



NORTHERN TERRITORY CATTLEMEN'S ASSOCIATION INC.

Advancing and protecting the interests of cattle producers in the Northern Territory

Member - National Farmers' Federation & Cattle Council of Australia

Legislation Scrutiny Committee
Department of the Legislative Assembly
E: lsc@nt.gov.au

Re: Petroleum Legislation Miscellaneous Amendments Bill 2019

To whom it may concern,

Please accept this as our response to the legislation currently being examined by the Legislation Scrutiny Committee.

Background

The Northern Territory Cattlemen's Association believes the strongest protection for pastoralists would be giving them the right to veto proposed onshore gas development on pastoral leases. This was the main substance of the NTCA's submission to the Scientific Inquiry into Hydraulic Fracturing.

This remains the policy position of the NTCA.

However, in making recommendations, the chair of the inquiry, Justice Rachael Pepper, was not prepared to offer landholders such a right and instead recommended mandatory land access agreements.

On Monday September 16, 2019 an NTCA working group consisting of key corporate, medium and generational producer members met in Darwin to discuss Land Access Legislation for onshore gas and eventually the mining industry. Set out below are some of the key discussions points and recommendations of the working group.

Since that date the executive of the Northern Territory Cattlemen's Association has also met and considered the recommendations. Outlined within this document is what our industry wish to see in the Land Access Legislation currently being prepared by the Northern Territory Government.

At this point the legislation as proposed meets these requirements, although there are some areas we wish to fine tune, especially around the matter of compensation. The NTCA does not support a singular per well figure as part of any compensation.

Ashley Manicaros
Chief Executive Officer
Northern Territory Cattlemen's Association



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Recommendations/Qualifications:

1. We require an underlying principle of the legislation to be that: "If there is no access agreement then there should be no access." This will ensure that the matters of concern for the pastoralist are addressed;
2. A definition and standings on "sub surface leases" (ie: If they can't get access to a property, what stops them putting down a well and fracking underneath a boundary fence. In other words they do a deal on one property but source gas from the next door neighbour.);
3. A Royalty enabling mechanism in the Territory does not exist. See page 397 of Pepper. We are seeking 10 per cent of 10 per cent. To achieve this, we need enabling legislation for a royalty to be included in the compensation component;
4. Assess with the landowner what the environmental impact on the land will be and then they have to agree to supply all the reports on it before/during negotiations in regards to Land Access. The current system has an anomaly because gas companies do not have to supply this information during Land Access negotiations, instead they can wait until stakeholder engagement occurs during the EMP process;
5. Gas company pays for lost management time in the context of the negotiation of land access (precedence set with Native Title holders);
6. Gas company covers cost for independent water monitoring of bores around the area being used for gas operations. We know that gas companies do water bore testing but we require independent monitoring to be covered by the gas companies. The land holder might facilitate the monitoring but the costs are covered by the gas company;
7. Use of helicopters by gas companies or third parties is to be restricted/negotiated;

Pepper Recommendations:

This is a list of the recommendations made by Justice Pepper and whether we support them, or if there is a requirement for additional wording.

1. ***A minimum notice period, given either orally or in writing, except in the case of emergencies.***
Agreed: Minimum periods should be not be less than 14 days and subject to reasonable timeframes and effort;
2. ***An obligation to conduct the onshore shale gas activities in a manner that minimises disturbance to Livestock and property.*** Agreed;
3. ***An obligation to return any gates to their original position unless advised otherwise by the Pastoral Lessee.*** Agreed;



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4. **An obligation to obtain the Pastoral Lessee's consent prior to the erection of any gate, fence or other barrier on the Land.** Agreed;
5. **An obligation to repair any gate, fence, grid or other barrier on the land damaged or harmed by the gas company or any subcontractor engaged in onshore shale gas activity on the land.** Agreed;
6. **Agreement upon the location and size of any camps on the land necessary to conduct the onshore shale gas activities.** We would like camps – balanced land access camps – to be created as a total subsection of any land access agreement;
7. **Notification to the pastoral lessee as soon as practically possible of all spills, incidents, harm or damage to the Pastoral Lease and its infrastructure and operation.** We require the timeframe to be 24 hours for notification or quicker. And the onus has to be on the resource/mining company to prove they didn't do it;
8. Compensation - part of other discussion
9. Compensation – part of other discussion;
10. **'Make good' provisions for any damage or harm to the water (surface and ground), land, infrastructure, or operation of the Pastoral Lease, The onus of proof is to be reversed so that the obligation is on the gas company to demonstrate that the harm or damage was not caused by the onshore shale gas activities.** Comment: Make good provisions with water table - has to include the gas company and all its associated third party contractors. They must be required to own the asset. The make good does not have a timeframe;
11. **Indemnification for any harm or damage caused by any third party engaged by the gas company or any of its sub-contractors to the water (surface and ground), land, infrastructure or operation of the Pastoral Lease.** Indemnification by the miner or any third party or any impacts that can be demonstrated by the landowner on the operations of the pastoral lease. Insurance liability and a parent company guarantee need to be included. We need to ensure that the following section of the water act is amended to ensure there can be a prosecution:
Section 7(2) of the Water Act NT (1992) states, "Section 16 of the Water Act does not apply to ... water that is polluted if the ... pollution occurs in the course of carrying out a ... petroleum activity, and, the polluted water is confined to the petroleum site". Petroleum site is defined to be the authority, licence or permit area. Section 16 of the Water Act sets out the offences for water pollution.
Section 117AAD Petroleum Act "Defences to environmental offences", applies "if is proved that the act or failure to act was authorised by another Act".

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There is every likelihood that if a petroleum title holder causes a water pollution event, which falls within the ambit of these sections, such as the intermingling of a briny aquifer with a beneficial aquifer, the petroleum title holder could use these sections of the Water Act and the Petroleum Act to argue they have a statutory defence to this type of water pollution;

12. ***The provision of appropriate guarantees where the holder of the approval to carry out the relevant onshore shale gas activity is not the person or company undertaking the activities on the land.*** Agree
13. ***To the extent reasonable and permitted by law, a release by the gas company of the Pastoral Lessee for any death or personal injury to the gas company's personnel, damage to or loss of the gas company's property or consequential loss, including financial loss.*** Agree. This means there will need to be inductions for gas company employees on to cattle stations.
14. ***Restrictions on, and notifications of, the sale, assignment or transfer of any rights or obligation by the gas company.*** We need to expand to ensure that "this make good provision doesn't have a life span...if you relinquish the permit then regardless if you relinquish it or not you are still responsible for the make good;
15. ***No confidentiality clauses unless by mutual agreement of the parties.*** Agreed: This will aid transparency across the industry and ensure an even playing field. This is very important to stop the gas companies playing the industry off against each other;
16. ***Payment of all reasonable Legal, financial and technical fees incurred in respect of the agreement must be borne by the gas company holding the approval for the activity.*** Agreed;
17. ***The payment of all duties and taxes payable in respect of the Land access agreement.*** Agreed;
18. ***Clear dispute resolution mechanisms.*** We seek a dispute resolution based on a mediation system. We do not support – we do not want an arbitration system. We think mediation will work effectively.
19. ***Clear Termination mechanisms.*** Agreed;
20. ***Agreement on access points, roads and tracks prior to entering the Lease.*** Agreed. Also require the government not to allow for the approval for regulated activities including fracking on government controlled land without consultation with a neighbouring property. For example, there may be a corridor which is government land but adjoins a pastoral property. The land holder may use that corridor for access and should be consulted before any approvals are given;
21. ***Induction training for all employees or contractors of the gas company.*** Agreed. Develop an induction template;



22. ***An obligation to prevent the spread of weeds, feral pests and diseases, and to ensure biosecurity.*** Agreed. Plans need to be part of initial Land Access discussions;
23. ***Clear obligations with respect to rehabilitation and remediation, including the provision for the independent assessment of all rehabilitation and remediation.*** Agreed. There has to be a mechanism to ensure the rehabilitation has been completed and there has to be an outline of the way the rehabilitation bonds will be collected and accessed when it does not occur correctly;
24. ***The ability to renegotiate the land access agreement after a specified period of time, including post-exploration and pre-production.*** Agreed. Renegotiation of land access agreements after specified times is a must so that the changing landscape can be addressed.

Compensation

The Pastoralist must be compensated for all impacts associated with access to private pastoral land. This compensation must include not only direct impacts to the land asset, but the impacts to the business operations on the land, and the indirect / consequential impacts on the Pastoralist, the business and the land.

Heads of Compensation to include:

- (a) deprivation of possession of the whole or any part of the surface of the land; and
- (b) damage to the surface of the land; and
- (c) damage to any improvements on the land; and
- (d) severance of the land from other land of the owner or occupier; and
- (e) loss of amenity, including recreation and conservation values; and
- (f) diminution of the use made of any improvements on the Land; and
- (g) loss of opportunity to make any planned improvement on the land; and
- (h) any decrease or diminution in the market value of the owner or occupier's interest in the land, including that land owned by the owner or occupier not directly impacted by activities; and
- (i) Deprivation of use or enjoyment of the land, including the improvements on the land;
- (j) all loss or expense that arises as a result of a Tenement Holders access to the land, including consequential losses;



- (k) where it is necessary for the owner or occupier of land to obtain replacement land of a similar productivity, nature and area as a result of any activities, all costs incurred or likely to be incurred by the owner or occupier in:
 - a. obtaining replacement land;
 - b. the owner's or occupier resettlement; and
 - c. the relocation of the owner's or occupier livestock or other chattels as at the date;must be paid by the tenement Holder

- (l) if the owner or occupier of land proves that the status and use / vertical integration currently being made (prior to any access by the Tenement Holder) of certain land is such that a premium should be applied to any compensation determined under (a)-(k);

- (m) compensation determined under (a)-(l) must be increased by no less than 10% by way of solatium to compensate the owner or occupier for intangible and non-pecuniary disadvantages to reflect the compulsory nature of actions to be taken by the Tenement Holder that are not otherwise compensable.