



# LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

13<sup>th</sup> Assembly

## LEGISLATION SCRUTINY COMMITTEE

### Public Briefing Transcript

11.40 am, Monday 9 December 2019

Litchfield Room, Level 3 Parliament House

**Members:**

Ms Ngaree Ah Kit MLA, Member for Karama (Chair)  
Mr Tony Sievers MLA, Member for Brennan  
Mrs Lia Finocchiaro MLA, Member for Spillett  
Ms Sandra Nelson MLA, Member for Katherine (Deputy Chair)  
Mrs Robyn Lambley MLA, Member for Araluen

**Witnesses:**

**Department of Primary Industry and Resources**

Rod Applegate: Deputy Chief Executive Officer  
James Pratt: Executive Director, Onshore Gas Development  
Emma Jane Farnell: Director, Onshore Gas Development

## PETROLEUM LEGISLATION MISCELLANEOUS AMENDMENTS BILL 2019

### Department of Primary Industry and Resources

**Madam CHAIR:** Good morning, everyone and thank you for joining us. I am Ngaree Ah Kit, the Member for Karama and Chair of the Legislation Scrutiny Committee. On behalf of the committee, I welcome everyone to this public briefing on the *Petroleum Legislation Miscellaneous Amendments Bill 2019*.

I acknowledge that this public briefing is being held on the land of the Larrakia people and I pay my deepest respects to Larrakia elders past, present and emerging.

I also acknowledge my fellow committee members, the Member for Brennan, Tony Sievers; and the Member for Katherine, Sandra Nelson, on the phone.

I welcome to the table to give evidence to the committee from the Department of Primary Industry and Resources, Rod Applegate, Deputy Chief Executor Officer; James Pratt, Executive Director, Onshore Gas Development; and Emma Jane Farnell, 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 today.

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 which is being webcast through the Assembly's website. A transcript will be made for use of the committee and may be put on the committee's website.

If, at any time during the briefing, 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.

I will ask each witness to state your name and the capacity in which you appear this morning before inviting you to make a brief opening statement, and then proceed to the committee's questions.

Before I do that, I would also like to acknowledge the attendance of my colleague, the Member for Spillett, Lia Finocchiaro.

Could you each please state your name and the capacity in which you appear this morning.

**Mr APPLGATE:** Thank you Madam Chair. Rod Applegate, Deputy Chief Executor Officer, Department of Primary and Resources.

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

**Ms FARNELL:** Emma Farnell, Director, Onshore Gas Development, Department of Primary Industry and Resources.

**Madam CHAIR:** Excellent. Mr Applegate would you like to make an opening statement?

**Mr APPLGATE:** I would very much welcome that, thank you.

Good morning Chair and members of the committee. Thank you for inviting me to speak to you today on behalf of the Department of Primary Industry and Resources about the *Petroleum Legislation Miscellaneous Amendments Bill 2019*.

The Bill, also known as Serial 116, was introduced into the Legislative Assembly on 28 November 2019 and I am joined by my colleagues Emma and James, who have introduced themselves.

The amending Bill, the *Petroleum Legislation Miscellaneous Amendments Bill 2019*, has been drafted to progress or implement 9 recommendations of the Independent Scientific Inquiry into Hydraulic Fracturing. Ta-da, I carry it around because it is a weighty tome.

It does this through two efforts. The first is creating a head-of-power in the *Petroleum Act 1984*, 'the Act', to amend regulations under the Act to enable the progression of several of those recommendations. The second is through direct changes to the Act to complete recommendations when the Bill is passed.

We will go to regulation-making powers. The Bill inserts regulation-making powers into the Act to (a) allow the *Petroleum Regulations 1994* to prescribe statutory land access agreements for entry onto pastoral leases in accordance with recommendation 14.6 from the HFI report. There is currently no legal requirement for a petroleum company to have a land access agreement with a pastoral lessee or landholder. The current land access policy exists, but it requires a petroleum interest-holder to seek an access agreement with the landholder before commencing regulated activities and, if agreement cannot be reached within 60 days, then the matter may be determined by the land access assessment panel. This panel has no legal authority currently. As highlighted by the Inquiry, this process can be significantly improved.

The second part of this Bill allows for the petroleum regulations to provide minimum protections in statutory land access agreements with pastoral lessees in accordance with the Inquiry recommendation 14.7. The inquiry has listed 24 minimum provisions that must be in the land access agreements.

Thirdly, allow the *Petroleum Regulations 1994* to prescribe minimum mandatory compensation for production activities on pastoral leases in accordance with Inquiry recommendation 14.8. This provision will only apply to production activities not exploration activities, as recommended under the HFI report.

Allow the *Petroleum (Environment) Regulations 2016* to prescribe environmental security bonds for regulated activities in accordance with recommendation 14.13 of the HFI report. The current process for environmental security bonds is not legislated and petroleum operators have voluntarily engaged in the process as a matter of good faith to date. The Department of Environment and Natural Resources has legislative responsibility for the *Petroleum (Environment) Regulations 2016* with the transfer of those powers this year, and will progress the amendments to prescribe environmental security bonds once this Bill is passed and the head of power to create such a regulation exists.

Reforms regarding land access and compensation are of significant interest to the petroleum industry and pastoralists and DPIR has been engaging with the Australian Petroleum Production and Exploration Association—otherwise known as APPEA—and the Northern Territory Cattlemen's Association about these matters.

Several progressive discussions with these groups have already occurred, and I am pleased to say there is common ground between both industry groups surrounding the need and importance for statutory land access agreements. Departmental officers are working cohesively with both industry groups to develop these regulations that will contain the detail related to statutory land access agreements. It is envisaged that once this Bill is passed, the drafting of the regulations can then be completed.

Part two of our proposal is the direct change to the *Petroleum Act* through the Bill. That relates to land release for exploration, amongst other things. The Bill amends the current process regarding land release for exploration in accordance with Inquiry recommendation 14.2 so that the Minister must give notice, through advertising in a newspaper, of the intention to release blocks for exploration. At the same time as inviting applications from petroleum companies, the Minister invites submissions from members of the public as to whether the land is suitable for exploration and whether co-existence with the petroleum industry is possible. Lastly, the Minister must decide whether co-existence is possible and give notice publicly.

Objections to granting of exploration permits: currently the Act only allows a landowner or a person with an interest in the land under application to lodge an objection. The Bill amends the current process regarding objections to proposals to grant exploration permits in accordance with Inquiry recommendation 14.10 so that any person can lodge an objection to the grant of an exploration permit. The time frame for objections is two months after notice of the application is published in a newspaper.

The next change the *Petroleum Act* requires is applying the principles of ecologically sustainable development. The Inquiry recommended that the principles of ecologically sustainable development are considered when making decisions under the Act and the regulations. Again, this is recommendation 14.11 of the HFI report. On a broad level, the principles of ESD, or ecologically sustainable development, are about development that meets the needs of Territorians today, while conserving the environment for the benefit of future generations.

Certain decisions under the *Petroleum (Environment) Regulations 2016* already require that ESD is considered, such as when approving an environmental management plan. The Bill lists the decisions at Schedule 1 where the principles of ESD will be considered when the decision-maker performs their duties under the Act. This includes all tenure-related decisions such as the grant of an exploration permit, retention licence or production licence. This is consistent with the intent of all recommendations in the HFI report.

There are a number of decisions under the Act which are not included because ESD is not relevant, such as appointing an inspector or maintaining the Petroleum Register.

I then move on to setbacks and prohibited activities. The Inquiry made recommendation mandating setbacks or buffers of certain petroleum infrastructure from improvements on the land. That is recommendations 7.11 and 10.2 in the HFI report. These mandated setbacks are in the code of practice already for onshore petroleum activities in the NT which is enforceable under the *Petroleum (Environment) Regulations 2016*. This code has been in place since July 2019.

The Bill amends the Act to update section 111 which prohibits certain operations of the permittee or licensee. Specifically, it prohibits a petroleum processing facility from being constructed within two kilometres of a residence and the construction of petroleum wells within one kilometre of a designated bore, including for rural stock or domestic use, without consent of the land holder, the registered native title body corporate and the owner of the bore.

Finally, the Bill authorises the charging of certain fees. The Bill makes technical amendments to the Act that are not related to the Inquiry recommendations and do not increase the fees. Rather they correct a drafting error and ensure that certain fees charged under the *Petroleum Regulations 1994* are properly within power.

Currently, the *Petroleum Regulations 1994* prescribe five different fees for which there is no specific head of power in the Act. The amendments amend the Act to insert the necessary power for government to charge this fee, which is revenue to the government. These fees are for petroleum companies to seek an extension, variation or waiver of their statutory work program under an exploration permit, a retention licence, or a production licence.

The other fees are an application to surrender part or all of the permit, or licence area and an application to obtain an access authority. The error likely originates from July 2013, and is most likely a drafting error at the time of the *Petroleum Amendment (Fees) Regulations 2013* were made.

That concludes my opening statement. Thank you again for the opportunity to speak to you today and I welcome any questions on these changes to the *Petroleum Act 1984* and *Petroleum Environment Regulations 2016*.

**Madam CHAIR:** Thank you very much. I will now open up to the committee for any questions.

**Mrs FINOCCHIARO:** Thank you. I wanted to ask—Mr Applegate you mentioned that this legislation will mean that any person can lodge an objection. Whereas currently—and I missed what you said prior to that, is it just the person whose land may be subject to? So how far does any person extend? Is that also any entity? For example an action group in Sydney wanting to lodge an objection to something happening in the Northern Territory, it covers them as well?

**Mr APPLGATE:** This is the Venezuelan clause is it? Anyone.

**Mrs FINOCCHIARO:** Anyone?

**Mr APPLGATE:** Anyone.

**Mrs FINOCCHIARO:** Anyone all over the world?

**Mr APPLGATE:** Anyone all over the world. It is consistent with Justice Pepper's recommendations in the HFI report to allow open standing.

**Mrs FINOCCHIARO:** With this Bill making it two months to now lodge an objection, is that an increase to the time frame? What is the current time frame to lodge an objection?

**Ms FARNELL:** So the current time frame is two months and we have not amended that time frame at all. We are just confirming to the committee that the time frame remains the same.

**Mrs FINOCCHIARO:** Could you just expand on—you mentioned something about a review body but them having no legal power or status. Could you just expand on that?

**Mr APLEGATE:** How long have we got? Back in 2013 there were some concerns initially raised by the cattle industry in relation to mining exploration on pastoral properties. Through a fairly extensive consultation period we basically came up with a policy endorsed by the government of the time that allowed for an access to be negotiated between, at the time, a mining company and a pastoral lessee to gain access. Should they not reach agreement within a certain amount of time, we set up body called the land access panel, which basically adjudicated on these matters.

It had no statutory powers, it was just a policy response by the government to try and ease some of the small issues that were occurring. Now we translated that policy from the *Minerals Titles Act* across to the *Petroleum Act* at the time, again, so that pastoralists who were experiencing an increase in some exploration by petroleum companies on such land also had the same sort of policy framework in which to operate.

Pepper recognised that we had tried to do something through a voluntary agreement and that the Act could be improved by giving it some statutory power. That is the effect of what we are proposing in the amending Bill in relation to land access is to actually make it statutory under the legislation, not voluntary.

**Mrs FINOCCHIARO:** Then in practice, the land access panel will have authority—what does that authority look like? For example, if at one of these mediations, the parties come to an agreement that then is a binding agreement, or how does it ...

**Mr APLEGATE:** The land access panel is only a policy response of government. It has no power. I am thinking we will not continue.

**Mr PRATT:** Member for Spillett, that panel will be dismissed of its responsibilities and not be in existence when this Bill is passed and the regulations are in place. We are currently working with both industry groups to develop a dispute resolution process, so once we have statutory land access agreements in place if there still is not a resolution for agreement within 60 days a dispute mechanism will entail, likely through mediation. Both parties are eager for a mediation approach as opposed to arbitration and then ultimately this Bill looks at NTCAT also taking on some responsibilities if agreement through mediation cannot be reached.

**Mrs FINOCCHIARO:** Is that dispute resolution process not set out within the Act? Are you saying that will go in to the regs?

**Mr PRATT:** That is correct. At the moment there is no head of power to require statutory land access agreements under the *Petroleum Regulations*, so this Bill enacts that power. We have commenced discussions with both parties, APPEA and NTCA, over the last six weeks. We have had a working group meeting with them as recent as last week about working through Justice Pepper's 24 minimum provisions. That would help inform the regulations that outline the detail behind statutory land access agreements, including dispute resolution.

**Mrs FINOCCHIARO:** When do you envisage the regs will be ready?

**Mr PRATT:** The Bill has to pass before we can have those regs in place because that creates the head of power. This committee's report is due back to the March sittings. At this current time we are working on drafting instructions in conjunction with those industry groups around the form and functions of those regulations, so there will be a parallel process as the Bill is being discussed through the scrutiny committee and then debated and hopefully passed through the parliament. Parliamentary Counsel will have some instruction to develop those regulations as well.

**Mrs FINOCCHIARO:** Will those regs be put out for exhibition? Or will you be running a consultative process currently—is that how you hope to formulate the end product?

**Mr PRATT:** The regulations are for pastoral lease holders and obviously the petroleum company to come to agreement on statutory land access agreements. We are currently working through the early stages of those minimum 24 provisions from Justice Pepper and working through both NTCA's and APPEA's concerns and

happiness regarding some of those provisions. We have not quite got to the form and function of having them drafted and the process from there yet.

**Mrs FINOCCHIARO:** Once that is done though, is it envisaged that it will go out for public exhibition?

**Mr PRATT:** I cannot give you a definitive answer at this point. The NTCA and APPEA both would like to speak to their members regarding that.

**Mr APPEGATE:** It is very clear in Pepper's report what the 24 minimal provisions are and anyone who is concerned will refer to page 394 where they are all spelled out.

**Madam CHAIR:** Are there any questions?

**Ms NELSON:** Yes. I have a question about land access. What happens with the people that are not members of like the NT Cattlemen's Association or not members of APPEA or whatever, not represented by peak organisations, what happens to those land holders or land owners? Do they go through the same mechanisms in regards to access to the land?

**Mr PRATT:** Yes, the statutory land access agreement is binding by law and applies to all land holders. Land holders are generally either governed under the *Aboriginal Land Rights Act* or are pastoral lease holders in this regards for land access agreements. ALRA land has its own process for petroleum companies gaining access. All pastoral lessees, whether they are a member of the NTCA or not, will have this land access agreement authority.

**Mrs FINOCCHIARO:** I want to ask about the minimum mandatory compensation for production activities. Will that be set out in the legislation or will it be set out in the regulations—what does that look like?

**Mr PRATT:** Again, the head of power has been created through this Bill and, for want of a better term, the formula or the process for determining that compensation will be in the regulations. At the moment, obviously that is applicable for production only. We are three or four years away from a production scenario in the Beetaloo, dependant on company's results and interest in pursuing those activities.

Our primary focus at the moment is to get the regulations for land access completed and in place as soon as possible. By no means is the compensation mechanism not of importance, but we have a little time next year to develop those. Once we get through this tranche of land access regulations that will be the next challenge.

**Ms FARNELL:** Member for Spillett, I can advise there are existing powers for compensation under the Act at sections 81 and 82. There are existing rights of compensation to landowners and they are (a) in relation to the deprivation of use or enjoyment of the land, including improvements and (b) damage caused to the land or improvements on the land. There are existing rights of compensation. We are talking about a different type of compensation for production.

**Mr APPEGATE:** As James has alluded to, we think we have a few years ahead of us before we will be contemplating issuing any production approvals. At the moment, our priority has been to facilitate the provisions as recommended by Pepper to allow exploration to occur appropriately.

**Madam CHAIR:** There being no further questions, I thank you all for appearing before us this morning.