

19 September 2018

Economic Policy Scrutiny Committee
Legislative Assembly of the Northern Territory
Parliament House
Darwin, NT 0800

By email: EPSC@nt.gov.au

Dear Chair and Committee members,

RE: Submission on the Water Legislation Amendment Bill 2018

Lock the Gate welcomes the opportunity to make a submission to the Committee on the *Water Legislation Amendment Bill 2018*.

By way of background, Lock the Gate Alliance is a national grassroots organisation made up of 100,000 individuals and over 250 local groups who are concerned about unsafe or inappropriate mining. The mission of the Lock the Gate Alliance is to protect Australia's agricultural, environmental, and cultural resources from inappropriate mining and to educate and empower all Australians to demand sustainable solutions to food and energy production. Lock the Gate works across the NT and is committed to advocating for environmental and community health, and the productivity of local economies.

We note there are a range of positive updates to the NT Water Act made through this Bill.

Overall, we welcome the update to the Act to remove an exemption for mining and petroleum in Section 15 of the Water Act, making it an offence to interfere or obstruct waterways S7(1). We also want to acknowledge the improvements to current arrangements in the Act, including by introducing strict liability offences and reversing the burden of proof.

This Lock the Gate submission to the Committee lays out three specific recommendations where the Assembly should amend the Bill. It also includes a general comment on where further work is required in order to amend the Water Act in line with the recommendations of the NT Fracking Inquiry.

Recommendation 1 – Remove the water pollution exemption in Section 7(2)

We have a strong concern about the exemption in Section 7(2) that has not been removed through this Bill process.

Section 16 presently makes it an offence to allow waste to come into contact with water or to pollute it in a way that causes serious environmental harm without authorisation. Water means “water flowing or contained in a waterway”, “ground water” and “tidal water.”

While other exemptions for mining and petroleum will be removed by this Bill, the *Water Legislation Amendment Bill 2018* retains Section 7(2) of the Water Act, which has been updated to state:

Section 7 amended (Application of Act to mining or petroleum activity)

7 (2) Section 16 does not apply to waste that comes into contact with water, or water that is polluted, if:

- (a) the contact or pollution occurs in the course of carrying out a mining activity or petroleum activity; and
- (b) the waste or polluted water is confined within the mining site or petroleum site on which the activity is being carried out.

This section broadly exempts mining and petroleum companies from pollution provided the waste or polluted water stays within the mining or petroleum site. A petroleum site for fracking can be across hundreds of kilometres of an exploration or production license. If, for example, the mining or petroleum site also includes pastoral water bores which get polluted - that would not be in breach of Section 16.

Furthermore, plumes of groundwater pollution can move slowly. Contamination or pollution that begins on a mining or petroleum site can move beyond the limits of that site over time, perhaps long after the extractive industry has ceased operating. Real environmental harm will occur if this section continues to permit pollution within petroleum and mining sites. If the intention of this section is to recognise that mining activities use water and that water becomes polluted in the process, then authorisations under the Act may be granted to such activities to ensure that there are strict controls that prevent pollution entering the environment and that there is adequate monitoring and compliance with any such authorization. Retaining the broad exemption from pollution controls as it is currently constructed is inappropriate and not consistent with the findings of the Fracking Inquiry.

The broad exemption 7(2) should be removed altogether. Section 16 already allows for the consideration of an authorisation, which could include pollution that takes place in accordance with a specific license. There is no rationale for broad based exemption of this nature.

Recommendation 2 – Increase the penalty provisions further

We note that the amendments generally improve the current arrangements in the Act, including by introducing strict liability offences and reversing the burden of proof. We welcome these measures.

We request that the Committee reconsider wording throughout the Bill providing for a defence to several offences where the defendant 'took reasonable steps.' In general, "reasonable steps" should include compliance with the relevant law. Where there is non-compliance, there should be enforcement. Certainly, in cases where there has been environmental harm, absolute liability should apply. An alternative may be to allow for different penalties to apply in cases where the company or person concerned made attempts to prevent the offence occurring.

While penalties in the Act are increased by this Bill, a quick review of water legislation in other states (Qld and NSW), shows the proposed new penalties still fall well below those available for equivalent offences in other jurisdictions. Water in the Northern Territory is of significant importance to multiple users. Penalties should reflect this.

For example, taking surface water without authorisation is new section 44 in the NT Water Act. This has a new penalty amount set at a maximum of 500 penalty units. I.e. \$77,500 (unintentional) or 1000 penalty units (\$155,000)/2 years gaol (intentional).

This level of penalty is not sufficient to deter unlawful take of water by a large scale mining or petroleum operation. In NSW, the fine for the equivalent offence is up to \$5 million for corporations, and \$1.1 million for individuals or 2 years in gaol (where offence is intentional) or \$2million and \$500,000 where the offence is unintentional [see s60A and s363B, *Water Management Act 2000 (NSW)*].

In Qld the equivalent offence has maximum penalty is \$217,365 [see s808 *Water Act 2000 (Qld)*].

Point 3 – Update definition for hydraulic fracturing at Part 15, 112 Definitions

Please update the definition of Hydraulic Fracturing. It must cover all forms of petroleum recovery using unconventional method of hydraulic fracturing, to read:

"hydraulic fracturing means the process of injecting fluid at high pressure into a hole in the ground to extract ~~shale gas~~ **petroleum resources and hydrocarbons** from subterranean rock."

This update is critical. For example, Origin plans to use hydraulic fracturing to target shale oil in 2019¹. This activity must be defined as hydraulic fracturing.

¹ See this 2018 update <http://www.falconoilandgas.com/beetaloo-australia>

Further work required to amend the NT Water Act:

This Bill is notably missing key areas of water reform that are important to have in place to better protect water in the Northern Territory if subjected to hydraulic fracture related activities.

The following recommendations from the NT Fracking Inquiry report are not provided for in the current draft Bill and need to be included:

- Recommendation 7.6: For there to be a prohibition on the use of surface water for fracking. There is nothing in the proposed amendments which responds to this recommendation.
- Recommendation 7.8: That no fracking bores be allowed within 1k of “an existing or proposed domestic or stock water supply bore.” There is nothing in the proposed amendments which responds to this.
- Recommendation 7.12: That enclosed tanks must be used to hold all wastewater.
- The Water Act could contain a prohibition on the storage of all waste water from a fracking activity in any open dam.
- Recommendation 7.17: that there should be a prohibition on the discharge of treated or untreated wastewater into waterways. This is not covered by the proposed amendments although, the miner cannot pollute outside the mining or petroleum site. A specific provision of the Water Act is required to respond to recommendation 7.17 and it should prohibit such discharge into all waterways, even within the boundaries of the mining and petroleum sites.

Final comment on whether the Assembly should amend the Bill further:

As outlined in this submission, there are a range of specific and important amendments that absolutely should be enacted now. However, the context for evaluating the extent further amendments are required is made difficult by the way the NT Parliament is progressing law reform in this incremental manner, and without proper public exhibition and consultation processes.

Many more changes are required to the NT Water Act and other Acts in order to fulfil the recommendations of the NT Fracking Inquiry.

Not having a clear picture of the full extent of how the NT Government intends to implement the Fracking Inquiry recommendations undermines the ability for the public to properly engage and understand the comprehensive framework that will apply to the industry. We suggest that the Committee consider whether Water Act amendments should be deferred until a comprehensive package of regulatory reform is available and the parliament and Territorians can consider the degree to which this package as a whole fulfils the recommendations of the Fracking Inquiry and serves the public interest. This would avoid the risk of creating unintended outcomes (because amendments not considered together/as a

whole) or leaving crucial gaps in the regulatory regime that will leave the communities and environment of the Territory exposed.

In conclusion, Lock the Gate Alliance is very concerned about the inclusion of Section 7(2) to allow a water pollution exemption. This should be removed altogether.

There is also specific need to update the definition of hydraulic fracturing, increase the penalty provisions further and to consider how the remaining aspects of the Fracking Inquiry recommendations related to NT Water can be brought into law.

Thank you for your consideration of this feedback in relation to the Water Legislation Amendment Bill 2018.

I can be contacted to discuss elements of this submission further.

Yours truly,



Naomi Hogan
Lock the Gate Alliance

