Legislation Scrutiny Committee
Petroleum Legislation Miscellaneous Amendments Bill 2019
Responses to Written Questions from the Department of Primary Industry and Resources

Clauses 6 and 7 – Section 16 amended (Application for exploration permit); Section 16A inserted

1. Several submitters considered that the Act should provide for an explicit obligation on the Minister to consider matters of suitability when making a determination of whether land is suitable for release. While noting that proposed s 16(2A) guides the submission process with reference to the criteria specified in Inquiry Rec. 14.2, the Environmental Defenders Office NT (EDONT) did not consider this to carry the same legal weight as mandating that the Minister determine whether the applicable criteria had been met.

   a. *Please clarify how and at what point(s) the Minister takes into consideration the matters specified in Inquiry Rec. 14. 2 (i.e. prospectivity of the land for petroleum; possibility of co-existence between onshore gas industry and any existing industries in the area; and whether land is an area of intensive agriculture, high ecological value, high scenic value, culturally significant or strategic significance).*

   The Northern Territory Government and Commonwealth Government, through their geoscience initiatives, has information of the prospectivity (or not) of areas of the Northern Territory. That information has already been utilised in the development of the petroleum reserved block policy in accordance with recommendation 14.3 and 14.4 of the Final Report of the Scientific Inquiry into Hydraulic Fracturing in the Northern Territory ***(Inquiry)***. Areas which are non-prospective are being reserved under section 9 of the *Petroleum Act 1984* ***(Act)*** in accordance with that policy. Following the complete implementation of the petroleum reserved block policy all non-prospective areas will not be available for release under section 16 of the Act.

   Before the Minister gives notice under section 16 (as amended) the Minister will consider all the available geoscience information on prospectivity. Proposed section 16(2)(da) requires the Minister to provide reasons for why the specified blocks are intended to be released for exploration.

   After the application period has ended for any land release under section 16 the Minister will:

   (i) consider any additional matters of prospectivity based on applications (if any) received; and

   (ii) consider matters in relation to co-existence including existing or proposed industries for a specified block and whether the land is suitable for exploration based on submissions received under proposed section 16(2A).

   Proposed section 16A requires the Minister to consider the applications and submissions received before determining which blocks (if any) are to be released for exploration. The Minister must publish their decision including their reasons as to why the blocks are appropriate for exploration. This determination is subject to judicial review.

   b. *How is the recommendation requiring that the Minister consider these criteria being implemented by the Bill?*

   In proposed section 16(2A)(b) of the Act, the guiding parameters for submissions are consistent with the criteria referenced in Inquiry recommendation 14.2. That is the submissions may submit that land is not suitable for exploration because the land is:

   (i) subject to intensive agriculture; or

(ii) of high ecological value; or

(iii) of high scenic value; or

(iv) culturally significant; or

(v) of strategic importance to nearby residential areas .

c. *Is there anything in the Bill that actually requires the Minister to consider these criteria other than the consideration the Minister would give to the submissions arising from the notification process (proposed s 16A)?*

Proposed section 16A of the Act states that 'the Minister must consider any applications received and any submissions received.' The Minister is required, by law and in accordance with good decision-making processes, to consider on their merit all the submissions in relation to co-existence and suitability for exploration, received during the notification process. In addition, the manner in which the Minister considered the submissions will be made explicit in the statement of reasons which must be published under proposed section 16A(d) of the Act.

The Inquiry Panel (at page 384 of the Final Report) noted that issues of co-existence and land suitability would be identified on a case-by-case basis and at a particular point in time depending on what the current and proposed land use in the area is or will be. The Inquiry also anticipated the involvement of the community and other stakeholders in this process.

2. Lock the Gate Alliance and the Arid Lands Environment Centre (ALEC) have commented that the Bill should be amended to place an obligation on the Minister to not release any block where co-existence is not possible. Inquiry Rec. 14.3 explicitly states that the Government should not approve any application for an exploration permit in relation to areas that are not prospective for onshore shale gas or where co-existence is not possible.

a. *What, if any, provisions are included in the Bill to ensure that no land will be released where co-existence is not possible?*

Co-existence is a matter of assessment for an individual area on a case by case basis and at the point of time of proposed release. This was outlined by the Inquiry Panel in the Final Report (p 384). The proposed process under section 16 of the Act (as amended) seeks input from both the petroleum industry and the community and other stakeholders in relation to matters including prospectivity, co-existence and land suitability for exploration in order to determine this matter. The Minister will consider the input of the petroleum industry the community and other stakeholders through the proposed amended section 16 and section 16A processes.

Existing applications for exploration permits have already had non-prospective areas declared to be reserved blocks under section 9 of the Act. These have been published in the Government Gazette. These non-prospective areas are not be available for exploration or production activities.

Inquiry recommendation 14.3 has been enacted through the petroleum reserve block policy (developed in accordance with Inquiry recommendation 14.4) and, under section 9 of the Act, areas of land have been reserved. The petroleum reserve block policy can be found at the following website: https://nt.gov.au/industry/mining-and-petroleum/land-tenure-and-availability/petroleum-reserved-blocks.

Reserved blocks are those areas which the Inquiry considered to be permanently unsuitable for any type of exploration activity because the petroleum industry is unlikely to be able to co-exist with those uses of land (such as where land is non-prospective, parks and reserves, towns and residential areas) . Areas of land which are reserved cannot be subject to release under section 16 of the Act.

Pursuant to the petroleum reserve block policy the Minister has, at the date of this response, declared reservations under section 9 of the Act over 94 areas; this equates to approximately 9% of the Territory's land mass. The Department is continuing to work towards declaring reserved blocks in accordance with the policy.

3. The Environmental Defenders Office has recommended removing the words "to nearby residential areas" in note (e) *Note for subsection (2A)(b)* because they consider that land may have strategic significance to the community more broadly and should not be limited to nearby residential areas.

a. *What is the rationale for limiting "strategic significance" to nearby residential areas, particularly as Inquiry Recommendation 14.2 does not provide such a limitation?*

The rationale for drafting proposed note (e) and limiting "strategic significance" to nearby residential areas was to align the drafting with recommendation 14.4 (which refers to areas that have assets of strategic importance to nearby residential areas).

b. *What would be the effect of removing the words "to nearby residential areas" from the note?*

The effect of removing the words 'to nearby residential areas' from note (e) would be create a broader capacity for submissions under section 16(2A)(b). It would also introduce a greater level of subjectivity as to what may be considered of strategic significance.

4. EDONT commented that while s 16(2)(dc) states that the submission period is the same as the application period, the Bill does not amend the Act to specify the length of the application period.

a. *How long will the submission and application period be?*

Section 16 of the Act does not currently specify the length of the application period, neither the minimum period or the maximum period. The Bill does not amend that position.

How long the application period (and therefore the submission period) will be determined on a case by case basis and depends on a range of factors including the known features of the area and the number of specified blocks (and therefore the size of the area). Historically, applications for land release have been a competitive process with companies from Australia and overseas lodging applications. The Department advises that, in a past example of a land release under section 16 of the Act, the application period was 6 months.

b. *Why is this not included in the Bill?*

As described above the application period is not specified in the Act. Specifying the length of the application period or the submission period was not considered to be required by the Inquiry Panel and was not a recommendation in the Final Report.

Additionally an application period is generally lengthy given petroleum companies are required to submit an application that considers the known geological information available and contains a proposed technical works programme including costings for exploration. Substantial time is required to develop such a programme and complete an application given the competitive process.

5. Proposed s 16(1) requires that the notice inviting applications for the grant of an exploration permit be published in a Territory wide newspaper. Both EDONT and ALEC have requested that the Bill be amended to also require the notice be published on a government website while the Northern and Central Land Councils (NLC/CLC) have considered that notification should also be provided to relevant landowners and native title parties.

   a. *What would be the effect of amending the Bill to require the notice to also be published on a relevant government website?*

      The Department advises that, in a past example of a land release under section 16 of the Act, the Department did publish the notice online. The Bill could be amended to require the publication of the notice on the Agency's website.

      The Minister is already required to publish certain determinations on the Agency's website including under section 15A(5) of the Act (in relation to a determination as to an appropriate person) and proposed clause 16A(d) (in relation to a determination of release of blocks).

   b. *What would be the effect on the operation of the Bill of requiring the Minister to notify relevant landowners and native title parties?*

      The effect of requiring the Minister to notify relevant landowners and native title parties would be to impose an additional obligation on the Minister (and the Department). The Department considers that if the notice is published in a Territory wide newspaper, and online (as indicated above), then there is sufficient opportunity for relevant landowners and native title parties to be notified and become engaged in the process.

      As a matter of Departmental practice, in a past example of a land release under section 16 of the Act, the Department did notify landowners and the Land Councils of the release.

Clause 8 - Section 18 amended (Notice of application for exploration permit)

6. Clause 8 removes the limitation on who is entitled to lodge an objection to the grant of an exploration permit but does not appear to provide any guidance regarding the grounds on which an objection can be made. APPEA have requested that such guidance be provided.

   a. *Is there anything in the Bill which would ensure that objections are kept to relevant grounds?*

      No, there is nothing in the Bill which would ensure that objections are kept to relevant grounds.

      Public consultation (including through a process of submissions or objections) allows people to put forward their view on a particular issue - in this case the intention to grant an exploration permit. The Act (and the Bill) provides that the Minister will consider all objections before them without limitation.

Currently section 18(1)(e) of the Act permits objections from a person who has an estate or interest in relation to the land comprised in, or land contiguous with land comprised in an application area but the Act does not provide any guidance on the grounds on which an objection can be made.

b. *What would be the effect of including in the Bill guidance regarding the grounds on which an objection can be made?*

If the Bill was amended to provide guidance regarding the grounds on which an objection could be made it would necessarily restrict the type and content of objections. An example of the type of guidance which may be appropriate is that objections can only be made on matters relating to the effects of exploration (as opposed to production) as the notice is for an application for an exploration permit - it does not mean petroleum production activities will occur.

Clauses 10-12 - Amendments to sections 28, 41, and 55 relating to variation of conditions to exploration permits, retention licences and production licences respectively.

7. Protect NT has requested that an additional amendment be made to clauses 10-12 requiring that applications to vary conditions in relation to exploration permits, retention licences and production licences be published online and opened to public comment.

a. *Please clarify why applications for exploration permits and for variation of conditions to exploration permits, retention licences and production licences, are not required to be published and made available for public comment.*

There is an ambiguity between the Act and the *Petroleum Regulations 1994* in relation to the power to prescribe fees for an application to vary the conditions of an exploration permit, an application to vary the conditions of a retention licence and an application to vary the conditions of a production licence. Fees for these applications are prescribed in Schedule 1 of the *Petroleum Regulations 1994* (761 revenue units/$920.00)

The amendments made at clauses 10-12 in relation to sections 26, 41 and 55 of the Act are technical amendments to ensure that fees charged under the *Petroleum Regulations 1994* are properly empowered.

The Inquiry's Final Report did not recommend that applications for exploration permits (and variations of conditions for exploration permits, retention licences and production licences) should be published and available for public comment. Additionally the applications contain commercial in confidence and confidential information. Following changes to the Act pursuant to this Bill (clause 8 amending section 18) there will be an ability for public comment on the intention to grant an exploration permit. Additionally if applications are made to vary conditions of an exploration permit, retention licence or production licence then a public comment process creates concerns about sovereign risk.

Clause 16 - Section 81 amended (Compensation to owners)

8. While not objecting to proposed s 81(1)(c), EDONT and Lock the Gate consider that all matters for which compensation is available should be included in the Act rather than the regulations . In particular, they recommend including diminution of, and loss of, land value.

a. *What criteria will be used to determine the types of matters that will be included in the regulations?*

The amendments to section 81 are to allow Regulations to be made in relation to land access agreements and the 24 standard minimum protections which includes certain types of compensation (including that which is requested by EDONT and Lock The Gate). Inquiry recommendation 14.7 specifies the 24 standard minimum protections includes compensation - being a minimum amount of compensation payable for each well drilled and compensation for any decrease in the value of the land.

b. *What, if any, consultation will be conducted on the regulations?*

The Department has established a working group with the two key representative stakeholder bodies being the Northern Territory Cattlemen's Association ***(NTCA)*** and the Australian Petroleum Production and Exploration Association ***(APPEA)*** to discuss Inquiry recommendations 14.6 and 14.7.

The Department will continue to liaise and consult with both NTCA and APPEA regarding the draft regulations. Additionally given that the NTCA and APPEA do not represent all owners of a pastoral lease and petroleum companies (respectively) the Department has considered the need to consult directly with all owners of a pastoral lease and companies with a granted exploration permit on the draft regulations.

c. *What would be the effect on the operation of the Bill of including an additional subsection after s 81(1)(b) providing for compensation to be available for diminution of, and loss of, land value?*

The Department's intention is to legislate land access agreements through amending the *Petroleum Regulations 1994*. Inquiry recommendation 14.7 requires that land access agreements include 24 standard minimum protections and those protections includes compensation for diminution of land value. Given the Department's intention, the effect of amending the Bill (to deal with compensation for diminution of land value) would be to fragment the regulation of land access throughout the Act and the Regulations .

9. EDONT has recommended that proposed s 81(7A) be amended to state that any compensation scheme in the regulations is a "minimum mandatory" compensation scheme, consistent with Inquiry Recommendation 14.8.

a. *What would be the effect on the Bill of amending proposed s 81(7A) to specify that any compensation scheme in the regulations is a minimum mandatory compensation scheme?*

Inquiry recommendation 14.8 requires a minimum mandatory compensation scheme to be enacted prior to the grant of any further exploration permits or production approvals. The proposed amendments to section 81 is to allow the significant policy work to be undertaken to implement recommendation 14.8 through regulations.

The recommendation must be completed before any further exploration permits are granted or any further production approvals are granted. In relation to the Beetaloo Sub-Basin it is likely to that production approvals are at least 3 years away (due the Inquiry's recommendation that all recommendations be completed before any further production approvals are considered) and during that time the significant consideration of the range of relevant policy issues will occur.

10. Lock the Gate Alliance and Marylou Potts Pty Ltd recommended that the Bill be amended to compensate landowners/pastoral lessees for any reasonable costs they incur in relation to the negotiation of a land access agreement, disputes and Tribunal proceedings. Although not specifically included in Inquiry Rec. 14.8, there appears to be an intention that a gas company compensate pastoralists for fees incurred as a result of the negotiation process, with text immediately preceding Inquiry Rec. 14.8 stating that "reasonable fees for negotiating any statutory land access agreement should also be payable by the gas company" (re costs incurred by pastoralists) (p. 397).

a. *What consideration has been given to including such fees as a matter for compensation in the Regulations?*

The Northern Territory Government has accepted all 135 recommendations of the Inquiry's Final Report and is implementing those recommendations in accordance with the Government's Implementation Plan.

The 24 standard minimum protections specified for Inquiry recommendation 14.7 require that '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'. Consistently with the other 23 standard minimum protections this will be implemented through the *Petroleum Regulations 1994.*

b. *What would be the effect on the operation of the legislation if the Bill were to be amended to include compensation for reasonable costs incurred by pastoral lessees?*

The effect on the operation of the Act would be patch-work of obligations throughout the Act and the Regulations. As advised above the reasonable fees of the pastoral lease holder in negotiating a land access agreement will be required to be met by the petroleum company.

Clause 18 - Section 82A inserted

11. The Australian Petroleum Production and Exploration Association (APPEA) commented that under s 140 of the *Northern Territory Civil and Administrative Tribunal Act 2014,* NTCAT can review its own decisions. APPEA recommended that NTCAT be required to provide original jurisdiction and not be required to review their own decisions under s 82A as this would be "consistent with other pieces of NT legislation and still allows for the review of decisions by the Supreme Court".

a. *What would be the effect of implementing this recommendation?*

The effect of implementing this recommendation would be that the Northern Territory Civil and Administrative Tribunal ***(NTCAT***) retains its original jurisdiction to determine certain disputes under the Act (such as a dispute in relation to compensation under section 81 of the Act) but that the internal review provisions of the *Northern Territory Civil and Administrative Tribunal Act 2014* do not apply. The *Northern Territory Civil and Administrative Tribunal Act 2014* provides for appeals to the Supreme Court.

Clause 19 - Section 111 replaced

12. The EDONT and Lock the Gate Alliance recommended that proposed s 111(1)(b) be amended so that the wording includes the full range of habitable dwellings and facilities identified in Inquiry Recommendation 10.2 and section A.3.1(f) of the Code of Practice under regulation 4A of the Petroleum (Environment) Regulations 2016.

a. *Why does proposed s 111(1)(b) limit the set-back requirements to "land being used as a residence" instead of including the full range of habitable dwellings and facilities identified in Inquiry Recommendation 10.2?*

Please see answer below.

b. *What would be the effect on the operation of the Bill of amending this proposed section in line with Inquiry Recommendation 10.2?*

The Department agrees that section 111(1)(b) should be amended, subject to any drafting requirements , to refer to habitable dwelling (including all buildings or premises where people reside or work, schools and associated playgrounds, permanent sporting facilities and hospitals or other community medical facilities) in accordance with recommendation 10.2. This would make section 111 consistent with the Code of Practice: Onshore Petroleum Activities in the Northern Territory ***(Code of Practice).***

1 3. The Northern and Central Land Councils noted that the *Native Title Act 1993* (NTA) provides registered native title claimants with the same procedural rights as native title bodies, including the right to negotiate an agreement with gas companies for the grant of petroleum tenements and recommended that proposed sections 111(2)(b) and (3)(b) be amended to include registered native title claimants as well as relevant registered native title body corporates.

a. *Please comment on their recommendation and clarify the effect on the operation of the Bill of implementing this recommendation.*

The Department agrees that section 111(2)(b) and 3(b) should be amended to refer to registered native title claimants (subject to any drafting requirements).

For context the Bill replaces section 111 of the Act. The reference to a registered native title body corporate was inserted into the Act by the *Lands and Mining (Miscellaneous Amendments) Act 1998.* The "future acts" regime under the *Native Title Act 1993* (Cth) does not differentiate between native title holders (who, as required by the *Native Title Act 1993* (Cth), have established a registered native title body corporate) and registered native title claimants, notwithstanding that Territory legislation may do so.

The *Native Title Act 1993* (Cth) provides that native title holders (those who have had their native title rights and interests determined by the Federal Court) and registered native title claimants (those who have not yet had their native title rights and interests determined by the Federal Court) have specified procedural rights under the "future act" regime when an activity or development is proposed to be undertaken over an area covered by a native title determination or a registered native title claim. If procedural rights are available, the contents of those rights vary depending on the type of future act. Procedural rights include, but are not limited to, a right to be notified, a right to object to the future act or any other right that is available as part of the procedures that are to be followed when it is proposed to do the act.

If the Bill was amended to require, at section 111, approval from both registered native title body corporates and registered native title claimants that would mean additional approvals would be required if certain activities would be undertaken within certain distances of certain infrastructure; however this is the consistent with the position at law under the *Native Title Act 1993* (Cth).

14. The Northern and Central Land Councils commented that only one of the actions identified in Scientific Inquiry Rec. 7.11 is implemented in proposed s 111 and query how the remaining actions will be addressed. They further comment that Rec. 7.11 cannot be fully implemented unless the Code of Practice : Onshore activities in the Northern Territory, is amended to mandate that all wells are constructed to at least Category 9 (or equivalent) as specified in the second dot point of Rec. 7.11.

a. *What is the current status regarding implementation of the actions specified in Inquiry Rec. 7.11?*

As reported on the Inquiry Implementation website (address: https://hydraulicfracturing.nt.gov.au/home) Inquiry recommendation 7.11 has been completely implemented. The amendments to section 111 were to ensure consistency between the Act and the Code of Practice.

Inquiry recommendation 7.11 required that a well subject to hydraulic fracturing must be constructed to at least a category 9 (or equivalent). A category 9 well is a technical and professional reference to a well with certain features that was put before the Inquiry. The term category 9 has no universal meaning. The features of a category 9 well are features that, at a minimum, must be in place to protect an aquifer from hydrocarbons and flowback fluids. The principles and mandatory requirements under the Code of Practice (see Part 8.4) provide for wells that are constructed to meet or exceed the category 9 requirements and that some wells may have more stringent requirements depending on the relevant geology and hydrogeology.

The Code of Practice (made by the Minister under regulation 4A of the *Petroleum (Environment) Regulations 2016)* in fact goes further than what is required by Inquiry recommendation 7.11 (in referencing a category 9 well) by also requiring isolation between aquifers as well as protecting an aquifer from hydrocarbons and flowback fluids. For example:

(i) clause 8.4.2.1 provides that it is a principle that the protection of aquifers is integral and that protection requires all aquifers in the area must be isolated from the surface and each other and any hydrocarbon bearing zones using appropriate barriers;

(ii) clause 8.4.3.1 provides that it is a principle that the well barriers are designed to prevent unintentional influx, crossflow to other formation lawyers and outflow to the extern al environment;

(iii) clause 8.4.3.2(b) provides that wells must be designed such that they are constructed, maintained and decommissioned in such a manner that it can be demonstrated there are at least two verified barriers between a hydrocarbon bearing zone and aquifers and the surface;

(iv) clause 8.4.3.2(d) provides that wells must be designed such that they are constructed, maintained and decommissioned in such a manner that it can be demonstrated that all aquifers are isolated from each other and the surface by a minimum of one verified well barrier;

(v) clause 8.4.7.2 provides that for top of cement requirements, surface casing must be designed to be cemented to the surface and any intermediate and production casing strings must overlap with the shoe of the previous casing string by a minimum of 200 metres.

The Independent Officer to oversee implementation of the recommendations noted the *Petroleum Legislation Amendment Bill 2018* (which commenced in April 2019) gave legal authority to the Code of Practice and that the Code was central to a range of recommendations including recommendation 7.11.

b. *Are any amendments proposed to the Code of Practice to mandate that all wells are constructed to at least Category 9 (or equivalent)? If not, why is this the case?*

As per the above response at 14(a) above, no amendments to the Code of Practice are proposed or required to be made. Inquiry recommendation 7.11 is complete.

Clause 21 - Section 118 amended (Regulations)

15. The Scientific Inquiry Panel stated: "It is the Panel's strong view that, prior to any access to a Pastoral Lease, a signed land access agreement (statutory land access agreement) must exist between the Pastoral Lessee and the gas company, and moreover, that the obligation to finalise such an agreement must be statutorily mandated." (p 394)

a. *Why does the Bill not amend the Act to require agreements to be finalised prior to any access to a pastoral lease being granted?*

Inquiry recommendation 14.6 provides the following:

> That a statutory land access agreement be required by legislation. That prior to undertaking any onshore shale gas activity on a Pastoral Lease (including but not limited to any exploration or production activity), a land access agreement must be negotiated and signed by the Pastoral Lessee and the gas company. That breach of the land access agreement be a breach of the relevant exploration or production approval giving rise to the onshore shale gas activity being carried out on the land. (emphasis added)

The Government, in accordance with its commitment to implement all 135 recommendations of the Inquiry, will implement Inquiry recommendation 14.6 through amending the *Petroleum Regulations 1994* to impose a comprehensive regime for land access and land access agreements.

The Inquiry outlined in Chapter 14 of the Final Report the existing regulatory scheme for the petroleum industry noting that the Act sets out a statutory regime for the granting of petroleum interests and titles as well as an assessment of proposed technical works within these titles. The Final Report also noted that the Act does not set out a framework for the management of environmental risks and impacts and this is done by the *Petroleum (Environment) Regulations 2016.* Despite an extensive 18 month Inquiry, and the central importance of environmental regulation, the Inquiry did not recommend that the matters regulated by the *Petroleum (Environment) Regulations 2016* should be in the Act - the Inquiry was satisfied that the obligations and requirements under the Regulations were legally effective, binding and appropriate for regulations (as opposed to the Act). Similarly the Inquiry did not recommend land access agreements, also of central importance during the Inquiry, needed to be specified in the Act. The Inquiry, in the main, sought to focus on outcomes and objectives as opposed to being prescriptive as to how the objectives were achieved - that is land access agreements must be legislated but not how the regulatory regime was to be amended.

For example and consistent with the above, the Inquiry noted the existence of the Schedule of Onshore Petroleum Exploration and Production Requirements ***(Schedule);*** that it was not legislation and did not have force. Recommendation 14.17 (to be completed prior to the grant of any further production approvals and scheduled to be implemented by 2022) provides that the Schedule is to be repealed and replaced by legislation - the Inquiry's Final Report points that these matters are appropriately dealt with by regulation and point to regulations in other jurisdictions such as the *Offshore Petroleum and Greenhouse Gas Storage (Resource management and Administration) Regulations 2011* (Cth).

The Inquiry Panel did not, unlike other recommendations such as recommendation 14.11 and 14.23, specify that the Act had to be amended. This was not an oversight of the Inquiry but a deliberate choice given the existing complex regulatory regime and the difficulty in retrofitting that existing regime with a land access regime (that will also be naturally complex given the subject matter involved).

The Inquiry's recommendation 14.6 stated that "a statutory land access agreement be required by legislation". Given the complexity of implementing a comprehensive land access regime, including 24 standard minimum protections, the Government is of the firm view that the Inquiry Panel's recommendation can be implemented (in full and in the spirit of the recommendation) by its intention to develop and draft regulations requiring a land access agreement to be in place when accessing pastoral leases.

The Government firmly maintains that a requirement for a land access agreement in Regulations is just as lawful, legal, binding and appropriate as if it was in the Act. Other important matters are legislated through subordinate legislation and regulations, for example:

(i) The requirement for an Environment Management Plan to undertake regulated activities on an exploration permit is specified in regulation 6 of the *Petroleum (Environment) Regulations 2016.*

(ii) The Australian Road Rules (including rules in relation to obeying the speed-limit) are made under the *Traffic Regulations 1999.*

(iii) The calculation of annual risk based licence fee for liquor licences (a key recommendation of the Final Report of the Alcohol Policies and Legislation Review) is provided for in the *Liquor Regulations 2019.* The Regulations also specify the conditions of liquor authorities issued under the Act.

(iv) The registration of environmental practitioners is provided under the *Environment Protection Regulations* (as published for consultation) as opposed to the *Environment Protection Act 2019* (to be commenced).

(v) Major hazard facilities (which includes large industrial chemical storage sites) are identified, licensed and regulated wholly through the *Work Health and Safety (National Uniform Legislation) Regulations 2011* and not through the Act.

Consistently with the above theme, the requirement for an environmental plan for the petroleum industry offshore is in the *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009* (Cth).

The Department also notes that the process to makes regulations is a robust process and includes a scrutiny of the regulations given:

(i) The Minister must approve the drafting instructions for any regulations.

(ii) Drafting in undertaken by the Office of Parliamentary Counsel (which also is responsible for drafting of Acts in the Northern Territory).

(iii) Draft regulations must be lodged with the highest bodies of the Executive arm of Government.

(iv) The Administrator, acting on the advice of the Executive Council, makes the regulations.

(v) Under the *Interpretation Act 1978* the regulations must be tabled in the Legislative Assembly within 3 sittings days after being made.

(vi) Pursuant to the rules of the Assembly the regulations are referred to the Public Accounts Committee (a committee of the Assembly which, like the Legislation Scrutiny Committee, undertakes a thorough and robust scrutiny process in relation to subordinate legislation). The Committee reports to the Assembly as to whether the regulations should be disallowed.

(vii) The Assembly may disallow subordinate legislation by motion.

Additionally from a practical perspective, the recommendations from the Inquiry for the standard minimum protections required further consideration and policy development such should a land access agreement be required not only on a pastoral lease but other forms of tenure, such as a Crown lease, where pastoral or agricultural activities are ongoing. Given the above the Government is of the view that the subject matter, land access agreements, are an appropriate subject matter for regulation. The Department also notes, from its consultation with the NTCA and APPEA, that there is support from both organisations to land access being prescribed in Regulations (as opposed to the Act).

b. *Why does the Bill not amend the Act to include standard minimum protections for pastoralists as recommended in recommendation 14.7?*

The Department has amended section 118 of the Act to allow regulations to be made to include the standard minimum protections for pastoral lease holders as recommended in Inquiry recommendation 14.7. As noted above the Department intends to create a comprehensive land access regime for access to pastoral leases including the negotiation with pastoral lessees.

c. *Why does the Bill not specify that* a *breach of the land access agreement constitutes* a *breach of the relevant exploration or production approval?*

This matter will be dealt with in the Regulations. The concern in amending both the Act for the above matters and implementing parts of the scheme through the Regulations is it is taking a fragmentary approach to the recommendation. Providing for land access matters through the Regulations means, as a matter of access to justice, that the whole regime is easily accessible and understood.

16. Protect Country Alliance commented that the Bill does not address the risk that a pastoralist who becomes party to a land access agreement may be waiving their rights to compensation under sections 81 and 82 of the Act.

a. *Could* a *land access agreement affect the pastoralist's right to compensation under sections 81 and 82?*

No.

Section 81 and 82 of the Act provide that the holder of a petroleum interest must pay:

(i) compensation for deprivation of use or enjoyment of the land (including improvements on the land); and

(ii) compensation for damage, caused by the permittee or licensee, to the land or improvements to the land; and

(iii) compensation for the loss or damage in respect of land which is injured or diminished in value as a result of the exercise of a right of access; and

(iv) compensation for the effect of the construction of a road or other work carried out to ensure access on native title.

There is no intent, and the Bill does not provide that a land access agreement automatically waives a party's right to compensation under the Act. A land access agreement may, depending on the mutual wishes of parties to that agreement, only deal with matters of access (such as closing gates and negotiating access points) and will not deal with compensation other then as provided for by the 24 standard minimum protections. The 24 standard minimum protections provide that a land access agreement must deal with compensation for any decrease in the value of the land and a minimum amount of compensation payable for each well drilled. These forms of compensation are in addition to what is currently compensable under section 81 and 82 of the Act which described above.

b. *How does the Bill deal with this potential risk?*

The Department does not consider there is a potential risk as described above. A land access agreement can only affect a pastoral lease holder's right to compensation under sections 81 and 82 under the Act if the pastoral lease holder makes an agreement that their rights to compensation under the Act are met upon payment of monies (or construction of improvements and infrastructure) under that agreement. There will be no requirement that a land access agreement must exhaustively deal with compensation under section 81 and 82 of the Act.

In addition this potential risk is further decreased by the ability of the pastoral lease holder to obtain legal advice and other expert advice in relation to negotiating a land access agreement and their rights under the Act. Under the 24 standard minimum protections the petroleum company is responsible for the payment of such fees.

17. Protect Country Alliance indicated that some potentially disadvantageous land access agreements have been imposed on pastoralists and have requested that "any agreements signed under duress be subject to review and extinguishment if requested by the landholder".

a. *If the Scientific Inquiry Panel's recommendation is implemented (i.e. that no onshore shale gas activity can occur on* a *pastoral lease unless* a *statutory land access agreement has been signed by both parties), what happens in relation to any existing agreements relating to land access?*

The Department is not a party to any existing agreements reached and is not aware of the terms and conditions of such agreements between pastoral lease holders and petroleum companies - this is because it is not required by the Act.

As is normal procedure when implementing new legislative requirements the Department does not intend to disturb agreements already made. The Department notes there are already general law remedies if a party feels they have been subject to undue influence or unconscionable conduct.

The Department's general understanding, from being briefed by external stakeholders, is that most existing land access agreements are not long-term agreements. If an existing agreement is not yet expired, the parties to that agreement could agree to terminate that agreement or allow the agreement to expire (in accordance with the agreement's terms and conditions) and then, if access is still required to the property, the parties would negotiate a land access agreement in accordance with the procedures to be implemented under the *Petroleum Regulations 1994.*

18. Protect Country Alliance commented that companies unable to demonstrate the financial capacity required to remediate sites, pay compensation to landholders or pay penalties for damage or regulatory breaches incurred during exploration activity should be precluded from forming land access agreements. They stated that there are multiple examples of pastoralists being asked to sign agreements with shelf companies on behalf of larger companies, presumably to avoid liabilities and requested that this practice be ended through the drafting of this Bill.

    a. *What assurance will pastoralists have, when entering into a statutory land access agreement, that the entity with whom they are entering into this agreement has the financial capacity to meet compensation obligations or remediate any damage done?*

    At the time of grant of an exploration permit or licence the Minister, under the Act, is required to consider that the holder of an interest has the technical capacity and financial resources to carry out the proposed technical works. The Minister is also required, under changes made to the Act by the *Petroleum Legislation Amendment Act 2019,* to consider whether the holder of that interest is an appropriate person. Additionally a petroleum company is required to lodge environmental securities with the Department in relation to their regulated activities on a pastoral lease. The money is held by the Department until the rehabilitation and remediation for the regulated activities has occurred (and been confirmed to have occurred to the requisite standard by the Department of Environment and Natural Resources).

    The 24 standard minimum protections provide that a land access agreement must provide appropriate guarantees where the holder of the exploration permit is not undertaking the activities but a contractor is. That is the holder of the exploration permit must guarantee any obligations (including compensation) under any land access agreement.

    b. *Under the Bill, will it be possible for a statutory land access agreement to be made with an entity that might not be able to fully remediate any damage?*

    No, please see the answer above. The Act currently has in place processes to ensure that the petroleum company is an appropriate person, has the financial resources and technical capacity to undertake the work and all works undertaken on an exploration permit are secured by an environmental security bond held by the Department.

19. Scientific Inquiry Recommendation 14.13 requires the public disclosure of all financial assurances and the calculation methodology, with the report noting that the financial assurance framework should clearly set out how each security is calculated.

    a. *Under proposed s 118(68) can the regulations provide for the public disclosure of all financial assurance and the calculation methodology?*

    Yes.

    b. *If so, will the regulations provide for such disclosure?*

The Department of Environment and Natural Resources has commenced work in relation to environmental securities under the *Petroleum (Environment) Regulations 2016.* The Regulations will provide for the public disclosure of all financial assurances and the calculation methodology.

20. Regarding proposed sections 118(2)(pa) and 118(6A), the Northern and Central Land Councils commented that most pastoral leases in the NT are also subject to registered native title claims or determinations and that it is not clear whether these amendments contemplate any requirements for agreements with native title holders. They note that requirements for land access agreements with traditional Aboriginal owners and native title holders are commonly, but not always, provided for under the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth)(ALRA) and the *Native Title Act 1993* (Cth) (NTA). They seek clarity on how the regulations might address "situations where access agreements between native title holders and gas companies should be required in the absence of or in addition to agreements required under the ALRA or NTA"

a. *Does the Petroleum Act 1984 make any provision for land access agreements with traditional Aboriginal owners and native title holders or is this considered to be adequately covered under the ALRA and NTA?*

Not specifically. The *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) and the *Native Title Act 1993* (Cth) are comprehensive commonwealth legislative schemes that provide a framework for agreements to be reached with traditional Aboriginal owners and native title parties including for the grant of exploration permits, retention licences and production licences. Such agreements are generally thorough and wide-ranging and typically deal with a broad range of matters including access, cultural heritage protection, employment and remediation (to name only a few of the topics generally covered).

Further the Inquiry Panel noted in the Final Report that "the Panel does not believe that the laws that govern land access to pastoral land should be the same as the laws that govern access to native title or Aboriginal land because the underlying property interests of pastoral leases, native title and Aboriginal land are very different" (page 387).

b. *Please comment on NLCICLC's query regarding how the regulations might address "situations where access agreements between native title holders and gas companies should be required in the absence of or in addition to agreements required under the ALRA or NTA".*

All exploration permits, retention licences and production licences granted under the Act were granted in accordance with the requirements of the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) and the *Native Title Act 1993* (Cth) as applicable.

Given the comprehensive commonwealth legislative scheme that applies under the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) and the *Native Title Act 1993* (Cth) the Act does not currently provide for land access agreements with native title holders. Following the 18-month Inquiry, the Inquiry Panel did not make recommendations in the Final Report in relation to this issue; the Government's first priority is to implement the recommendations of Inquiry to create the framework that will mitigate the Inquiry's identified risks associated with the onshore petroleum industry to an acceptable level.

For example the Government is currently working on recommendation 11.6 which provides that reliable, accessible, trusted and accurate information about any petroleum industry is to be developed to allow for effective communication with all Aboriginal people who will be affected by the industry.

General

21. APPEA noted that there is no offence provision to cover circumstances where a person interferes with authorised activities being conducted on a mineral title; or the exercise by the titleholder of a right under the mineral title and recommended that a commensurate provision be included in the Act.

    a. *What would be the effect on the operation of the Bill of including an amendment to this effect?*

    This amendment could be incorporated into the Bill; it would mean that the Act would be consistent with other resources legislation (see section 107 of the *Geothermal Energy Act* 2009, section 149 of the *Mineral Titles Act 2010* and section 66(2) of the *Energy Pipelines Act 1981).* Specifically it means that the interference with activities authorised under an exploration permit or licence under the Act would be an offence. The Department notes that the interference with activities authorised under the Act could have implications in terms of the safety (including human, animal and environmental) of those activities.

Further questions

22. The Northern Territory Cattlemen's Association (NTCA) recommended that the environmental impacts of the gas company's proposed activities must first be jointly assessed by the gas company and the landowner and that the gas company must then supply all relevant reports to the landowner either before or during land access negotiations. They note that currently, gas companies do not have to supply this information during land access negotiations but can wait until stakeholder engagement occurs during the EMP process.

    a. *How do the processes in the Bill ensure that* a *landowner has sufficient relevant information to effectively negotiate* a *land access agreement?*

    Neither the Act (nor any regulations) require a land access agreement. This was recognised by the Inquiry as a matter which needs to be addressed (hence Inquiry recommendations 14.6 and 14.7). The experience of pastoral lease holders to date in negotiating land access agreements reflects that it is not a statutory process and, in that context, no information is required (by law) to be provided to the pastoral leases as part of any non-statutory land access negotiation. It must be noted that the provision of information is required as part of stakeholder consultation under the *Petroleum (Environment) Regulations 2016.*

    Once the Bill is passed and commenced (subject to passage through the Legislative Assembly), the *Petroleum Regulations 1994* will be drafted to provide that a land access agreement must be in place prior to a petroleum company having access to the land and therefore before any proposals to undertake on-ground activity . As such, the land access agreement sets the framework between the pastoral lease holder and the petroleum company as to how the relationship between the two parties will operate including in relation to access, conduct and information sharing (such as in relation to environmental impacts and reports). Land access agreements required by

regulation must contain the 24 standard minimum protections as detailed by the Inquiry.

If pastoral lease holders specifically want certain information about anticipated environmental impacts that information (if it exists) can be provided by the petroleum company during the negotiation process for a land access agreement. Given that a land access agreement will be required for entry onto the land the petroleum company has a significant incentive to provide all reasonable information (if it exists) to the pastoral lease holder during any negotiation for a land access agreement to ensure that an agreement can be reached.

However it must be noted that some information may need to be provided after an agreement is reached and the information sharing process can be agreed in the agreement - given that access requires an agreement certain reports may not be available (those reports which require on-ground access for data accumulation) until after an agreement is in place. A petroleum company may not be able to supply environmental reports that doesn't exist because there has been no access.

23. In their submission, the NTCA identified 13 matters for which a pastoralist should be eligible for compensation from the gas company. Although some of these matters appear to be covered under existing s 81(1)(a) and (b) this is not the case for all the matters raised.

a. *What consultation will be undertaken on the regulations?*

The Department has established a working group with the two key representative stakeholder bodies being the NTCA and APPEA to discuss recommendations 14.6 and 14.7.

The Department will continue to liaise and consult with both NTCA and APPEA regarding the draft regulations. Additionally given that the NTCA and APPEA do not represent all owners of a pastoral lease and petroleum companies (respectively) the Department has considered the need to consult directly with all owners of a pastoral lease and companies with a granted exploration permit on the draft regulations.

b. *What criteria will be used to determine the types of compensation that will be included in regulations?*

Section 81 and 82 of the Act provide that the holder of a petroleum interest must pay:

(i) compensation for deprivation of use or enjoyment of the land (including improvements on the land) ; and

(ii) compensation for damage, caused by the permittee or licensee , to the land or improvements to the land; and

(iii) compensation for the loss or damage in respect of land which is injured or diminished in value as a result of the exercise of a right of access; and

(iv) compensation for the effect of the construction of a road or other work carried out to ensure access on native title.

Inquiry recommendation 14.7 specified 24 standard minimum protections that are required to be in any land access agreements. Those protections include:

(i) a minimum amount of compensation for each well drilled; and

(ii) compensation for any decrease in the value of the land.

The 13 matters raised by the NTCA, as heads of compensation, are relevant for Inquiry recommendation 14.8. The Department acknowledges that further work regarding compensation is required, given recommendation 14.8 which requires a minimum mandatory compensation scheme to be established. That scheme must be enacted prior to the grant of any further exploration permits or production approvals.

Inquiry recommendation 14.8 must be completed before any further exploration permits are granted or any further production approvals are granted. In relation to the Beetaloo Sub-Basin it is likely to that production approvals are at least 3 years away (due the Inquiry's recommendation that all recommendations be completed before any further production approvals are considered) and during that time the significant consideration of the range of relevant policy issues will occur.

24. The NTCA commented that a petroleum company could gain access to one property and then use this to put down a well and carry out operations to access gas on a property for which they have no land access e.g. by going under a boundary fence. As a consequence, they have requested that the Bill includes a definition and standings on "sub surface leases".

a. Please clarify whether an event such as that described by NTCA would be permissible under the Act.

No, this will not be permissible under the *Petroleum Regulations 1994* (to be amended as outlined in this response).

A petroleum company may only undertake activities (whether above-ground or below the surface) within the boundaries of their petroleum tenure. A petroleum company cannot, under the Act, access land below the surface which is not within their title (see section 105 of the Act). The Act does not permit a petroleum company drilling a well on the edge of their exploration permit to access, horizontally, land which is not within the boundaries of the exploration permit.

The Inquiry referred to land access agreements being required for access -this includes below the surface of the land. Given that land access agreements are not currently required under the Act, the Act does not currently deal with this issue although pastoral lease holders would be consulted through the *Petroleum (Environment) Regulations 2016* including for any activity that occurs below the surface.

There is no requirement to amend the Act in relation sub-surface leases given that the *Petroleum Regulations 1994,* as part of land access regime, will deal with the issue of sub-surface activities. As a matter of context, and unlike other jurisdictions in the Australia, the average size of a pastoral lease is approximately 3,000 km^2.

25. NTCA recommended that the Bill be amended to enable a royalty to be included in the "compensation component". Although the Inquiry Report does not recommend that a royalty payment scheme should be implemented, Inquiry Rec. 14.9 recommends that the Government considers whether a royalty payment scheme should be implemented.

a. What consideration has been given to the implementation of a royalty payment scheme?

Inquiry recommendation 14.9 provides the following:

> That the Government considers whether a royalty payment scheme should be implemented to compensate Pastoral Lessees prior to any further production approvals being granted. (emphasis added)

Recommendation 14.9 is currently being considered by the Department of Treasury and Finance. In accordance with the Government's Implementation Plan the recommendation is not scheduled to be finalised until 2022. The Inquiry noted there are sound arguments against the establishment of the scheme including that (p 372, 396, 397):

(i) the pastoral lease holder will be compensated for the impact of petroleum activities on the pastoral lease through other mechanisms; and

(ii) such royalties would not be available to native title parties; and

(iii) the tenure of pastoral lease holders is not freehold; and

(iv) the Crown owns all the petroleum in the Territory and it is the Crown that provides public infrastructure and services (such as schools, hospitals etc).