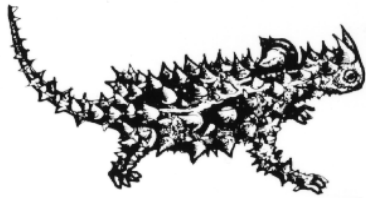


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## **ALEC Submission on the Petroleum Legislation Amendment Bill to the Economic Policy Scrutiny Committee**

The Arid Lands Environment Centre appreciates the opportunity to comment on the *Petroleum Legislation Amendment Bill*.

The Arid Lands Environment Centre (ALEC) is central Australia's peak environmental organisation that has been advocating for the protection of nature and ecologically sustainable development of the arid lands since 1980.

ALEC is regularly engaged in environmental regulatory reform in the Northern Territory through policy submissions, committee representation and community engagement. ALEC is committed to ensuring that all the recommendations from the final report from the Inquiry into Hydraulic Fracturing in the NT are implemented in full, consistent with robust best practice environmental regulation. However, ALEC's position is not supportive of the development of an onshore shale gas industry in the Northern Territory.

ALEC generally supports the Petroleum Legislation Amendment Bill and the amendments to the *Petroleum Act* and *Petroleum (Environment) Regulations*. However, several sections need to be revised to strengthen the Act and ensure the objectives of the reform are properly operationalised.

The Bill needs to be strengthened to ensure that it can achieve the intended regulatory functions that were outlined by the Inquiry into Hydraulic Fracturing in the Northern Territory. Our comments are provided in order to further strengthen accountability and integrity in the regulation of petroleum activities that are consistent with community expectations.

### **Section 15A: Appropriate person test**

#### **Section 15A be revised and expanded to provide for thorough and accountable determinations.**

The scope of *prescribed environmental legislation* should be expanded to include Acts that have environmental implications or are relevant to environmental issues. For example, the *Water Act* should be, at the least, included as an Act defined as *prescribed environmental legislation*. If a proponent has violated the *Water Act* this needs to be considered in determining whether the applicant is an appropriate person.

Sub-section (6) needs to clarify that both *former* and current legislation is included in the definition so that a decision maker is able to consider the conduct of a person or body in relation to previous iterations of prescribed legislation.

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Section 15A (1) will be strengthened by including criteria that require a decision maker to consider the history and conduct of a person or body concerning land access arrangements, land use negotiations and free prior and informed consent. In determining ‘appropriate person’ a decision maker should be able to consider the history of a proponent in negotiating in good faith and their commitment to operating with a social licence.

There is concern that sub-section (4) provides unfettered discretion to the Minister and undermines the effect of the preceding sections. Allowing the Minister to disregard contraventions at their discretion could bring inconsistency in decision making. This discretion should be qualified by a requirement that the Minister justify why they have chosen to disregard factors that are listed in subsections (1) and (2) through publishing a statement of reasons. Alternatively, *disregard* could be replaced by *consider* so that the Minister is compelled to undertake a process of balancing the competing considerations as opposed to simply disregarding a contravention without due cause.

**Recommendation:**

**Section 15A be revised and strengthened to ensure it can further the intended purpose of the reform:**

- **Additional criteria in section 15A (6) to include all Acts relevant to land use and rights. For example; natural resource management Acts and Indigenous land use Acts. At the least the *Water Act, Planning Acts, Native Title Act, Aboriginal Land Rights Act* should be included.**
- **Clarify that section 15A (6) includes *former and current* versions of the prescribed Acts.**
- **Amend section 15A (2)(c) by removing *environmental* to become: *the record of compliance with the prescribed legislation of any director of the body corporate.***
- **Qualify the discretion in section 15A (4) to require a process of balancing considerations rather than simply disregarding history. Otherwise this is an unbridled discretion that will impact rights and duties without due accountability.**
- **Include additional criteria to require consideration of a proponent’s history of negotiating in good faith and commitment to a ‘social licence to operate’.**
- **The decision of whether an applicant is an appropriate person needs to be included in the Schedule of Judicial Review of Decision or Determination.**

**Recommendations from the Inquiry into Hydraulic Fracturing**

**The Northern Territory Government should clarify why this Bill includes certain recommendations from the final report of the Inquiry into Hydraulic Fracturing in the NT but has left others out.**

Recommendation 14.11 provides that the *Petroleum Act* needs to be amended to provide that: “ESD is a mandatory relevant consideration for any decisions made under that Act to any onshore shale gas industry”. We note that the previous *Petroleum Environment Regulations* provide that consideration must be had to the principles of ESD in developing an EMP but that this does not meet what is required by recommendation 14.11

Why has recommendation 14.11 not been included in this amendment to the *Petroleum Act*? Another example is recommendation 14.24 which provides that the *Petroleum Act* and *Petroleum (Environment) Regulations* should be amended to provide merits review for decisions made on environmental management plans. It is not clear why this is not included in this Bill.

The key concern here is that if recommendation 14.11 is not included then exploration permits may be assessed this year without decision makers having regard to ESD in the way that is strictly required by recommendation 14.11.

### **Consultation and engagement**

#### **Scrutiny committees are not the most appropriate avenue for community engagement on fracking regulatory reform.**

It is important to note that we do not consider the policy scrutiny committees to be the most effective avenue to educate and engage the broader community on fracking regulatory reform. While the scrutiny committees themselves are operating according to the terms of reference (TOR), the narrow TOR restrict the type of feedback that can be made on the Bill. While the committee offers a form of scrutiny, it is not providing effective engagement on the current raft of legislative reform. There is also very limited scope to influence the content of a Bill once it reaches the scrutiny committee.

The explanatory statement contains no detail about how the amendments to the Legislation will be operationalised. While the reasons for the inclusion of 15A is clear, there is no discussion about how this would operate as the Act is administered. It is difficult to understand and therefore comment on the predicted operation of the Act, which is a key factor in enabling valuable submissions to be made to this committee.

Amendments to the *Petroleum (Environment) Regulations* were implemented at the end of last year without being brought to this scrutiny committee. It is not clear why the current amendments are therefore now going through public scrutiny while previous amendments to the same regulations were not given an opportunity for public scrutiny. As the 2016 version of the *Regulations* has been listed on the committee page, submissions will presumably be referenced to the former, 2016 version of regulations.

#### **Could the committee explain why this current Bill (including regulations) was referred for scrutiny in November and then separate amendments were made to the *Petroleum (Environment) Regulations* in December without scrutiny?**

Consistent application of scrutiny is critical for public trust in institutions. More consultation outside of the scrutiny committee is required for community members to understand the impacts of the reforms.

### **Conclusion**

Section 15A of the Petroleum Legislation Amendment Bill outlining the appropriate person test needs to be revised and amended to ensure that all relevant Acts and criteria are captured and therefore considered by the Minister when making a decision. This will strengthen the decision-making process and provide for greater accountability.

Regarding the fracking regulatory reform agenda, it would be valuable to have greater clarity over the timeline of legislative reform for the implementation of recommendations from the Inquiry into Hydraulic Fracturing in the NT. Specifically, questions remain as to which recommendations are being implemented at which point in the legislative reform processes. This would improve understanding and build public trust in the reform process and provide certainty that these amendments are not being rushed through without broad public understanding.