

Scrutiny Committee re Water act Further Amendment Bill.



The Water Further Amendment Bill 2019 provides an opportunity to add stronger drought provisions into the Act to ensure that the most sustainable and important water allocations are protected in dry periods. The annual allocation calculations need to be weighted so non-sustainable uses lose allocation in order to achieve ESD outcomes as per legislation guidelines.

The amendment process provides an opportunity to delete section 7(2) of the Water Act. This would remove doubt about the statutory defence provisions of the Act as it operates in conjunction with the Petroleum Act. Currently the Act provides what appears to be a statutory defence argument for a water pollution event across the petroleum licence area for petroleum companies.

The review also provides an opportunity to rewrite section 102 of the Act to remove ambiguity about the way owners/occupiers, including Government, pastoralists and Native Title holders would inherit liability for mining company activities.

There are significant concerns in relation to interactions between Section 7(2) and Section 102 of the Water Act NT and Section 117AAD of the Petroleum Act NT.

We have received strong legal opinion that Territory landholders are exposed to significant risks regarding land access for petroleum exploration due to the current wording of regulations in the Northern Territory. If there was a challenge from a petroleum company about a damage or pollution incident, the company could use these loopholes created in the legislation to avoid or pass on responsibility to the landholder.

As an example, if a saline aquifer was inadvertently connected to a beneficial aquifer and the result meant the aquifer was no longer suitable for stock water or domestic use, and impact spread to a neighboring property or community water supply, any compensation claim would potentially find the land owner /occupier liable but the petroleum company has a statutory defence whilst the landowner has none.

Section 7(2) of the Water Act NT (1992) provides "Section 16 of the Water Act does not apply to ... water that is polluted if the ... pollution occurs in the course of carrying out a ... petroleum activity, and, the polluted water is confined to the petroleum site". Petroleum site is defined to be the authority, licence or permit area. Section 16 of the Water Act sets out the offences for water pollution.

Section 117AAD Petroleum Act "Defences to environmental offences" applies "if it is proved that the act or failure to act was authorised by another Act".

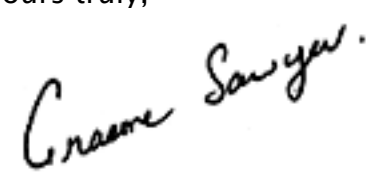
There is every likelihood that if a petroleum title holder causes a water pollution event, which falls within the ambit of these sections, such as the intermingling of a briny aquifer with a beneficial aquifer, the petroleum title holder could use these sections of the Water Act and the Petroleum Act to argue they have a statutory defence to this type of water pollution.

Note that these provisions would not apply to a water pollution event caused by hydraulic fracturing waste, for which there is an offence in s17A of the Water Act.

The laws as currently enacted could leave pastoral stations and other identified landowners and occupiers at risk of being legally responsible for damages that occur as a result of the activities of companies engaged in hydraulic fracturing activities, over which the landowner currently has no control. This transfer of liability for pollution and incidents transfers unfair liability to Territory landholders including pastoral lease holders, Native Title holders, local shire councils and others.

We recommend that the Committee uses this opportunity to further reform the NT Water Act to remove Section 7(2) and to update the wording of Section 102.

Yours truly,

A handwritten signature in black ink that reads "Graeme Sawyer." The signature is written in a cursive style and is slanted upwards to the right.

Graeme Sawyer  
Protect Country Alliance  
Mobile [REDACTED]