

## WATER AMENDMENT BILL 2019 SERIAL NO. 80

### Submission

Dear Dr Jennifer Buckley, Committee Secretary, and the Economic Policy Scrutiny Committee,

Water is our most valuable commodity in the Northern Territory. Water is vital to sustaining all industries, communities, environments and indeed all life. It is up to you our legislators, to ensure our water quality and quantity is preserved and protected above all else.

I query how the Economic Policy Scrutiny Committee (EPSC) and the Northern Territory Legislative Assembly (LA) can adequately “inquire into and report on: a) whether the Assembly should pass the Bill; b) whether the Assembly should amend the Bill; c) whether the Bill has sufficient regard to the rights and liberties of individuals; and d) whether the Bill has sufficient regard to the institution of Parliament”<sup>1</sup>. Considering our submissions are due on 11 March 2019, and the Legislative Assembly “March sittings will see the following bills before Parliament: The Electoral Legislation Amendment Bill 2018; The Health Services Amendment Bill 2018; The Criminal Code Amendment Bill 2018; The Liquor Amendment Bill 2018; THE WATER LEGISLATION AMENDMENT BILL 2019; The Petroleum Legislation Amendment Bill 2018”<sup>2</sup>. How will the EPSC and LA read all our submissions to make a considered assessment of this Bill in a week? Especially considering there are several large Bills of great importance to the NT for the LA to consider in a short period of time.

Before I address the Water Legislation Amendment Bill. I would like to draw your attention to some problems in the current Water Act 2018, which have not been addressed by this Bill.

The Water Act 2018 states<sup>3</sup>:

- 7 Application of Act to mining activity or petroleum activity**
- (2) Section 16 does not apply to waste that comes into contact with water, or water that is polluted, if:
- (a) the contact or pollution occurs in the course of carrying out a mining activity or petroleum activity; and
  - (b) the waste or polluted water is confined within the mining site or petroleum site on which the activity is being carried out.
- (4) Part 6, Division 5 applies to the disposal underground of waste in the course of carrying out a mining activity or petroleum activity on a mining site or petroleum site if the waste is not confined within the mining site or petroleum site.

And,

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<sup>1</sup> EPSC Call for Submissions [https://parliament.nt.gov.au/\\_data/assets/pdf\\_file/0009/653625/Call-for-submissions-for-Water-Amendment-Bill.pdf](https://parliament.nt.gov.au/_data/assets/pdf_file/0009/653625/Call-for-submissions-for-Water-Amendment-Bill.pdf)

<sup>2</sup> Natasha Fyles Media Statement <http://newsroom.nt.gov.au/mediaRelease/28761>

<sup>3</sup> Water Act 2019 [https://parliament.nt.gov.au/\\_data/assets/pdf\\_file/0006/653595/Water-Act.pdf](https://parliament.nt.gov.au/_data/assets/pdf_file/0006/653595/Water-Act.pdf)

## Part 6 Ground water

### Division 1 General

#### 47 Declaration of exemptions

The Administrator may, on the recommendation of the Minister, by notice in the *Gazette*, declare that a provision of this Part does not apply to or in relation to a bore, or to drainage water or waste, of a class or description specified in the notice and, accordingly, that provision does not apply.

As well as Part 6 Division 5,

#### 63 Grant of underground waste disposal licence

- (1) Subject to this Act, the Controller may, of his or her own motion or on application in the prescribed manner and form, grant to a person a licence in the prescribed form to dispose of waste underground by means of a bore.

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*Water Act*

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Part 6 Ground water  
Division 5 Waste disposal

- (2) A licence may be granted under subsection (1) subject to such terms and conditions, if any, as are specified in the licence document.
- (3) A licence shall be granted for such period, not exceeding 12 months, as is specified in the licence document.

These Sections of the Water Act 2018 must be removed. They contravene the NT Fracking Inquiry's Recommendation 7.9 - Prohibition on the reinjection of wastewater into deep aquifers and conventional reservoirs. They also contradict section 10 of the Water Amendment Bill which inserts section 67(4) into the Water Act.

Section 17(2) must also be removed from the Water Act (see discussion below).

The Water Act 2018 also needs to clarify the definition of petroleum activity in the s4 Interpretation to specify oil, gas and hydrocarbons. Eg. **petroleum activity** means exploration, extraction or processing of petroleum *for example oil, gas and other hydrocarbons*, under an Act or an Act of the Commonwealth, including another activity for a purpose ancillary to one of those activities.

Now to address the Water Amendment Bill 2019 Serial 80<sup>4</sup>:

Section 7 of the Bill inserts “Division 3 Hydraulic fracturing waste”, including section “17A Hydraulic fracturing waste and water”, and section “17B Application of section 17A”, into the Water Act.

Section 17A lists offences regarding hydraulic fracturing waste. 17A(5) needs to be strengthened to better capture accidental contamination caused by hydraulic fracturing waste. *I suggest it be changed to read: (5) A person commits an offence if the person engages in any conduct, regardless of intent, that results in, directly or indirectly, hydraulic fracturing waste coming into contact with water.*

Section 17B lists the exemptions to 17A. This makes a mockery of section 17A, as it allows water contamination to occur unchallenged if it is “hydraulic fracturing waste is produced water or flowback fluid” (17B(1)(a)) and “the hydraulic fracturing waste comes into contact with ground water during the process of hydraulic fracturing.” (17B(1)(b)). Our water deserves better protection than this. *Section 17B must be deleted in its entirety. There must be no exemptions for the risky petroleum industry from our Water Act.* To meet the intention of being able to reuse flowback water to hydraulically fracture shale as discussed in the Explanatory Statement<sup>5</sup>, this must be re-written to provide clarity and definition.

Section 17(2) of the Water Act 2018 states, “it is a defence if it is proved that the pollution was authorised by a licence granted under section 63 or 74”. Pollution of our surface and ground waters should always carry a hefty penalty. S17(2) must be removed from the Water Act 2019.

Section 8 of the Bill inserts Section 45A into the Water Act.

Section 45A states, “No licence to take water for petroleum activity. The Controller must not grant a licence under section 45 if the proposed beneficial use of water under the licence is petroleum activity”. *I applaud this insertion into the Act to protect our surface water.*

Section 9 of the Bill inserts Section 60A into the Water Act, allowing groundwater use for petroleum activities. *I object to section 60A in its entirety as much of our ground water is already allocated.* This will put the petroleum industry in conflict with existing groundwater users, especially if the aquifers don’t recharge sufficiently due to dry/drought conditions. We have already seen this happen in NSW with miners outbidding farmers for water<sup>6</sup>. I especially object to section 60A(2)(b) which allows groundwater to be extracted for petroleum activities within 1km of a designated bore as this could impact these existing bores during dry/drought periods.

Section 10 of the Bill inserts section 67(4) into the Act which states, “The Controller must not grant a licence that permits the increase of water contained in an aquifer with water that is or contains hydraulic fracturing waste”. *I applaud this insertion into the Act to protect our aquifers. The Water Act 2018, s63 must be amended to reflect the insertion of s67(4).*

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<sup>4</sup> Water Amendment Bill 2019 [https://parliament.nt.gov.au/data/assets/pdf\\_file/0003/653592/80-19-Water-Amendment-Bill-2019.pdf](https://parliament.nt.gov.au/data/assets/pdf_file/0003/653592/80-19-Water-Amendment-Bill-2019.pdf)

<sup>5</sup> Explanatory Statement [https://parliament.nt.gov.au/data/assets/pdf\\_file/0004/653593/80-19-Explanatory-Statement-Water-Amendment-Bill-2019.pdf](https://parliament.nt.gov.au/data/assets/pdf_file/0004/653593/80-19-Explanatory-Statement-Water-Amendment-Bill-2019.pdf)

<sup>6</sup> The Land, Farmers say they are priced out of water auctions by miners <https://www.theland.com.au/story/5931279/water-war-mines-beat-farms-at-water-auction/>

Section 11 of the Bill inserts Part 16, s117, regarding the application of s60A. I sincerely hope that the Water Controller defers any decisions on pending water applications until after the Water Act amendments have been finalised.

Thank you for this opportunity to comment on the Water Amendment Bill 2019.

Yours Sincerely,

Pauline Cass\*

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\*Please don't publish my contact details online.