CENTRAL LAND COUNCIL

Central Land Council submission to the Economic Policy Scrutiny Committee on the Water Amendment Bill 2019.

18 March 2019

The Central Land Council is a statutory authority established under the Aboriginal Land Rights (Northern Territory) Act 1976 ('ALRA'). The CLC is also a Native Title Representative Body established under the Native Title Act 1993 ('NTA'). The CLC region covers the southern portion of the Northern Territory, an area of 775,963 km². The CLC is directed by its Council, which consists of 90 members who represent traditional landowners and communities throughout the CLC region. The CLC represents approximately 25,000 Indigenous people resident in the CLC region. The CLC, among other things, is charged with the statutory responsibility to represent the interests of traditional Aboriginal owners and, as well, the wider Aboriginal population of Central Australia. The CLC also has a strong land management and community development program which aims, among other things, to develop capacity of Aboriginal people to engage in the wider economy.

The Central Land Council welcomes the opportunity to comment on the Water Amendment Bill 2019. The CLC welcomes the introduction of amendments to implement further recommendations from the scientific inquiry into hydraulic fracturing. Specifically, the CLC is pleased to see Recommendations 7.6, 7.8a, 7.9, and 7.17 addressed here. While we are largely supportive of the proposed amendments, we do have several issues with the changes as written, and also on the timing of the process.

The CLC supports the amendment to Section 17 A (Division 3) as implementing Recommendation 7.17 (prohibition of discharge of any onshore shale gas hydraulic fracturing wastewater to surface water ways). However, clause 17 B is poorly written and as presented currently allows for the contamination of aquifers.

> *17B Application of section 17A*
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> *(1) Section 17A does not apply if:*
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> *(a) hydraulic fracturing waste is produced water or flowback fluid; and*
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> *(b) the hydraulic fracturing waste comes into contact with ground water during the process of hydraulic fracturing.*

Hydraulic waste should not come into contact with water contained in aquifers. If this clause is intended to apply only to water contained within shale gas formations, then this should be specified. The definition of produced water could be changed to,

…. *'means naturally occurring water that is extracted from the target geological formation or the geological formation containing hydrocarbons following hydraulic fracturing'*. This is important because there is a risk that other non-targeted aquifers could be contaminated through well failure, or a severe seismic event.

There is some uncertainty around the reinjection of either flowback water or produced water into aquifers and conventional reservoirs in the current Water Amendment Bill. S. 17A applies to produced or flowback water in the context of re-use for a frac or multiple fracs. However, it is it is unclear how this applies to recommendation 7.9 (prohibition on the reinjection of wastewater). The amendment to Section 67 (3) to prohibit the Controller from granting a license for the recharge of an aquifer using water that is or contains hydraulic fracturing waste relates to the implementation Recommendation 7.9. However, this is not a clear prohibition on reinjection of wastewater and does not necessarily prohibit injection of wastewater into conventional reservoirs. Therefore, it is unclear whether or not reinjection is a lawful act. The CLC recommends that the amendment act contains a clear prohibition of re-injection of water into aquifers and conventional reservoirs and a definition of reinjection.

The CLC supports the introduction of clause 60A to implement Recommendation 7.8a (prohibition of extraction of groundwater within 1 km of bores without landholders consent and hydrogeological investigation and ground water monitoring that indicate no adverse effect on water supply). However, the CLC suggests the wording of 60A (2) (b) be modified to refer to modelling in addition to monitoring. Recommendation 7.8a specifically refers to the need for 'hydrogeological investigations and groundwater modelling, including the SREBA' to indicate that a distance shorter than one kilometre is appropriate. Monitoring and modelling have distinct meanings, and in this case modelling would require analysis and evidence as to why there would be no adverse effect to water supply, whereas monitoring would only be applied once extraction has begun. The CLC has concerns that monitoring requirements may not receive the necessary oversight and will be difficult to enforce.

The definition of 'owner' in section 60A (3) does not refer to Aboriginal Land Trusts or other landholders, instead referring to the owner of the bore, which is defined as the holder or applicant of a permit or licence under the Water Act, or the person who uses or maintains the bore. Recommendation 7.8a refers to a requirement to obtain the consent of the 'landholder' to extract water within 1 km of an existing bore. However, the definition used in the Water Amendment Bill does not always equate to the landholder, as often the person holding or applying for permits or licences, or using or maintaining bores will not be the owner of the land. For example there may be grazing licences or other licences granted by Aboriginal Land

Trusts that allow licensees to use and maintain bores. Furthermore, this definition does not include bores located on Aboriginal Land Trusts that are not in current use, but for which Traditional Owners may have aspirations to use in the future. To properly implement recommendation 7.8a the definition of 'owner' should include landholders with specific reference to Aboriginal Land Trusts.

While the CLC welcomes the opportunity to comment on these amendments, we do have concerns about the process for stakeholder feedback.

1. The Economic Policy Scrutiny Committee has provided a due date on submissions on this amendment of Monday the 11th of March 2019. However, these amendments were tabled for discussion at the Community Business Reference Group meeting originally scheduled for 26 February 2019. The meeting was however deferred until Tuesday the 12th of March 2019, a day after the close date for submissions. The CLC expresses concern about this timing, as submissions on these amendments should be informed by the discussion of members at the Reference Group meeting. The CLC has sought an extension to the time frame to make a submission but notes the time frame is now compressed for CBRG members who wish to make comment.
2. The piecemeal approach of government to major legislative reforms underway in the NT, arising from the implementation of the 135 Recommendations of the Scientific Inquiry, has made it difficult to provide clear feedback. The overall plan as to how the final goal will be achieved is not set out clearly and commenting on amendments in isolation to each other is frustrating. Although the CLC is doing its best to respond to the many changes, uncertainty remains as to how all of the recommendations will be implemented and the timeframes that apply (when there is the usual work load to manage) make the process around legislative reforms feel rushed. Further, the number of reforms and their importance for consideration has placed an enormous burden on the CLC which is constrained by available resources.

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