating a harmonious environment. It is also the only viable way to grant a social licence. The Australian government is at a cross-roads currently: either level the playing field or deal with more community unrest, halted drilling projects (and revenue from it), and political consequences. Mediation appears to be the best way to level the playing field, and it is the author's hope that this article helps move Australia in the right direction regarding the coal seam gas industry. Only then will the full benefits of the coal seam gas industry be enjoyed by all interested parties.

[67] Mary Radford, "Advantages and Disadvantages of Mediation in Probate, Trust, and Guardianship Matters" (2001) 1 *Pepperdine Dispute Resolution Law Journal* 241.

[68] Paul Pederson, *ADR: A Better Way to Do Business: Cross Cultural Communication Workshop Script* (2003) National Alternative Dispute Resolution Advisory Council Conference <https://www.ag.gov.au/LegalSystem/AlternateDisputeResolution/Documents/NADRAC%20Publications/ADR%20A%20Better%20way%20of%20Doing%20Business%20Summary%20of%20Conference%20Proceedings.pdf>.

[69] Pederson, n 68.