LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

13th Assembly

ECONOMIC POLICY SCRUTINY COMMITTEE

Public Briefing Transcript
Water Legislation Amendment Bill 2018

3.00 pm, Wednesday, 3 October 2018
Litchfield Room, Parliament House, Darwin

Members:
Mr Tony Sievers MLA (Chair), Member for Brennan
Mr Jeff Collins MLA (Deputy Chair), Member for Fong Lim
Mr Yingiya Guyula MLA, Member for Nhulunbuy
Mr Lawrence Costa MLA, Member for Arafura (via teleconference)
Mr Gary Higgins MLA, Member for Daly (via teleconference)

Witnesses:
Department of Environment and Natural Resources
Ms Joanne Townsend: Chief Executive Office
Ms Christine Long: Executive Director, Water Resources Division
Mr Ian Smith: Director, Legislation Reform

The committee commenced at 15.08 pm.

Water Legislation Amendment Bill 2018

Department of Environment and Natural Resources

Mr CHAIR: Mr Higgins might join us a bit later. We are trying to contact him at the moment. We may start if the committee is ready.

Mr CHAIR: On behalf of the committee, we have the Deputy Chairman, Mr Jeff Collins from Fong Lim; the Member for Nhulunbuy, the Member for Arafura on the phone and we are just waiting for the Member for Daly, Gary Higgins.

On behalf of the Economic Policy Scrutiny Committee, I welcome everyone to this public briefing into the Water Legislation Amendment Bill 2018. I welcome to the table to give evidence to the committee Ms Joanne Townsend, Chief Executive Officer, Ms Christine Long, Executive Director, Water Resources Division and Mr Ian Smith, Director, Legislation Reform.

Thank you for coming before the committee. We appreciate you taking the time to speak to the committee and we look forward to hearing from you all today. As we know, we have 20 submissions into the Water Legislation Amendment Bill.

This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee apply. This is a public briefing and is being webcast through the Assembly's website. A transcript will be made for use by the committee and may be put on the committee's website. 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.

Before we start, could you please each state your name and the capacity in which you are appearing here today. Jo, could we start with you.

Ms TOWNSEND: Jo Townsend. I am the Chief Executive Officer for the Department of Environment and Natural Resources.

Ms LONG: Christine Long, Executive Director, Water Resources Division in the Department of Environment and Natural Resources.

Mr SMITH: Ian Smith, Director, Legislation Reform, Department of Environment and Natural Resources.

Mr CHAIR: Thanks, Ian. Jo, would you like to open with an opening statement to the committee?

Ms TOWNSEND: Thanks, Mr Chair and members of the committee. I really appreciate the opportunity to speak with you today on behalf of the department about the Water Legislation Amendment Bill 2018.

The Bill introduces amendments to the Northern Territory's *Water Act*. As you may be aware, the *Water Act* governs the assessment, allocation and management of water resources in the Northern Territory and is administered by our department. Committee members may also know that I am appointed as the Controller of Water Resources under that Act.

As mentioned by the Chair, I am joined by Christine Long, who is the Executive Director in the Water Resources Division, and Mr Ian Smith, who is leading the legislative reform process.

The purpose of the *Water Act* and these changes—it is probably important for the committee to get some context about the changes and where they sit in a broader range of changes that have been agreed to. As I stated, the *Water Act* governs the assessment, monitoring and allocation of water resources in the Northern Territory. It requires water extraction—either surface or ground water—in a water control district to be subject to a water licence. It also requires a permit for the construction of a bore and a dam above a certain size if the licence is to release waste water into a waterway. These requirements exist so that these activities can be regulated and monitored, or otherwise prohibited or conditioned.

With the exception of waste discharge licences offsite, the water use permitting and licensing requirements of the *Water Act* do not currently apply to mining and petroleum activities. The *Water Act* includes provisions in section …

Ms TOWNSEND: As I was saying, the water use permitting and licensing requirements of the Water Act do not currently apply to mining and petroleum activities. The *Water Act* includes provisions in section 7(1) and (3) which specifically prevent water allocation and use by mining and petroleum activities from being regulated …

Phone hookup: Gary Higgins joins the meeting.

Mr HIGGINS: I worked the phone out, Tony. It is me.

Mr CHAIR: Thank you, Gary. Thank you, Mr Higgins, for joining us. We have started and Jo is just making the opening statement.

Ms TOWNSEND: The Member for Daly knows.

Mr HIGGINS: Okay.

Mr CHAIR: Thank you.

Ms TOWNSEND: This means that water allocation and use by mining and petroleum activities is not subject to the same assessment regime as other water users. It means that the public and close neighbours are not notified of a mining and petroleum operator's intent to apply to extract water, as is the case with other water licence applications, and that decisions to grant or refuse a licence, and reasons for that decision, are not published.

Mining and petroleum operations are required to obtain a water extraction licence in all states and territories, except the Northern Territory. Requiring water use by mining and petroleum activities to be regulated through the *Water Act* is the key matter that this Bill seeks to address. This is an election commitment of government published in the 2016 Sustainable Water Use Policy. I quote from that policy that the commitment by government is as follows:

> *Ensure water requirements for mining are formally incorporated into the consumptive pool for water allocation plans rather than the current approach which sees these uses sit outside of the system, with risks of over-allocation; and*
>
> *Ensure that mining and petroleum operations will be subject to the Water Act. This means they are dealt with like any other uses and must apply for water licence.*

This Bill, therefore, removes the limitation in the Act on the regulation of water use by mining and petroleum activities. It also brings it in line with Part IIAA of the *Criminal Code Act*, and modernises both the compliance and enforcement options and the penalty and offence provisions available under the Act so they are comparable with other water legislation in Australia.

This is a big shift for the Act. We have not had a change of this size to the legislation since it was introduced in 1992. But it is only one of a series of reforms proposed for the *Water Act*. It is important that we explain the context of those other proposals, as it is evident from the submissions made to the committee that there are concerns that the Bill does not go far enough.

What are those other proposed changes? As stated earlier, this Bill dates from a commitment made in late 2016 and defined in the election commitment. In addition to the election commitment, this Bill deals with Recommendation 7.1 of the Inquiry Report—that is, the *Scientific Inquiry into Hydraulic Fracturing in the Northern Territory*—which requires that the *Water Act* be amended prior to the grant of any further exploration approvals to require gas companies to obtain water extraction licences under the Act.

There are three other Bills in development to amend the *Water Act* following agreement by government on drafting instructions. The next Bill that is likely to be introduced is the Water Amendment (Hydraulic Fracturing) Bill 2018. I say 'likely' as this Bill is currently being drafted and any introduction and timing is subject to government approval. The Water Amendment (Hydraulic Fracturing) Bill will pick up on the balance of pre-exploration recommendations relating to water management made in the Inquiry Report.

As you will appreciate, there are a number of recommendations in the Inquiry Report related to water. Some of these are not legislatively based. Some will be implemented through future changes to the *Water Act*, and others will be implemented through the *Petroleum Act*, Petroleum (Environment) Regulations, as well as other subordinate instruments.

A large of number of submissions received by your committee referred to the recommendations in the Inquiry Report, with an expectation, I believe, that this Bill would address those. It is important, due to the strong interest in the Inquiry Report in the submissions received by the committee, that I indicate how they will be implemented, where it is known.

What recommendations is the Water Amendment (Hydraulic Fracturing) Bill likely to address? In summary, we are progressing further amendments to the *Water Act* to ensure the recommendations in Chapter 7 of the Inquiry Report can be addressed in a way that is complementary to the regulatory framework of the *Petroleum Act* and the Petroleum (Environment) Regulations.

Specifically, Recommendation 7.6 requires that prior to the grant of any further exploration approvals, the use of all surface water resources for any onshore shale gas in the NT is prohibited. There are current powers in the *Water Act* for me, in my capacity as Controller of Water Resources, to take this agreed recommendation into account in my licence decision-making. These powers exist in section 90(1)(k) of the *Water Act*. However, the Water Amendment (Hydraulic Fracturing) Bill will strengthen the *Water Act*, enabling any such application, if made, to be rejected outright by the department.

Recommendation 7.7 refers to the extension of the Water Control District, which has already happened. I believe the NT Cattlemen's Association submission refers to it. It also recommends the establishment of water allocation plans for the northern and southern parts of the Beetaloo Sub-basin, and imposes obligations in semi-arid and arid regions to have sufficient information to demonstrate that petroleum water extraction will have no adverse impact on existing users or the environment.

The water allocation planning process will, of course, be based on detailed ground water science, including that which will be generated through the Strategic Regional Environmental and Baseline Assessment, otherwise known as SREBA. Water allocation plans are the mechanism to ensure sustainable and fair water allocations will be made to the new beneficial use, known as 'petroleum activity'.

Outside of a water allocation plan, sustainability principles will, of course, be applied to ensure there is no adverse impacts on existing users, as is already required under section 90 of the *Water Act*. These arrangements, as I said, currently exist.

Recommendation 7.8 includes that extraction of water from water bores used to supply water for hydraulic fracturing will not be allowed within one kilometre of an existing water bore, other than with agreement of the landowner or where hydrogeological investigations indicate another distance is appropriate, and requires the development of water allocation plans that control the rate and volume of water extraction from those bores, and requires those gas companies to 'make good' any problems, if there is excessive drawdown. Of course, I am paraphrasing from the Inquiry Report.

As I said, the science to support water allocation plans will be produced through the Strategic Regional Environmental and Baseline Assessment, and the remaining elements of the recommendation can be accommodated through existing consideration and licence conditioning powers of the *Water Act*.

That said, I have sought advice on appropriate strengthening of these provisions to make sure that any decision I make to not allow it under the *Water Act* is appropriate. I have asked that it be considered in the drafting of the Water Amendment (Hydraulic Fracturing) Bill.

There are a few more to go. Recommendation 7.9 deals with prohibition of the reinjection of wastewater into aquifers and conventional reservoirs, specifically stating that it is prohibited unless more scientific investigations demonstrate appropriate risks can be managed. Recommendation 7.17 states that the discharge of any onshore shale gas hydraulic fracturing waste water, either treated or untreated, to either drainage lines, waterways, temporary stream systems or waterholes, is prohibited. These recommendations both relate to waste discharge and waste water activities of shale gas operators, which are not currently administered under the *Water Act*, where these activities are combined onsite. That is because they are regulated under the *Petroleum Act* and the Petroleum (Environment) Regulations. *Water Act* authorisations are required where waste water would not be confined onsite. That is the current requirement.

The Water Amendment (Hydraulic Fracturing) Bill will examine the interactions between the *Water Act* requirements, petroleum legislation requirements and matters such as enforceable waste water management frameworks, which are currently under development and supported by the independent expertise of the CSIRO. Those interactions are being examined as part of the Water Amendment (Hydraulic Fracturing) Bill.

The other recommendations—7.10 to 7.16, 7.18 and 7.20—I have skipped over because they will not result in changes to the *Water Act*. They do not need a legislative base to be done.

Committee members, I referred to three Bills and I have only spoken about one. Obviously, that is a big one. It is important, given the issues that were raised in the majority of submissions, to be clear that although this Bill was not designed to address those recommendations, that the work to implement them is under way.

The other Bills coming forward—one is progress on very minor amendments to the *Water Act*. There are a number of deficiencies in the current Act and some very minor corrections to be made. This Bill is very much limited to those changes that have no impact on policy intent, but is a step up from a statute law revision bill. As an example, the Bill will correct things like groundwater as one word, instead of two. It will remove an overly-regimented committee member specification requirement and streamline notification processes for the department. This Bill is being prepared now.

The last Bill being drafted is the Water Amendment (Strategic Water Reserves) Bill. As the name suggest, this will capture the government's policy, as agreed, for Strategic Aboriginal Water Reserves, which was approved in October 2017. Strategic Aboriginal Water Reserves are being incorporated into water allocation plans now. The proposed amendments are expected to be fairly simple and will establish the Strategic Aboriginal Water Reserve as a new beneficial use category in the Act.

As I said, none of these Bills are as robust and large as the one currently before the committee.

This Bill represents nearly two years of difficult and enduring effort on the part of Ian Smith, as the instructing officer, and his colleagues in the Water Resources Division. He has worked closely with the Department of the Attorney-General and Justice in relation to the offence and penalty provisions, and with the Department of Primary Industry and Resources on the joint implementation arrangements. What you do not see here, of course, is the policy and procedure that has been established to support these changes in legislation and the ongoing legal advice from the Solicitor for the Northern Territory, which has helped to frame it.

At the same time, government is also progressing a broad-ranging environment assessment and regulatory reform agenda. The Northern Territory Environment Protection Authority Amendment Bill was also introduced in August and is currently before the Social Policy Scrutiny Committee. Later this week we will commence public consultation on a new Environment Protection Bill, which is the first major piece of legislative work for the environment reform program. That Bill will introduce the new environmental impact assessment system and a new environment approval. During October and November, the department will be undertaking a number of public consultation processes associated with those reforms. That consultation is occurring before the introduction of the Bill. It will not replace the scrutiny committee process, of course.

The discussions we are having with key stakeholders is also about a new licensing and regulatory framework for managing waste and pollution, including those currently managed under the waste discharge and licensing provisions of the *Water Act*. It is for that reason that review of the provisions about waste were specifically excluded from drafting instructions for this Bill. Waste management will also become part of the strengthened environment protection Act, as well as changes to the *Petroleum Act* and Regulations.

I will now ask Christine to talk a bit more about the Bill in some detail and some of the matters raised in submissions.

Mr CHAIR: Thanks, Jo. Does the panel have any questions on that?

Mr COLLINS: Oh, no, we can come back to it.

Mr CHAIR: Gary, are you right to continue?

Mr HIGGINS: Yes, I am right.

Mr CHAIR: Lawrence?

Mr COSTA: Right.

Mr CHAIR: Thanks, Christine.

Ms LONG: Thank you Mr Chair. Thank you, Jo, and thank you to the committee of the opportunity to present today on this Bill to amend the *Water Act*, which I will refer to as Serial 60 for brevity. As you will now understand, it is one Bill in a series to come to reform the water regulatory framework.

Since the submissions were made to the committee, the department—that is, Ian and I—have had the opportunity to talk to some of the individuals and organisations that made submissions. Those discussions were to outline the broader environment and water regulatory reform package underway and to provide a context, and also specifically in regard to the comments made to the committee.

We indicated to the submitters what the department's response to their comments would be and offered to provide them with a copy. Discussions with all submitters was not possible as the majority did not identify themselves, and there are a few we have not had the chance to contact at this stage.

I have provided the committee with a submission from the department which, among other things, analyses our response to each of comments made in them and the themes which present across all submissions.

I will talk to the department's submission now and outline its contents. In terms of Serial 60, clearly the Bill has been drafted only in accordance with the drafting instructions authorised by government. For the benefit of those listening and who made submissions, I will briefly outline what was in the scope of those drafting instructions and what was ruled out of scope, as both of these things have framed the contents of Serial 60.

Preparation for drafting of Serial 60 commenced in 2017. Government approved the preparation of drafting instructions in May 2017. The drafting instructions were to capture the election commitment expressed in the 2016 Sustainable Water Use Policy. I will not go into extreme detail—there is more detail in the department's submission—but the approval to prepare drafting instructions included the following:

- the instruction to repeal 7.1 and 7.3 of the *Water Act* which limit the Act's application to mining and petroleum activities

- to allow lawful authorisations given to mining and petroleum operators given under the relevant legislation prior to the commencement of the amended Act to continue

- to amend offences and penalties consistent with contemporary Australian water industry best practice.

Government also noted the proposed operational arrangements between the Department of Environment and Natural Resources and the Department of Primary Industry and Fisheries—sorry, that is now and Resources—to deliver on the transition process.

Government also agreed that the waste discharge control provisions be left alone, to be incorporated into the new environment protection Act, and reform of water management and pollution measures more broadly.

The drafting instructions were approved by government in January 2018 and drafting commenced. In April 2018, government accepted the recommendations in the Inquiry Report. Further drafting instructions were then authorised to include provisions to apply the amended Act, immediately on commencement, to that part of the petroleum sector which uses hydraulic fracturing techniques. This was consistent with Recommendation 7.1 in the Inquiry Report and the timings outlined in Table 16.1.

The department has worked closely with the Department of the Attorney-General and Justice and the Office of the Parliamentary Counsel to ensure that the elements comprising each offence are consistent with Part IIAA of the *Criminal Code Act* and that the penalties are set at an appropriate level, given the situation in other jurisdictions. In other words, there is a significant degree of rigour sitting behind these provisions.

In August 2018, government approved the introduction of the Bill into the August Sittings by Minister Lawler, approved the joint departmental implementation policy, and a communications and engagement plan, and also provided additional funding to the department for $375 000 this year and $500 000 next year for resources to work through the assessment and licensing transition phase.

Minister Lawler referred Serial 60 to your committee and here we are today.

The department notes that over 400 submissions were received. The majority of those were proforma submissions. I am actually counting the number of individuals in that over 400. From these, several key themes were identified relating to both in-scope and out-of-scope matters. These are covered in detail in attachment 3 of the submission. For in-scope matters, these were burden of proof, in that the majority of new offences proposed in Serial 60 placed the onus on a defendant to prove that the defendant took reasonable steps and exercised due diligence to prevent the offence. All offences have been brought into compliance with Part IIAA of the NT *Criminal Code Act*, which means the elements of all offences are clearly articulated for criminal proceedings and due diligence assessments.

The department has a small regulatory force to cover remote and extended regions. There are unlikely to be witnesses to alleged offences due to this remoteness. The department considers reversing the onus of proof for defence against prosecution is appropriate in this regulatory environment. This reverse onus of proof is not unique—it appears in other water legislation in Australia.

Legal clarifications. There were many comments relating to points of law. We are not lawyers. The department relied on legal advice to progress these provisions. These comments provided in submissions were various and are listed on page 3 of attachment 3. Several of these relate to the offence provisions and are considered, in turn, in the department's submission.

Penalties. There were a range of views on penalties, from support, to the view that NT penalties should sit up with Queensland and New South Wales penalties. The department has provided a summary of each penalty in the current *Water Act* and what is proposed in Serial 60 at attachment 1 of the submission.

Ranking the third highest in Australia is considered appropriate, given the current regulatory environments, including the ability for simultaneous prosecutions under the *Water Act, Mining Management Act* and *Petroleum Act*.

Hydraulic fracturing definition. This exists for one purpose only, and that is to ensure the *Water Act* captures water use by hydraulic fracturing activities on the day of commencement of the Act. The definition is deliberately drafted for that purpose and is not a text book definition. There were a multitude of text book definitions available, including that in the Inquiry Report. It does not need to specifically deal with what the future products of those techniques might be, as production is several years away, and all petroleum activities will be captured by the amended Act within six months of commencement.

Transition arrangements. The transition arrangements are better explained in the implementation policy at attachment 4 of the department's submission, which is the government approved, joint departmental implementation policy.

The last page of the submission shows the various transition arrangements of the different industry sectors and how those operators with existing authorisations will come to be captured. There was a range of views on how these transition provisions should be, or will be, applied. The fact is that many operators are lawfully authorised now to extract water under the relevant legislation. That will not change, and nor should it. The transition will be a phasing in of approvals being required under the *Water Act*. That is the only way that this is achievable for the licensing authority and the industry.

This department has reviewed every current mining management plan in existence to determine how many of them will actually need a water extraction licence. The answer is around 20%. These will be captured when their plans require renewal, which is currently annually. For the petroleum industry, new environment management plans will be captured. No currently approved petroleum activities involve water use that would require licensing and permitting under an amended *Water Act*.

The department is talking to operators in the mining and petroleum industries now about their licence applications and the information they will be required to submit for assessment. Industry is well aware of the new requirements.

Now to …

Mr CHAIR: I am sorry, Christine. Have you much more to …

Ms LONG: No. I am going to move to out-of-scope matters and I will not stay very long on that.

Mr CHAIR: Okay, thanks.

Ms LONG: A large number of submissions did not understand that subsections 7(2) and (4) of the *Water Act* were not in the scope of the amendments. However, the points that were made will be taken into account by the Environment Division in the broader review of environmental regulations.

Similarly, there was an expectation that Serial 60 would implement the recommendations of the Inquiry Report. As Jo has explained, not so, but again, thank you to everyone who made those comments. They have been reviewed and will be considered in the drafting of the amendment Bills to come.

There were some other out-of-scope matters, some of which related to implementation. These do not belong in legislation. Again, we appreciate those views and they will be considered.

There were also some comments made in the press, including recently in the *Centralian Advocate*, in relation to Serial 60 and its impact. Claims were made that petroleum companies would become polluters as a result of Serial 60. It remains the case that water pollution and disposal underground of waste, when confined to the relevant mining and petroleum activity sites, are best regulated through environmental authorisations—that being an environment management plan for onshore gas activities in the *Petroleum Act* and its regulations, rather than *Water Act* authorisations. The approach allows an integrated consideration of a project's overall waste management plan, in consideration of factors such as current best practice for specific industries, including specific codes of practice, regional factors and cumulative impacts.

Should an onshore gas company release waste water, there is a range of strong sanctions in place under the *Petroleum Act* and Petroleum (Environment) Regulations. These are stronger than the current and proposed penalties in the *Water Act*. There were similar claims made about pollution of community water supplies.

Serial 60 brings no change to the already existing strong regulatory framework that protects water resources. As regulators, we are attempting to reform what is an outdated and inflexible range of penalty and offence provisions. Serial 60, for us, is a means to strengthen the deterrent of any water use activities that will impact detrimentally on the Territory's water resources, water users and the environment.

I will finish by saying that the work is, obviously, not complete. The *Water Act* also operates through a series of gazetted exemptions, and the department is in the process of reviewing these to ensure that they will remain relevant and appropriate.

Thank you for your time. Again, thank you to everyone who made submissions in relation to Serial 60.

Mr CHAIR: Thank you, Christine. Thank you, Jo. A very comprehensive report. You have obviously gone through the submissions very well. I will open to the panel now. We have a number of questions. We have been trying to follow. You have answered some of our queries. Thank you for that. I will open to the panel. Gary, do you have anything to ask?

Mr HIGGINS: No. I am right at the moment.

Mr CHAIR: Lawrence?

Mr COSTA: I am good at the moment.

Mr CHAIR: Jeff?

Mr COLLINS: About the definition. I noticed in the end of your attachment 3, talking about the issues and the definition of hydraulic fracturing. The response does not seem to really—to me anyway—cover the issue that is raised in the submissions about why the definition specifically says shale gas. You say the response is the definition has one purpose. It is purely for the purpose of section 113 and the transitional arrangements in order to ensure the *Water Act* licence and permits will be required for activities. But, ultimately, if it is in there as a definition, it will be there until amended. Why would it not make more sense to cover hydraulic fracturing? The suggestion was to extract petroleum resources and hydrocarbons from subterranean rock. Does that not make more sense?

Ms LONG: When the Water Amendment (Hydraulic Fracturing) Bill is introduced, that will rewrite the definition of hydraulic fracturing. That will supersede the definition that exists only in section 113 for the purposes of the transition.

Mr CHAIR: Okay. Thanks, Christine. Thanks, Jeff. Mark, do you have a question? I have a few, but please jump in where you wish.

Ms LONG: Sorry, can I just correct that. Section 112.

Mr CHAIR: Thanks, Christine. You mentioned the penalties increase from $3000 to $64 000. You mentioned we are third in the country now. Yes?

Ms TOWNSEND: We are now at the very bottom.

Mr CHAIR: We are now at the very bottom, so it is $3000 now?

Ms LONG: Yes. The averages are at the bottom of attachment 1, and the average of current NT penalties is $3128. The average of each jurisdiction's penalties—in this, we are comparing penalties that relate to water use, because that way we are comparing like for like. They range from $5285 in Victoria, and Queensland and New South Wales are, obviously, the highest, as we mentioned. In Queensland, it is $157 908 and in New South Wales it is $216 611, or an average across all jurisdictions—not that that is necessarily valid—of $71 737. That appears at the bottom of the table of attachment 1 in the green tab.

With the proposed amendments—if the proposed amendments are commenced—the NT would be ranked third.

Mr CHAIR: Okay. In the country?

Ms LONG: In the country, correct.

Mr CHAIR: Is that for one breach, or if there were a number of breaches would it be up to that for each breach?

Ms LONG: Every offence has been reassessed, and each row in this table at attachment 1 deals with each offence. It shows, for example, if we are talking about section 42—obviously, some of the section numbering will change with the amendments—section 42 is a breach of a term or condition of a permit. This relates to construction or ordering of works in a waterway. We are talking about, for example, a dam or something like that. Currently, the penalty is $2310. With the proposed amendments, the equivalent penalty, which becomes a breach of a permit to interfere with a waterway, will be $77 000.

Mr CHAIR: Yes, got it. When a lot of submissions said we have not gone far enough in the penalties, and the response is that we are up to what the rest of Australia is doing?

Ms LONG: The way we rationalised it, Mr Chair, was that New South Wales and Queensland have had a number of issues with mining activities, in particular. As a result of that, there have been quite a number of criminal proceedings in those two states. Their reviews of their penalties have been in that context. We are not in that situation at this stage. We hope we never will be. So, we feel that it would not have been appropriate to go right to the top. We think where we are proposing to place the NT is appropriate at the present time.

Mr CHAIR: Right. Great. Thank you, Christine. Jeff, have you any? I have a couple of others.

Mr COLLINS: No, I had some others but I think she answered them anyway.

Mr CHAIR: The other concern—a lot of submissions were for the water contamination within the mining site, but there was a lot of concern about contamination outside that. Can you talk to us about how we have that covered, or does it come into the other Bill?

Mr SMITH: Mr Chair, if I could answer that. This Bill, Serial 60, will not change the existing arrangements in respect of what we call waste management or waste discharge and pollution control. They will remain the same, which is, essentially, a shared arrangement, if you like. The primary responsibility will be with the mining and petroleum legislation to control whatever happens on-site. But if there is any likelihood or if there is actual off-site impacts arising from those on-site wastage—if the waste crosses the boundary of the mining or petroleum site—be that in the surface water or ground water—or it is deemed likely that that will happen, then the *Water Act* applies. That has been and will continue to be subject to a waste discharge licence to control that under the *Water Act*.

So, that arrangement is part of reconsideration in the review of the environmental regulatory framework that is happening in the other parallel process …

Mr CHAIR: In the other, yes.

Mr SMITH: … and which, as I understand it, will see all of those licensing arrangements for waste discharge and pollution control move into, not only out of the *Water Act,* but I understand whatever applies in the mining and petroleum legislation will move into the new environment protection Act.

Mr CHAIR: Okay. Under this …

Mr SMITH: My understanding is the government has seen that—sorry, Jo.

Mr CHAIR: Keep going, Ian.

Mr COLLINS: As you said, currently on-site it is covered by the *Petroleum Act* and the mining management plans. Do you know what the penalties are under that? Are they commensurate with what we are proposing here?

Mr SMITH: They are commensurate. They are probably around about the same order. My recollection is in some cases they can be quite significantly higher where it is a major breach of either the environment management plan or the mining management plan, but for more of a breach of activities it is around about the same order of what we are talking about here. That was part of our consideration. If we are bringing mining and petroleum into the *Water Act* for the key water use offences, we needed to lift our penalties so they were consistent with anything else that would apply on the mining and petroleum side. That was one of the considerations.

Then, we looked at what is happening in other jurisdictions. I go back to a comment Christine made that in the other jurisdictions of Queensland and New South Wales there were issues with mining. There are other broader issues. We all know about the Murray Darling Basin and there are issues of—I do not want to say rampant water theft—but water theft occurs and they have over allocated systems.

So, we are not there yet. We felt that the penalty regime that we needed to go to did not need to go to the extremes of New South Wales and Queensland, but we wanted to bring it up to be, if you like, next cab behind.

Mr COLLINS: Okay, thank you.

Mr CHAIR: Thanks, Ian. When we talk about the other Bills coming into play will complement this Bill and cover some of the legislation, do you talk about a timeframe for that coming in? Are you working on these Bills now? Yes? Is there a timeframe or a—yes, Christine?

Ms LONG: The clue to the timing is in the titles. The Water Amendment (Hydraulic Fracturing) Bill is 2018 and the Bill to bring in the minor amendments, the Water Amendment Bill, is also 2018. The Strategic Aboriginal Water Reserves is 2019. That is about as good as we can predict at this point in time. That is based on the way that the Office of the Parliamentary Counsel programs Bills for introduction.

Mr CHAIR: Right. Thanks. Okay. Is there any other—sorry, Jeff.

Mr CHAIR: Any other questions from the panel? Mr Higgins?

Mr HIGGINS: No, none from me, mate.

Mr CHAIR: Mr Costa?

Mr COSTA: No, all good.

Mr CHAIR: Jeff?

Mr COLLINS: No.

Mr CHAIR: Is there anything you would like to say before we wrap up?

Ms TOWNSEND: No.

Mr CHAIR: No? Okay.

On behalf of the committee, we thank you for coming in and answering our questions and going through a very in-depth report and providing us with some documentation to go over as well. We thank everyone who made submissions to the committee. We are still looking at some of those—a couple of late ones we had—and looking at some legal advice on some of those as well.

Thank you very much for today. Thanks everyone. The public hearing is now closed.

The committee concluded.
