

Protect Country Alliance NT

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,

Submission on Water Act Amendment Bill 2019

The Protect Country Alliance NT (PCANT) is grateful for the opportunity to make a submission to the committee on the *Water Amendment Bill 2019*.

The Protect Country Alliance brings together impacted landholders, communities, and civil society groups concerned about gas fracking proposals or projects in the Northern Territory.

The Alliance is made up of delegates representing metropolitan centres in the NT as well as regional communities including; Elliott, Marlinja, Minyeri, Borroloola, Mataranka, Jilkminngan and Hermannsberg.

Based on consultation and ongoing engagement with individuals and groups across the NT, PCANT supports this bill, subject to the amendments proposed in this document being made.

Section 17a

The fracking Inquiry was very clear that to adequately mitigate risk of water contamination there was to be a total prohibition of fracking waste ever coming into contact with surface and groundwater. PCANT supports that section 17a outlines that offences cannot be avoided through mechanisms of approval such as environmental management plans. However, in its current form both the description of offences (Sections 1-4), and the penalty applied for (Section 5), require amending to reflect more modern and impactful standards.

For Sections 1-4 a requirement for proof of harm, and the significance that rests in one's knowledge and or intention of an incident means that they would be difficult cases to prosecute and not be in the interest of protecting communities from waste contamination. The most likely and least contestable penalty in section 5 does not currently have severe enough fines attached to it. In its current form it is possible that mining companies or individuals would knowingly commit an offence, with the knowledge that the fine is not significant, in order to operate more efficiently.

Alliance members from Borrooloola are well aware of the danger that exists when there is not significant penalties applied for environmental harm. Their experience with McArthur River mines means they do not believe compliance will happen unless penalties are significant. Indigenous groups are especially concerned about their water and the cultural implications of water use. This needs to be an element of the Water Act also.

Given this, in its current form, the Bill will not satisfy the recommendations of the Fracking Inquiry in relation to wastewater and re-injection. The bill should be amended to reverse the onus of proof and increase penalties to serious levels that will encourage mining companies and individuals to employ best practice and avoid any environmental harm or water contamination. These proposed amendments would bring this section of the Act in line with the rest of the Act which was amended in late 2018 to reflect modern environmental standards.

Section 17b

The PCA understands that for the re-injection of waste-water to be able to happen, legislation must be worded to allow contaminated water to come in to contact with other groundwater (in a drilled well). In its current form, one could argue that even if contaminated water were to leak out of a well- that it would be legal.

The wording is unacceptable in its current form and the PCANT proposes amending the wording to clearly indicate that any contamination of water outside the area that is contained within the targeted geological formation, is a significant offence and prohibited.

PCANT would also highlight that there is a widely held view in the community that the re-injection of wastewater would be entirely ruled out. As such, it is surprising that this bill is not currently taking every precaution to ensure that ground-water is not contaminated through the re-injection of waste-water.

Section 90 & 96

It is noted that Section 96 of the Water Act gives the Controller certain powers to restrict water extraction in some situations. Section 90 sets out the factors to be considered by the Controller. We submit that the sections should be amended firstly to provide in section 90 that one of the factors to be taken into account is whether the area where the bore or bores are situated has been drought declared.

Also, we submit that in making any decision about whether to grant, amend or modify a permit, licence or consent or in making a decision under section 96 the Controller must give priority to those activities requiring water for domestic, food production or cultural purposes.

Further there should be specific elements developed in order to stop the likelihood of Cease to Flow (CTF) conditions being created by the use of water for non sustainable/ non renewable resource exploitation activities such as mineral or petroleum exploitation. The ESD concepts should be applied to prioritise sustainable use above and beyond elements like resource exploitation. Given the consequences of saltwater intrusion into the drinking water aquifer on the Roper and the evacuation of Ngukurr these sorts of incidents are best avoided.

Section 90 should provide that no new water extraction licences can be issued for purposes associated with mining in an area where there is a current drought declaration.

Monthly rainfall totals are the first indication of drought. The Act could set minimum water levels which trigger the requirement to stop pumping. Similar initiatives have been applied as conditions of approval of groundwater abstraction projects in the Perth area since as early as 1986. It was even earlier for groundwater abstraction from Millstream in the Pilbara. They're a big part of regulation of groundwater abstraction for public and private water supply in WA.

Members of the PCANT recognise that this would be of great importance, *“As a local person who has been working as a bore runner, I feel very strongly that there needs to be protections in place to make sure our water supply is protected. It’s getting drier in the NT with very little rain this year- if fracking companies have full access to our water supply it could have serious impacts on other industries as well as the pastoral sector. I firmly support a drought water trigger to protect our water.”* Ray Dixon, Marlinja.

Concluding Remarks

Finally, the PCANT would like to reiterate what a disappointing process of regulatory reform this has been. The approach of introducing amendments in a piecemeal fashion has meant that it has been very difficult to understand the full suite of amendments being proposed. This has resulted in a less thorough process that has been very inaccessible for the broader community. To our knowledge there has been no effort made to engage the community in a meaningful way. It is also clear that this process has not been made easily accessible to those who do not speak English as a first language.

The PCANT supports the NT government in undertaking this much needed environmental regulatory reform. However, thorough reform takes time. The narrow timeline that the NT government is trying to push through numerous amounts of legislation will result in weak legislation that allows for mining companies to pollute and contaminate water with little ramification.

We look forward to future engagement in this process.

Graeme Sawyer

Jesse Hancock

Protect Country Alliance NT