

The 'discretionary principle': Understanding the implications of government policy for developing unconventional gas and oil in Australia and the UK

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Introduction

- PhD – Critical discourse analysis of the anti-fracking movement in Australia and the UK
- Interview findings
- Discretion
- Discretionary principle



Problems identified by the anti-frackers

1. Inadequate regulations

Inadequate regulations

- A lack of capacity in existing agencies
- Not enough stringency
- Inadequate knowledge
- Use adaptive management rather than the precautionary principle

“you can’t risk manage what you don’t know, and the problem with the unconventional gas, no matter what countries you go to, there is just simply far too much that we don’t know” (Professional Aust. 3)

Problems identified by the anti-frackers

1. Inadequate regulations
2. **Discretions with policy and regulation**

Discretions with policy and regulation

- Agencies underfunded
- Companies self-monitoring
- Exemptions from assessments and other regulatory processes
- Revolving doors between government and industry

“we’ve seen the EPBC Act watered down and it actually is not protecting the environment at all. So, we’re seeing problemsactually corruption with that, politicians having a very negative influence on outcomes and it’s because they have a vested interest if you like, or an interest in pushing their own particular barrow, but it’s not in the national interest” (Professional Aust.7)

Problems identified by the anti-frackers

1. Inadequate regulations
2. Discretions with regulation
3. **Discretions with policing**

Discretions with policing



Photo: Bridie Meyer-McLean

Discretions with policing



Photo: <https://www.yorkshirepost.co.uk/news/fracking/home-office-will-fund-additional-costs-of-policing-fracking-protests-in-yorkshire-1-9635859>

Discretions with policing



Photo: <https://www.bbc.com/news/uk-england-lancashire-47094337>

Discretions with policing

“we have got terrorism surveillance. And we have got tactics which were decided by Met to oversee the imposition of the whole industry, and ... it involves enforcement and intimidation. And it’s very worrying considering that is a model, which has been drawn up with the support of our Government with the Met Police” (YKSH 3)

Problems identified by the anti-frackers

1. Inadequate regulations
2. Discretions with policy and regulation
3. Discretions with policing
4. **Influence of industry on government decision-making**

Influence of industry on government

- Lobbying and monetary influence
- Nepotism
- Question impartiality
- Revolving doors

“Government is completely captured by the oil and gas industry and in particular fracking industry interests,”
(YKSH 4)

“It’s the industry that’s driving that and we see it through political donations, you know. I know in the Northern Territory they’re always out wining and dining our politicians. It’s not in Australia’s best interests to do it and it’s getting driven by the actual gas industry” (NT 1)

An obstacle to solving the problem

- Discretion
- Not new and an important aspect of good governance
- However.....

The 'discretionary principle'

- Encompassing a range of discretions relating to laws, policy and regulation and enforcement
- Economic reasons are used to justify the discretion
- It underscores a discourse of power
- Replaces the precautionary principle

Conclusion

- Discretions in policy, regulation, laws, policing, used extensively for a common pursuit
- = Discretionary Principle
- Places industry as powerful
- Is an obstacle to identifying risk and easing tensions

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This is a working paper and so I would be grateful for any
critique or feedback