



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY
13th Assembly
ECONOMIC POLICY SCRUTINY COMMITTEE]

Public Briefing Transcript

10.30 – 11.30 AM, Monday 4 March 2019

Litchfield Room, Level 3, Parliament House

Members:

Mr Tony Sievers, Member for Brennan (Chair)

Mr Lawrence Costa, Member for Arafura

Ms Kate Worden, Member for Sanderson

Witnesses:

Mr Alister Trier, Chief Executive Officer

Mr Rod Applegate, Deputy Chief Executive Officer

Mr James Pratt, Executive Director, Onshore Gas Development

The committee convened at 10.29 am.

PETROLEUM LEGISLATION AMENDMENT BILL 2018

Department of Primary Industry and Resources

Mr CHAIR: I welcome everyone to this public briefing for the inquiry into the Petroleum Legislation Amendment Bill 2018.

I welcome to the table to give evidence to the committee Mr Alister Trier, Chief Executive Officer, Mr Rod Applegate, Deputy Chief Executive Officer and Mr James Pratt, Executive Director, Onshore Gas Development. Thank you for coming before the committee. We appreciate you taking the time to speak to the committee and look forward to hearing from you all today.

This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee apply. The purpose of this hearing is to promote public consideration of the bill as part of its passage through the Assembly and I welcome the interest of those attending the hearing today. I note the decorum and procedures of the Assembly and the committee should observe at all times.

If, at any time during the hearing, you are concerned that what you will say should not be made public, you may ask that the committee go into a closed session and take your evidence in private. Could each of you please state your name, title and the capacity in which you are appearing this afternoon?

Mr TRIER: Good morning Chair and members of the committee. My name is Alister Trier and I am the Chief Executive Officer of the Department of Primary Industry and Resources.

Mr APLEGATE: I am Rod Applegate and I am the Deputy Chief Executive Officer of the Department of Primary Industry and Resources.

Mr PRATT: James Pratt, Executive Director of Onshore Gas Development, Department of Primary Industry and Resources.

Mr CHAIR: On the panel today we have Mr Lawrence Costa, Deputy Chair and Mrs Kate Worden—one of our great members.

We always ask if you would like to give an opening statement to the committee. Would you like to start with an opening statement Mr Trier?

Mr TRIER: Thank you for inviting me to speak to you today on behalf of Department of Primary Industry and Resources about the Petroleum Legislation Amendment Bill 2018. I would like to start by acknowledging the work that Rod Applegate, James Pratt, Cathryn

Tillmouth and the Office of Parliamentary Counsel have undertaken in getting the Bill to this point.

As the committee is aware, the government appointed a panel of experts chaired by Justice Rachel Pepper to conduct an independent scientific enquiry into hydraulic fracturing in the Northern Territory. In March 2018 the panel handed down its final report with 135 recommendations. The Inquiry stated that if the recommendations were implemented they would mitigate to acceptable levels and in some cases eliminate altogether the risks associated with an onshore gas industry in the Northern Territory.

These risks were identified by the Inquiry through its own research, analysis and extensive community consultation. In April 2018, the Northern Territory accepted the 135 recommendations and lifted the moratorium on hydraulic fracturing. The government then proceeded to develop and release an implementation plan that outlined when and how the 135 recommendations would be completed.

Thirty one of the recommendations were identified by the Inquiry as needing to be implemented prior to the approval of any exploration approvals for drilling of petroleum wells with hydraulic fracturing. This bill, known as ‘Serial 76’ is currently before parliament and the Economic Policy Scrutiny Committee, and proposes to amend the *Petroleum Act 1984* to enact a number of these pre-exploration recommendations.

These changes will strengthen the regulation of the development of the onshore gas industry in the Northern Territory and provide Territorians with the transparent information that has previously not been available to them.

I will give an overview to the changes to the *Petroleum Act 1984* within the bill, firstly the judicial review. The inquiry made a recommendation for persons or an entity to challenge the legality of a decision under the *Petroleum Act 1984* by providing for open standing for judicial review of decisions under the Act. Recommendation 14.23 of the inquiry states:

That prior to the grant of any further exploration approvals, the Petroleum Act 1984 and Petroleum Environment Regulations be amended to allow open standing to challenge administrative decisions made under these enactments.

Changes to the *Petroleum Act 1984* will allow for any person to apply to the Northern Territory Supreme Court to challenge the legality of a decision, whether a decision directly impacted them or not. Previously, the ability to challenge decisions under the *Petroleum Act 1984* existed in common law only and would normally be limited to persons with an interest that was impacted by the decision. For example, a petroleum company or a land holder.

As outlined in the Inquiry’s Final Report, the status of third parties such as environmental groups, nearby land holders or community groups, is less clear under common law. The amendments in this bill and the provision of open standing will extend the standing to

the broader Territory community and beyond these shores. It will provide clarity as to what decisions are available for judicial review.

The fit and proper person test; the Inquiry made recommendations as to the suitability of who should be allowed to hold an exploration and production licence for onshore gas in the Northern Territory. Recommendation 14.12 states:

That the Minister must not grant any further exploration permits unless satisfied that the applicant (including any related entity) is a fit and proper person, taking into account, among other things, the applicant's environmental history and history of compliance with the Petroleum Act and any other relevant legislation both domestically and overseas.

That failure to disclose a matter upon request relevant to the determination of whether an applicant is a fit and proper person will result in civil and/or criminal sanctions under the Petroleum Act.

That the Minister's reasons for determining whether or not the applicant is a fit and proper person be published online.

Additionally, recommendation 14.20 is also addressed through this bill, the recommendation states:

That the Minister must be satisfied that an applicant is a fit and proper person to hold a production licence, taking into account, among other things, the applicant's environmental history and history of compliance with the Petroleum Act and any other relevant legislation both domestically and overseas.

That failure to disclose a matter relevant to the determination of whether an applicant is a fit and proper person upon request will result in civil and/or criminal sanctions under the Petroleum Act.

That the Minister's reasons for determining whether or not the applicant is a fit and proper person be published online.

Amendments to the *Petroleum Act 1984* have been proposed to allow for the Minister to make a determination of whether a person is an appropriate person to hold an exploration permit or production licence in the Northern Territory based on evidence of their compliance or contravention with legislation as identified by the Inquiry and as listed in the bill.

Legislative enforcement of codes of practice; the Inquiry made a number of recommendations for the development of codes of practice in relation to well integrity, well decommissioning, methane monitoring and waste water management. Amendments to the *Petroleum Act 1984* will allow legislative enforcement of codes of practice and will give the government the power to penalise a company operating in the Northern Territory who fails to abide by these codes of practice.

Once this power is created in the *Petroleum Act 1984* the government has the ability to adopt the codes of practice. The codes of practice which have been developed in conjunction with the CSIRO are almost completed and will be released for public comment before being adopted by government.

The implementation plan; these amendments to the *Petroleum Act 1984* are necessary to complete the pre-exploration stage of the Inquiry's recommendations. The remainder of the Inquiry's recommendations will be implemented before the onshore petroleum industry can obtain approval from the regulator to progress to production development.

There will be further amendments to the *Petroleum Act 1984* to meet the Inquiry's recommendations which are forecast as stage 3 recommendations in the government's publicly available implementation plan.

Thank you for the opportunity to speak to you today and I welcome any questions that you have on these important changes to the *Petroleum Act 1984*.

Mr CHAIR: Thank you Alister.

We have prepared a list of questions around specific issues that we want clarity around. I will go through some of these questions and my colleagues may throw in at any time with any further questions. If you wish to throw it to Rod or James, please state your name before you start.

In your written response to the Committee's questions to the department you provided an amendment definition for hydraulic fracturing which replaced the word hydrocarbons with petroleum. This revised definition also replaced the word gas and oil with the word petroleum. Can you clarify to us why the words gas and oil have been replaced with word petroleum?

Mr PRATT: In the *Petroleum Act 1984*, the definition of petroleum is that it can be made up of hydrocarbons or hydrocarbon in a gaseous liquid or solid state. The act does not define gas and oil in the definitions. We decided to ensure clarity and consistency. To ensure a modern and accurate definition in the act the words gas and oil have been replaced with hydrocarbons.

There was no definition in the *Petroleum Act 1984* for hydraulic fracturing so this bill has the inclusion of that definition as well. The amended definition should now be as follows:

Hydraulic fracturing means the underground petroleum extraction process that involves the injection of fluids at a high pressure into a geological formation to induce fractures that conduct petroleum for extraction.

A definition of hydraulic fracturing consistent with the definition in the Petroleum Legislation Amendment Bill 2018, should also be included in the *Water Act 1992* by the upcoming Water Amendment Bill that is currently before the Economic Policy Scrutiny Committee.

Mr CHAIR: Thank you. Any questions? Any questions Lawrence?

Mr COSTA: No, that is all good.

Mr CHAIR: Moving into clause 5, proposed sections 15A(1)(a), 15A(1)(c) and 15A(6). I will not go through all the statement but we have some questions around compliance. Why does the bill not require the Minister to take into account compliance—with all the relevant legislation that is recommended and recommended by the scientific inquiry?

Mr PRATT: The Inquiry stated in Recommendations 14.12 and 14.20—I will paraphrase from what Alister said earlier—that the Minister must be satisfied that an applicant is a fit and proper person, taking into account, among other things, the applicant's environmental history and history of compliance with the *Petroleum Act 1984* and any other relevant legislation both domestically and overseas.

The Inquiry did not prescriptively define which pieces of legislation the applicants must demonstrate compliance with so that has been left open with the department. The Inquiry's final report states on page 403 that this compliance with legislation:

... should not be limited to compliance with legislation related to petroleum, but also include, for instance, compliance with occupational work health and safety and taxation regimes ...

From that, we deduced a range of legislation currently in Australia, in the Northern Territory specifically, that are now listed in the bill. There are two separate lists of legislation that delineate between environmental legislation and other types of relevant legislation.

As detailed by the Inquiry, international legislation is also covered in the bill at section 15A(6)(b) and 15A(6)(k), that prescribed legislation was to mean:

An Act of another jurisdiction that is similar in nature and purpose to an Act listed.

We took the pragmatic view that listing every piece of legislation across the world—many of these companies operate in other jurisdictions—would not only be problematic in nature and be difficult in the changing of legislation across jurisdictions, to have an up to date and accurate list.

We have detailed legislation in the Northern Territory and across Australia with a clause that covers similar legislation in other jurisdictions. Provision was also made in section 15A(6)(v) that the prescribed legislation was to mean an act of another jurisdiction that is similar in nature and purpose to an act listed.

It is a capture all clause that says if there is a similar piece of legislation in Venezuela, that it can be applied as well in regards to petroleum and whether a company has breached that legislation.

We also concur through submissions and comments from the committee that the insertion of the *Water Act 1992*, the *Northern Territory Aboriginal Sacred Sites Act 1989* and the *Taxation Administration Act 2007* should also be listed in the two lists within the bill.

We agree that compliance to all listed legislation should be required.

Mrs WORDEN: How confident are you that you have captured every piece of what they are calling relevant? Can you walk us through the process of what you would determine relevant? That is obviously the key word—any other relevant information. Can you cover those two things?

Mr PRATT: Certainly. In page 4 of the bill, we have a section called prescribed environmental legislation which lists the *Environmental Assessment Act 1982*, *Waste Management and Pollution Control Act 1988*, *Environment Protection and Biodiversity Conservation Act 1999* (Cth), *Environment Protection Act 1997* (ACT), *Protection of Environment Operations Act 1997* (NSW), *Environmental Protection Act 1994* (Qld), *Environment Protection Act 1993* (SA), *Environmental Management and Pollution Control Act 1994* (Tas), *Environment Protection Act 2017* (Vic), *Environmental Protection Act 1986* (WA) and then there is the clause that says:

An Act of another jurisdiction that is similar in nature and purpose to an Act listed above.

There is a capture all of environmental protection legislation across Australia. We believe from that aspect we have captured everything within Australia related to environmental protection under the heading prescribed environmental legislation.

I follow with another subsection of listings called prescribed legislation which is the other raft of legislation the Inquiry said should be captured. Within that we have said prescribed environmental legislation, the *Territory Parks and Wildlife Conservation Act 1976*; the *Work Health and Safety (National Uniform Legislation) Act 2011*; the work health and safety acts from the Commonwealth, ACT, New South Wales, Queensland, South Australia and Tasmania; *Occupational Health and Safety Act 2004* (Vic); *Occupational Safety and Health Act 1984* (WA); *Petroleum Act 1998* (VIC); *Offshore Petroleum and Greenhouse Storage Amendment Act 2013* (Cth); *Petroleum (Onshore) Act 1991* (NSW); *Petroleum and Gas (Production and Safety) Act 2004* (QLD); *Petroleum and Geothermal Energy Resources Act 1967* (WA); *Mineral Resources Development Act 1995* (Tas); *Corporations Act 2001* (Cth); and *Australian Securities and Commission Act 2001* (Cth).

We have taken a pragmatic view of looking at all legislation that protects the environment across jurisdictions and the other capture all legislation the Inquiry referred to in terms of work health and safety, taxation regimes and the like.

In terms of capturing legislation in other jurisdictions, in international jurisdictions, that is extremely difficult and an onerous task. Through the provision in the act of citing another jurisdiction that is similar in nature and purpose to an act listed above, we believe we have captured all the relevant legislation.

Mrs WORDEN: So you are confident?

Mr PRATT: Yes I am confident.

Mrs WORDEN: Any new legislation that might arise in the future, how would you anticipate dealing with that?

Mr TRIER: It is my view that the approach that has been taken is a principle approach to the areas of legislation and in some ways it is a belts and braces approach. It is listed that the known legislation across a range of related areas for a fit and proper person as a mechanism to say that these are the principles of legislation that should be looked at and listed.

Then it has the catch all of any relevant legislation that is similar. That can be within Australia or internationally. In getting the balance right or trying to be too prescriptive which can lead to problems—if you try to be too prescriptive but have some omission—having that catch all allows a broader ability to get all relevant legislation.

Just to back James up, I am confident that this section covers the intent.

Mrs WORDEN: I have concerns because we see the turnover of legislation here. Legislation also changes its name and a whole range of things. I take your point about the catch all—I misinterpreted because I thought when you were saying other jurisdictions you were literally looking at overseas. Obviously if Tasmania changes its name on its legislation it would still fall within.

Mr CHAIR: You have a wide range of legislation that you can incorporate. Is that wide range of legislation relevant as outlined by the Scientific Inquiry report? Have we captured all that as well?

Mr PRATT: The Inquiry did not specifically list a range of detailed titled legislation. It gave a broad summary of what should be covered in terms of environmental matters and that is why there is a list regarding a prescribed environmental legislation.

The secondary list which is the other, takes in Petroleum Act 1984 around the world, work health and safety acts, the Territory Parks and Wildlife Conservation Act 1976 and the other—not any less important—delineating the two lists so that it is easy for decision makers, the public and companies to understand what they need to comply with.

As we have discussed, there is a wide range of legislation—a huge list if we itemise it. Keeping it in separate buckets can make the process a little clearer.

Mr CHAIR: Mr Costa, do you have any other questions?

Mr COSTA: No, all good.

Mr CHAIR: We will move on.

Proposed section 15A(4) allows the minister to disregard contraventions mentioned in proposed section 15A(1)(a) by having regard to the seriousness of the contravention, the length of time since the contraventions occurred and any matter that the minister deems relevant.

Given that there is nothing in the bill that prevents the minister from taking these factors into account when determining whether an applicant is an appropriate person to hold a licence or permit, why is there a need to include a separate subsection stating that the minister can disregard factors that they should consider?

Further, should the intent around the proposed subsection be that it requires that when the minister has regard to contraventions, they also consider the seriousness of past contraventions and how long ago they occurred?

Mr PRATT: The intent by section 15A(4) is to allow the applicant access to natural justice in the processes determining whether they are an appropriate person. I refer to section 15A(4)(a) to 15A(4)(c) and this provides for the minister's regard to the degree of seriousness of the contraventions, the length of time since and any other matter that appears relevant to the minister. It gives a due process—obviously it is a concern if companies have breached legislation but there are always points of clarification or purpose behind it.

The minister is required to publish a statement of reason as per 15A(5) of the amendment bill that would detail this consideration if the minister, in their determination, allowed the company who may have contravened something to proceed. This public detail provides a level of transparency in that decision making both for the company and for the minister involved. I believe that provision is suitable.

Mr CHAIR: Is there any stipulation to a time frame? How long ago they can have these contraventions? There is concern around if they have had any issues, how do we mitigate that issue? Or the minister takes into account the seriousness of that.

Mr PRATT: It is at the discretion of the minister. I do not believe there are any time constraints in the bill. Having said that, the minister is accountable for any discretion that is applied regarding that because their decisions have to be publicly stated and published. The minister is held to account for that decision.

Mrs WORDEN: I am struggling to understand why you have to specify this. If there is nothing in the Act that already says that a minister can already, why do we have to be so prescriptive?

Mr PRATT: I guess the Act is a little silent on it, which is why we are putting this into the Bill for clarity. If a company has applied and has breached or contravened one of those pieces of legislation in another jurisdiction or ours—that is of interest.

It is in the company's interest to disclose that and ensure they are being considered as a fit and proper person. It also gives the minister at the time an ability to formally consider and be transparent around whether an indiscretion 15 years ago was of high or low impact. It is a piece of natural justice we are putting into the legislation in formality.

Mrs WORDEN: Natural justice for the applicant?

Mr PRATT: Natural justice for the minister in making that decision and the applicant.

Mr TRIER: The basic principle is around natural justice. It is a common right under law that anybody going through a legal process should be allowed natural justice. It is about making sure it is clear and transparent.

There is a mechanism to allow natural justice but should the minister make a decision that allows some natural justice that decision must be publicly made available with a statement of reasons and published.

Mr PRATT: If this Bill is successful, that decision is subject to judicial review.

Mrs WORDEN: My point is that it is already there. It is just silent on it, it is nothing new.

Mr PRATT: I agree. It is a bit like judicial review. It is in common law but the Inquiry said to make the judicial review 'in law' and for this purpose, in totality of the decision making around fit and proper person, we thought it was an appropriate inclusion for the bill.

Mr CHAIR: Mr Costa do you have any questions?

Mr COSTA: No, all good.

Mr CHAIR: We will move onto judicial review. Clauses 8, 12, 15 and 18.

Prescribing the decisions and determinations that are eligible for judicial review in the schedule creates a risk. The risk is that some decisions may be left of the list inadvertently. Some of our concerns are what options are available to ensure that all relevant decisions are eligible for judicial review? An example could be, could the current schedule of decisions eligible for judicial review be replaced by a schedule of decisions that are not eligible?

How confident is the department that all relevant decisions have been included in the schedule?

Mr PRATT: For clarity and transparency, it is more beneficial to have a schedule of decisions that are eligible for review in our viewpoint in the Act, and not the reverse as you suggested in terms of the alternate option of decisions that are not eligible for review.

Having a list that details what is eligible for review is clear to the decision maker, the department, the proponent and the community. It puts the onus on the person who wants to seek a review.

If we did the reverse it puts the onus on a person to have to trawl through an Act trying to find what decision could be available for review. The proposal within the Bill to list everything that is available for review is appropriate. In terms of the confidence in it, I am confident that the list there is detailed and accurate. We conducted a legal and policy review of the Act to identify all those relevant decisions. The scrutiny process has also identified one that was overlooked and we acknowledge that. There was no intent there, it was an oversight. Again, the scrutiny process has identified that.

In the proposed Amendment Bill 15A is not in that list as yet because this Bill has not passed. That is probably an item for scrutiny committee to include in their report that should be included in the decision making process. I am very confident the list is appropriate.

Mrs WORDEN: It is a little bit like the previous question we were talking about—it is all very well doing a list now, but we do live in a time of litigation. It is growing more and more, not necessarily here but overseas. Do you think by being so prescriptive, as against the alternative which I am not entirely certain is the answer, but being so prescriptive dates the Act?

Legislation, we have so much of it, but even getting through it on an annual basis to what needs to be done or every term of parliament—is that still the rule that every bit of legislation has to be looked at, at least in some term or a parliament. It is a four year cycle for reviewing.

Mr TRIER: I think it is principle based.

Mrs WORDEN: Okay. I accept that given the work load that it entails. Do you have any concerns that we are making these decisions at a point in time of the things that we know? But as time goes on and legislation often becomes irrelevant, that you are dating the Act?

Mr PRATT: I take your point and see it well. Two points to that, the Inquiry in its findings required a large increase in transparency of decision making across government in relation to the petroleum industry. For us, in detailing that in the itemised account of the decisions that are for review, that makes it really clear on what is available to the community and, more broadly, industry can also seek a judicial review if they do not like the decision that a minister makes. That is really important.

In terms of the act and being dated, I acknowledge the effort in changing legislation and by putting something in here prescriptively like that, it has the risk of being dated. From the Inquiry's recommendations there are several reform processes underway for the *Petroleum Act 1984* as well. The reform of the *Petroleum Act 1984* will be an iterative

process over the coming 12 to 18 months. If something is omitted by accident, there is a chance to include that in amendments.

Once the Inquiry's reforms are complete, we do not anticipate the *Petroleum Act 1984* to change much at all because I guess that was the outcome of the Inquiry—complete overhaul of legislation relating to this industry.

Mr APLEGATE: As James is saying, this is the first tranche of changes to the *Petroleum Act 1984* and we have tried to capture those decisions within the *Petroleum Act 1984* which involve a decision by the minister and is therefore subject to judicial review. Any further changes to the *Petroleum Act 1984*, which have been flagged, if those changes involve decisions with the minister, then those decisions will also—and can be in judicial review—be added to the schedule.

Each time the *Petroleum Act 1984*—I know it will be amended at least another two times—is amended, we will update the schedule in accordance with any decisions and powers that were issued that the minister making of in decision-making.

Whilst there are various concerns that legislation can be dated over time, the decisions in the legislation will remain and the schedule will remain current with those decisions.

Mrs WORDEN: Are there decisions that would currently not be able to be reviewed? There are some specific things that would not be up for judicial review?

Mr PRATT: Yes there is and I have noted a couple down in anticipation of that question. An example of this is section 7(1) of the *Petroleum Act 1984*, the decision of the minister to delegate powers and functions under the act, not deemed appropriate for review. There is still an accountable delegated officer where this occurs, usually the Chief Executive Officer or the Deputy Chief Executive.

Another example is section 64(2) of the act. The decision by the minister to require a proponent to give notice of information to the minister where petroleum is discovered in an exploration permit or licence area. In essence, the company advises government that it has found some resource and the minister makes the decision to accept that information.

There is no real logic there to seek why that would be for review, the minister is noting that a company has discovered petroleum resources. Normally that is publicly communicated—if it is an ASX listed company it would be detailed publicly anyway.

Mrs WORDEN: The last bit we talked about, there was the catch all. Would it be an opportunity for a similar catch all around decisions? It would allow it to not become dated so that if something does occur in the next 18 months we would not be reviewing legislation in that time frame.

As you said James, we have already come across one that was an omission and you have accepted that. What happens if something else comes up in the next 18 months? Is there a catch all that you can add to it that covers that off?

Mr TRIER: I understand exactly what you are saying and the different approach to this particular part and the previous but there are two or three points. One, we have to get the balance right between making sure that we get the coverage required for the intent of the Pepper report.

We also have an obligation to try and provide as much certainty through the legislation as it is being crafted. In this instance, we have taken this view to try and provide certainty through prescribing legislation noting as Rod Applegate has said, there will be at least two more opportunities for review of that list going forward.

I get the tension, I understand it. I think for us it is based on the balance between ensuring that we meet the intent of the Pepper report but also craft a way forward that provides certainty for all, as James pointed out.

Mrs WORDEN: I will note that I am not sure that being less prescriptive does create uncertainty. I am trying to work out whether it does or does not but I am not sure legislatively. I might have to chat to some other people about that.

I am not entirely convinced that we have to be quite so prescriptive and then lose an opportunity down the track for other things to be covered that we discover as we go—remembering that all of this new to the Territory and we have examples elsewhere but they are not necessarily ideal examples.

Mr PRATT: I will also add that another recommendation of the Inquiry which will be on our list of things to do shortly is merits review, which is another form of review. Your concern around missing things, I do note that concern and you have had the option of having a capture all, but the merits review process we will have to instigate through legislation and this will also provide an avenue for updating the schedule if required, if anything else has been missed. The merits review will also have a similar process in identifying what is available for review as well.

Mrs WORDEN: What timing are you taking about for the merits review?

Mr PRATT: That is a stage three recommendation which, we are about to hit that mark in the government's implementation plan. It is before production licences are issued. It is the balance of the recommendations apart from the 31 that were in the pre-exploration approvals.

That could be any time from next month until 2021. That is when production approvals—government cannot grant a production approval until the balance of the Inquiry's recommendations have been completed. There is a safety net there.

Mrs WORDEN: Thank you.

Mr CHAIR: Lawrence, did you have any questions on that?

Mr COSTA: No, that was pretty good.

Mr CHAIR: Some concerns were raised in one submission that the provisions in relation to the judicial review do not address a situation where a decision maker has failed to make a decision that she or he was required to make. In its written response to this concern, the department stated that there are existing provisions within the act that cover this eventuality.

Could you please identify these provisions and explain to the committee how they address this issue?

Mr TRIER: I will start then hand over if I may. Certain areas where making a decision is not time bound and the minister not making a decision might actually be in the best interest of the Northern Territory. For example, that could be to do with acreage and release of acreage. There are other decisions that are time bound and should the decision maker not make a decision within that period then the review provisions become available.

Mrs WORDEN: The review provisions? Which section of the act is that?

Mr APLEGATE: These are amendments to the existing *Petroleum Act 1984*, which already has a number of administrative decisions to be made within determined time frames and it also allows for review provisions after decisions already exist within the *Petroleum Act 1984*.

As Alister said, if the concern is that, what happens when the decision maker, in this case the minister does not make a decision? Alister gave an example of acreage release and that is a very real case of where the Minister did not proceed and make a decision on acreage release in 2016 because it was not in the interest of the Territory to pursue further issuing of exploration permits.

The only one affected by that is the company seeking the acreage—it was a competitive process so we did not determine who was going to actually get the licence anyway. That is probably one of the few cases where existing provisions, no statutory timelines and if the decision is not made then the only one who could be affected would be the proponent.

Mr CHAIR: Moving on, we are going into the code of practice. We had a query on that one especially around clauses 9, 11 and 17. An answer to question 13 that states amendments to the codes of practice will be able to be made through amendment to the regulations in proposed section 118.

It continues, does this regulation making power enable the administrator to prescribe a system for making or amending the code or practice? For example, a regulation along the lines the minister may issue a code of practice under the *Petroleum Act 1984* by gazettal.

Mr PRATT: In essence, it does not allow the administrator to develop a system. The system already exists. Amendments to a code of practice can be made through an amendment to the Petroleum (Environment) Regulations where an amendment will be adopted under these regulations. This is as per section 118 of the *Petroleum Act 1984* as it stands now, changes to regulations can be made by the minister.

The Minister of Environment and Natural Resources as of last Wednesday now has the carriage of the Petroleum (Environment) Regulations. Any changes to the code of practice when they are finalised will require her endorsement before going to the administrator and ultimately gazettal.

The codes of practice that are being developed as we speak are also going to be released for public comment. That understanding and transparency element in terms of the codes of practice is also addressed there. They are expected to be finalised and released later this month.

Mrs WORDEN: Just to be clear, there are four of them?

Mr PRATT: There are four elements, if I can call it that. For the sake of clarity there will probably be one code of practice with four chapters in them. These are well operations, surface activities, waste water framework and methane emissions.

They were, in essence, the themes that the Inquiry said should be covered in the codes of practice. In totality, there are close to 30 recommendations that are addressed through those codes of practice.

Mr CHAIR: Thank you. We had a couple of other things that were not addressed in the Bill. These are recommendations 14.12 and 14.20 of the Scientific Inquiry. They require that an application that fails to disclose a matter relevant to the determination of whether the applicant is a fit and proper person should be subject to civil and/or criminal sanctions. Does the Bill place an obligation to reveal all the information relevant to the criteria in section 15A(1)?

Mr PRATT: Yes, applicants are required to adhere to the requirements of the *Petroleum Act 1984* in order for the minister to make a determination as to whether the applicant is a fit and proper person. As per the changes in clause 7, 10 and 16 of the bill, a person needs to provide evidence of being an appropriate person.

Where the Bill requires evidence of being an appropriate person, the department is not opposed to amending that wording to require evidence if you are not an appropriate

person, that is direction contraventions of a prescribed legislation or prescribed environment legislation.

Section 106 of the existing Act provides for the offence that a person shall not contravene or fail to comply with the Act. If you provide incorrect information, you are in contravention of section 106 of the Act. The current offence for that section is 100 penalty points for a person or 500 penalty units for a body corporate. Failure to comply with providing the right information is a contravention of the Act.

Mrs WORDEN: Is there an opportunity to specifically identify? A lot of the things we were discussing today are coming from the Pepper review. As it is specified in Pepper's review, would it not be right to specify it? At the moment you are saying it is covered and caught in section 106.

Mr PRATT: Section 106 is the section that says that a person should not contravene or fail to comply.

Mrs WORDEN: Yes. Would it not be better to be more prescriptive? We have gone from not prescriptive to prescriptive now, because that is specified in Pepper's review.

Mr PRATT: For section 15A which is where this conversation started in the Bill, we are happy to see it amended - that if they have to provide compliance as opposed to contravention with that. If a company chooses to not disclose its contravention to other legislation, that is a breach of the Act and there are penalties and offences, ultimately their permit can be revoked if already existing—if they are seeking a production licence.

I understand your question but we are in the hands of the Committee if you think there is an amendment required there.

Mrs WORDEN: We cannot play it both ways. If it is in Pepper, we need to have it here and it needs to be specific. I know we are only talking words but the two need to mirror each other. If there is an opportunity to do that without having an overall impact on the Bill and its intent, I do not think there is any harm. That has always been my view around legislative change.

Mr PRATT: I do not disagree. I will also refer to a future recommendation we have to implement which is recommendation 14.29, review of sanctions, offences and penalties. That is a stage 3 recommendation which will see us introduce legislative amendments to that as well. That is another opportunity to address it there if required.

Mrs WORDEN: I think that if you have an opportunity now, that is where we should do it. We will discuss that after in our deliberations.

Mr CHAIR: That brings us to section 14.29. The department has advised us that they will be fulfilling the Scientific Inquiry's recommendations by enacting a broader range of

powers under that section. That is by 2021 or before any production licences are granted.

How does this intention to enact a broader range of powers to sanction by end of 2021, or before any production licences are granted, resolve the absence of civil or criminal sanctions at present? Particularly in relation to the granting of other licences or permits—for example, an exploration permit.

Mr PRATT: Recommendation 14.29, looking at sanctions and penalties—we all note the report says prior to 2021 but I would hope that it would be in parliament before then. We have several tranches of legislation that we need to implement as part of the ongoing recommendations, some of which are statutory land access agreements which are critical to the pastoral industry and operators alike. While the outer year of 2021 is there, it by no means is being left to the last minute.

We have already turned our mind to it with this recommendation. It is such a broad recommendation to implement and looking at all penalties and offences—the Inquiry did a little bit of work in its investigations on some comparative analysis but it is not something that should be quickly given a few seconds thought. Our view was that it could be addressed in recommendation 14.29 in the near future.

Some of the sanctions can be revoking licences and issuing injunctions, they are fairly heavy penalties. The catch with the recommendation is that no production licences can be issued until this recommendation is complete. At the moment there are a large number of exploration permit applications on foot in the Territory but there are a number of recommendations that have to be completed before any of those can be assessed and processed.

We are not about to get inundated with new applications, it is basically companies with existing exploration permits seeking activity approvals through environment management plans. It is safe and with good will that this recommendation will be completed within the next 12 to 18 months subject to legislative time frames with government as well.

Mrs WORDEN: With all due respect, James, you could get hit by a bus tomorrow and the whole thing could stop and be pushed out to 2021, which would really cause some issues. That bit that we were talking about before, even your response makes me realise that we need to put in as much as we can upfront and do the bigger bit later. I understand that you are right, we cannot just gloss over it and get it through quickly. It has to be done properly.

Where there is an opportunity with that disclosure and a failure to disclose—if there is an opportunity to catch that early it demonstrates that we are serious and are not going to wait until 2021. That gives companies certainty as well, it is very clear how we are going to operate in the Territory and if we are going to operate, these are the standards we are going to expect. We can do that early and there is an opportunity for it.

I understand what you are saying, but I am sure there are other things we can cover by 2021 as well.

Mr PRATT: We, as the department, are bound a little bit by the implementation plan from government. Recommendation 14.29 was deemed as stage 3 recommendation. The focus from government is to get table 16.1 and the 31 recommendations completed to assist activity to occur this year. To undertake the review of every penalty and offence in this Act, the serious nature of that and the offences associated with every penalty in review, is a serious matter, needs great consideration and most likely some heavy consultation as well. Hence the stage 3 placement of it in the time frame.

Mr CHAIR: Thank you. Do you have any other questions Kate?

Mrs WORDEN: No, I am good.

Mr CHAIR: Lawrence do you have any other questions?

Mr COSTA: No, all good.

Mr CHAIR: That is basically it from us. Would you like to add anything?

Mr TRIER: Thank you for the opportunity to be able to present, it is a very important process. We appreciate that and again, for the record, acknowledge the team in Primary Industry and Resources and Parliamentary Counsel in getting the Bill this far.

Mr CHAIR: Thank you Alister. On behalf of the committee, we thank you for coming in today. It is important that you did and that we get through this.

The committee concluded.
