



**Arid
Lands
Environment
Centre**

Office: 90 Gap Road Alice Springs NT
Mail: PO Box 2796 Alice Springs 0870 NT
Web: www.alec.org.au
Phone: 08 89522497
Email: policy@alec.org.au

Legislation Scrutiny Committee
Parliament House
GPO Box 3721
Darwin NT 0801

By email: lsc@nt.gov.au

Dear Chair and Committee Members,

Submission on the Petroleum Legislation Miscellaneous Amendments Bill 2019

The Arid Lands Environment Centre (ALEC) appreciates this opportunity to comment on the *Petroleum Legislation Miscellaneous Amendments Bill 2019* (The Bill).

ALEC is central Australia's peak environmental organisation that has been advocating for the protection of nature and ecologically sustainable development for the arid lands since 1980. ALEC maintains that the risks posed by the industry to climate, water and health are not acceptable and we will continue to advocate for alternative energy solutions as shale gas is no longer considered a viable sustainable energy source. Notwithstanding this, ALEC recognises the critical importance of a rigorous and best practice regulatory framework to ensure the industry operates to the highest standards of accountability and transparency. It is to this end we provide these comments.

It is crucially important that the intent and purpose of the recommendations from the Final Report are accurately implemented in law through these amendments. The full intent and purpose of the Recommendations from the Final Report needs to ensure that the mitigation strategies anticipated by the Inquiry are properly implemented. While we support several of the proposed amendments in the Bill, there are certain amendments that do not provide the legal protection required by the recommendations.

Principles of ESD

ALEC supports the legal requirement for a decision maker to *consider and apply* the principles of ESD when making decisions under schedule 1. This provides proper accountability and consistency in decision making whilst also fulfilling recommendation 14.11.

Clause 6A (2) should be removed to ensure that the Minister specifies how the principles have been considered and applied when making that decision. This will strengthen accountable decision making under the Act and provide greater public confidence that ESD is informing decisions as required by the Act. Incorporating ESD into decision making is a safeguard to protect against key risks noted by the inquiry, including exploration creep. By requiring a decision maker to outline how they have considered ESD, the Act will ensure that ESD functions as a safeguard as intended by the Final Report.

Land access agreement required to be in place for legal access

Recommendation **14.6** provides that a land access agreement should be required by law. The Inquiry intended the existence of an access agreement to operate as a necessary pre-condition for lawful exploration or production activities and be enshrined in legislation.

As the amendment is currently drafted, it does not provide the legal protection necessary to give effect to recommendation 14.6. While we acknowledge the regulations are enforceable, the requirement for an access agreement to be in place must be given clear statutory authority. This will strengthen the provision and improve enforceability which will ultimately protect the rights of pastoral lease holders who may be impacted by petroleum activities.

The Bill should be amended to require a land access agreement to be in place before any onshore shale gas activity can be approved on a pastoral lease.

The Bill could be amended to fulfill recommendation 14.6 by requiring a land access agreement to be in place as follows:

- (i) An access agreement must be negotiated and signed by a pastoral lessee and a gas company prior to undertaking any onshore gas activity.

Unless the Bill is amended to require an agreement to be in place for legal access, we submit that the Bill does not fulfill recommendation 14.6.

Environmental Securities

Similarly, with the land access agreement, the requirement to provide environmental securities should be enshrined in the Act rather than the Regulations. As the head of power for legal activity, the Act should require an operator to provide an environmental security before any petroleum activity can be authorised.

Land Release for exploration

Recommendation 14.2 outlines clear conditions around the process for releasing land for shale gas exploration. We submit that the current drafting of clause 6 does not fully implement the intent nor purpose of that recommendation.

Specifically, in the interests of full public disclosure and transparency the clause should be amended at 1(3) to require the notice to be published on the relevant NTG website in addition to the newspaper.

Further, submissions on an application should not be limited to the factors listed at 2(A)(b). A submission can be made outlining why exploration may not be suitable for those listed reasons, but it should also be able to include any other reasons that are considered relevant to the suitability of the proposed exploration activity.

In addition to the criteria guiding land release, the Bill does not fulfill 14.2 as there is no explicit obligation on the Minister to consider matters of suitability when making a determination under that clause. While the Minister should be obliged to consider any submissions that outline why release may not be suitable, the Minister should also be obliged to refuse approval where co-existence is not possible.

Recommendation 14.3 is unequivocal in stating that exploration permits must not be granted over areas that are not prospective nor where co-existence is not possible. The Bill should be amended to reflect this and explicitly require refusal of an exploration application where co-existence is not possible or in areas that are not prospective.

Conclusion

It is difficult to comment on the adequacy of the legal mechanisms being used to implement key recommendations from the Inquiry as the substance of the reform is being addressed through the Regulations. There is a genuine risk to public confidence over the integrity of the reform process if critical questions about detail are being addressed by Regulations which do not undergo legislative scrutiny. It is critical that these legal reforms undergo a high degree of public scrutiny to ensure that the regulatory framework is robust, accountable and transparent as expected by the NT community and required by the Fracking Inquiry.

Finally, we are concerned that these Amendments demonstrate a weakening of the commitment to fully implement all the recommendations from the Fracking Inquiry. The revisions listed above should be made to the amendments, as supported by other groups, to ensure that these protections are given the highest level of legal enforceability.