



28 January 2020

Submission Serial 116 Bill for an Act to amend the Petroleum Act 1984

To the Legislation Scrutiny Committee Northern Territory

This document is a submission by Marylou Potts Pty Ltd ACN 074 696 263 (**MLPPL**)¹ an incorporated legal practice, on behalf of my clients who are pastoral lessees in the NT, in relation to Serial 116 Petroleum Legislation Miscellaneous Amendments Bill 2019 being a Bill for an Act to amend the Petroleum Act 1984 NT (**Bill**).

This submission is in relation to the land access provisions of the Bill. Unless expressly defined in this submission, words and phrases have the meaning set out in the Petroleum Act NT.

Submission

We agree with the Recommendations 14.6.1.5, 14.6 and 14.7 of the Scientific Inquiry into Hydraulic Fracturing in the Northern Territory (**Pepper Inquiry**)². We note the NT Government's commitment to implement the Recommendations of the Pepper Inquiry.

The Pepper Inquiry recommendations require the "*statutory enshrinement*" of land access agreements. Statutory enshrinement requires sections in the Petroleum Act³ that set out Recommendations 14.6.1.5, 14.6 and 14.7. That is, sections in the Petroleum Act that state:

- (i) an access agreement must be negotiated and signed by a pastoral lessee and a gas company prior to undertaking any onshore gas activity on the pastoral lessee's land.
- (ii) the statutory land access agreement must contain the standard minimum protections set out in Recommendation 14.6.

The Bill does not propose these amendments to the Petroleum Act. As such, the Bill fails to implement the Recommendations of the Pepper Inquiry to statutorily enshrine land access.

The Bill proposes an amendment to the regulation making powers in the Petroleum Act.

¹ MLPPL specialises in advising landholders, pastoralists, councils, occupiers, community groups on their rights in relation to petroleum, mining and pipeline activities proposed on their land. This practise has advised landholders in NSW, Qld and the NT and has specialist expertise in land access and land access disputes in these jurisdictions.

² See Schedule 1 which sets out these recommendations

³ *Dossett v TKJ Nominees Pty Ltd* [2003] HCA 69 "[10] The **meaning of statute** law is found in the text of legislation enacted by the Legislature." The legislation is the Petroleum Act.

We have not seen what is proposed for the regulations. Insertion of these essential protections for pastoralists in the regulations means they will not be subject to the same level of scrutiny, transparency, rigour or debate. There will be no Parliamentary scrutiny or assessment by the Legislation Scrutiny Committee, likely no public exhibition or public consultation, likely no genuine stakeholder engagement. Failing to ensure these land access protections are enshrined in the statute, being the Petroleum Act, is a significant step down from the Recommendations of the Pepper Inquiry.

We submit at the very minimum the following provisions should be inserted into the Petroleum Act:

- (i) an access agreement must be negotiated and signed by a pastoral lessee and a gas company prior to undertaking any onshore gas activity on the pastoral lessee’s land.
- (ii) the statutory land access agreement must contain the standard minimum protections set out in Recommendation 14.6.

In other jurisdictions in Australia, the substantive land access provisions are found in the statute⁴. The most recently amended legislation in other jurisdictions in relation to land access is in the respective Acts and NSW and Queensland:

- (a) in NSW: s69C(1) Petroleum (Onshore) Act 1991 *“The holder of a prospecting title must not carry out operations on any land except in accordance with an access agreement ...*
- (b) In QLD: s43(1) Mineral and Energy Resources (Common Provisions) Act 2014 *“A person must not enter private land to carry out an advanced activity for a resources authority unless each owner and occupier of the land (a) is a party to a conduct and compensation agreement about the advanced activity ...*

The NSW and Queensland Acts contain the most extensive provisions setting out the rights of landholders and the minimum standards which must be met by title holders.

We submit a similar regime in the Petroleum Act is what was recommended by the Pepper Inquiry.

4. Statutorily enshrined land access

We submit the following amendments be made to the Bill.

Bill Para	Comment	Recommended change Delete/amend
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⁴ Part 8 Mining Act 1992 NSW, Part 4A Petroleum (Onshore) Act 1991 NSW, Chapter 3 Mineral and Energy Resources (Common Provisions) Act 2014 QLD, Petroleum and Geothermal Resources Act WA 1967, Part 10 Petroleum and Geothermal Act SA 2000

16	Insert heads of compensation in the Petroleum Act	<p>Insert after proposed section 81(1)(c)</p> <p>(d) damage to or disturbance of any business or other activity lawfully conducted on the land;</p> <p>(e) compensation for decrease in land value;</p> <p>(f) compensation for each well head drilled on the land;</p> <p>(g) consequential loss suffered or incurred by the owner on account of the permittee or licensee entering the land and carrying out petroleum activities under this Act;</p> <p>(h) costs of the pastoral lessee, including but not limited to the pastoral lessee's time, legal and expert costs, reasonably incurred in connection with the negotiation of a land access agreement, any dispute, proceedings before the Tribunal or in relation to an acquisition pursuant to paragraph (i) related to petroleum activities on the land.</p> <p>(i) if the petroleum activities on land substantially impair the pastoral lessee's use and enjoyment of the land, the pastoral lessee may apply to the Tribunal for an order that the permittee or licensee acquire the land on just terms compensation principles, as set out, for example, in the Land Acquisition (Just Terms Compensation) Act NSW. (see <i>Petroleum and Geothermal Energy Act 2000 SA</i> s64 in same terms)</p>
20	Delete paragraph 20. This paragraph proposes to delete a definition of Environment.	Environment is not defined in the Petroleum Act. The Petroleum Act requires a definition. We submit that the definition of Environment remain in section 117AAB or alternatively a reference to a definition of Environment in another statute.
21	Amend Para 21	<p>21(2)</p> <p>s118(6A)(h) Costs should be in the Act. See proposed amendment in paragraph 21A below.</p> <p>s118(6A)(i) Delete if this restricts a pastoralist's access to legal representation of their choice through the process.</p>

21	Insert new paragraph 21A with land access recommendations of the Pepper Inquiry	<p>Insert principle land access provisions in the Petroleum Act not the regulations. Those provisions in the Act be as stated by Justice Pepper in the Pepper inquiry. There may be circumstances in which land access should not be determined. Any determination should be “<i>whether or not</i>” access be determined.</p> <p>Insert new Paragraph 21A of the Bill with the following.</p> <p>Insert a new Division 4A in Part III of the Petroleum Act: Land access</p> <p>Section 83A:</p> <p>(a) An access agreement must be negotiated and signed by a pastoral lessee and a permittee or licensee prior to undertaking any petroleum activity on the land.</p> <p>(b) A permittee or licensee shall not commence petroleum activities except in accordance with an access agreement.</p> <p>(c) The access agreement must contain the standard minimum protections as set out in the Regulations (set out in the Regulations each of Recommendation 14.6 of the Pepper Inquiry).</p> <p>(d) Where a pastoral lessee and a permittee or licensee are unable to agree an access agreement within 90 days of notice by the permittee or licensee, either party may refer the matter to the Tribunal. The Tribunal has power to determine whether or not access should be granted and, if access is to be granted, the terms of the access agreement.</p> <p>(e) The costs of the pastoral lessee, the pastoral lessee’s legal costs and expert costs reasonably incurred by the pastoral lessee as a consequence of the permittee or licensee’s activities including negotiation of a land access agreement, and at the Tribunal, are payable by the permittee or licensee in accordance with the terms of an itemised invoice.</p> <p>(f) Where there is a dispute as to the legal costs, the pastoral lessee may refer the dispute to a costs assessor of the NT Supreme Court who may assess the costs and make a determination in accordance with the rules of costs assessment of the Supreme Court.</p>
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Schedule 1

Pepper Inquiry recommends “statutory enshrinement”

The Pepper Inquiry sets out 3 Recommendations in relation to land access agreements, Recommendation 14.6.1.5, 4.6 and 4.7.

Recommendation 14.6.1.5 provides “*there must be a statutorily enshrined land access agreement*”.

Recommendation 14.6 provides “*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 a Pastoral Lessee and a gas company.*”

Recommendation 14.7 provides “*That in addition to any terms negotiated between the Pastoralist and the gas company, the statutory land access agreement must contain the above standard minimum protections for pastoralists.*”