

Submission to Petroleum Legislation Miscellaneous Amendments Bill, NT

January 2020



As a group of Territory pastoralists with gas fracking exploration permits blanketing our properties, we are well aware of the power imbalance we experience when it comes to the gas fracking industry seeking access to our properties.

To construct industrial gasfields of the scale being proposed in the Northern Territory, fracking companies' require access to private land for drilling, hydraulic fracturing, work camps, access tracks, water bores, waste storage facilities and pipelines. These activities carry with them significant risks to the value of our businesses and property, our water security and the right to the peaceful enjoyment of our land.

The Pepper Inquiry was clear on a range of legal actions that need to take place to ensure Territory pastoralists and landholder rights are protected before the fracking industry can proceed.

These will be explored below in more detail. However, in summary, these issues include:

- The requirement for a statutorily enshrined land access agreement
- The requirement for a statutory land access agreement to include standard minimum protections for landholders
- The risk that companies with minimal financial assets are being used by larger petroleum exploration companies to enter into contracts with landholders for access, increasing risk of defaulting on penalties or compensation arising from incidents or impacts while operating on private land.
- The lack of legal clarity surrounding the land access arbitration process and decision-making powers of its Committee to bind landholders and gas companies to outcomes.

The draft bill fails to meet the requirement set by adoption of Pepper Inquiry at 14.6.1.5, which states: “there must be a statutorily enshrined land access agreement”.

Currently, the NT Economic Policy Scrutiny Committee is considering a Bill to Amend the Petroleum Act with regard to land access. Yet the NT draft Bill fails to implement the land access Recommendations of the Pepper Inquiry. It leaves out the critical legal requirement for a land access agreement, to be dealt with in supplementary regulations.

The Pepper Inquiry recommendations require the “statutory enshrinement” of land access agreements. The Bill does not satisfy Recommendation 14.6. A statutorily enshrined access agreement is an access agreement that is required by the statute itself. The statute is the Petroleum Act.

Further, Pepper Inquiry Recommendation 14.7 states: “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.”

There is no provision in the Bill which sets out the standard minimum protections for pastoralists as required in recommendation 14.7.

We require the minimum protections to be outlined in the Act, not hived off in regulations that we haven’t seen, haven’t been drafted and won’t have the proper scrutiny of the public and the Economic Policy Scrutiny Committee.

Currently, pastoralists who have gas companies seeking access to their properties are incurring significant costs in legal fees, baseline studies, property valuations and time away from their businesses in order to protect their properties from harm caused by invasive gas activity. The requirement to cover these costs should be included in standard minimum protections to ensure landholders are not being financially penalised during negotiations with gas companies.

The Act itself should be simply drafted, along the lines of:

- (i) an access agreement must be negotiated and signed by a pastoral lessee and a gas company prior to undertaking any onshore gas activity.
- (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 Act itself.

We state that the Bill does not have sufficient regard to the rights and liberties of individuals in the Northern Territory – because it does not enshrine our legal right to a land access agreement.

Additional to these afore-mentioned specific issues, we hold concerns regarding the failure of the Bill to address these matters and request that the Scrutiny Committee address these in its formal response and any subsequent redrafting of the Bill:

- The draft Bill does not address the risk that a pastoralist who becomes party to a land access agreement may be waiving their rights to compensation arising from damage or other impacts on their property and business, currently guaranteed under Section 81 and 82 of the Petroleum Act.

- Pastoralists are presently being coerced by gas companies to agree to potentially disadvantageous land access agreements, either individually or through the NT Government's Land Access Arbitration Committee, without regard for the fact that these reforms are not yet implemented. This practice should be stopped immediately and any agreements signed under duress be subject to review and extinguishment if requested by the landholder.
- Companies which are unable to demonstrate capacity to financially remediate sites, pay compensation to landholders or penalties in the event of damage or regulatory breaches incurred during exploration activity should be precluded from forming land access agreements. There are now multiple examples of local pastoralists being asked to sign agreements with shelf companies on behalf of larger companies, presumably to avoid liabilities. This practice must be ended in the drafting of this Bill.

We hold ongoing concerns that the water-hungry and invasive nature of the fracking industry is not compatible with our pastoral operations. A legally enshrined right to an access agreement will, at a minimum, ensure greater access to information critical to good decision making over the future of our businesses, and protection of our legal rights.

Only then can we decide if we will agree to sign a land access agreement or not, depending on the conditions, our legal advice, and the future protection of our business, land and water.

We are deeply concerned that this process continues to favour the gas industry and related Government representatives over the long term security of water and the rights of Territory landholders. We will continue to strongly advocate for veto rights against fracking companies. We want the pressure that is currently coming on us, forcing us to allow access for fracking companies, to cease, certainly during this time with the critical legislation amendments in draft form.

We thank the Committee for your time in considering the concerns raised here by the below signed pastoral lease holders, and would welcome the opportunity to meet with Committee Members to discuss these matters further.

Owners, Big River Station

Owners, Greenbank Station

Owners, Spring Creek Station

Owners, Manangoorah Station

Owners, Seven Emu Station

Owners, Elsey Station