LOCK THE GATE ALLIANCE
AUSTRALIANS WORKING TOGETHER TO PROTECT OUR LAND, WATER, AND FUTURE

29 January 2020

Economic Policy Scrutiny Committee
Legislative Assembly of the Northern Territory
Parliament House
Darwin, NT 0800

By email: EPSC@nt.gov.au

Dear Chair and Committee members,

RE: Submission on the Petroleum Legislation Miscellaneous Amendments Bill 2019

Lock the Gate welcomes the opportunity to make a submission to the Committee on the *Petroleum Legislation Miscellaneous Amendments Bill 2019.*

By way of background, Lock the Gate Alliance is a national grassroots organisation made up of 100,000 individuals and over 250 local groups who are concerned about unsafe or inappropriate mining. The mission of the Lock the Gate Alliance is to protect Australia's agricultural, environmental, and cultural resources from inappropriate mining and to educate and empower all Australians to demand sustainable solutions to food and energy production. Lock the Gate works across the NT and is committed to advocating for environmental and community health, and the productivity of local economies.

Key Feedback on the Draft Bill

We understand the purpose of this Bill is to make amendments to the Petroleum Act 1984 and the Petroleum (Environment) Regulations 2016 to give effect to a number of the recommendations made by the Scientific Inquiry into Hydraulic Fracturing in the Northern Territory ("Inquiry").

While we agree with the requirement of the Minister to consider the principles of ecologically sustainable development, we are concerned by the Bill's interpretation of the Inquiry recommendations with regard to land access. We have also outlined a short range of other improvements necessary to the Bill.

Clause 21: powers to make regulations relating to land access and environmental securities

Land Access:

The draft Bill fails to enshrine the right to an access agreement in legislation. The Bill misses the clear intention in the Fracking Inquiry Final Report at 14.6.1.5, which reads: ***There must be a statutorily enshrined land access agreement prior to any onshore shale gas activity on any Pastoral Lease.***

The current draft of the Bill fails to implement this intended aim and does not enact Pepper Inquiry recommendation 14.6: **That a statutory land access agreement be required by legislation.**

In other jurisdictions in Australia, the substantive land access provisions are found in the statute. The most recently amended legislation in other jurisdictions in relation to land access 2 is in the respective Acts and NSW and Queensland:

> *(a) in NSW: s69C(1) Petroleum (Onshore) Act 1991 "The holder of a prospecting title must not carry out operations on any land except in accordance with an access agreement …*
>
> *(b) In QLD: s43(1) Mineral and Energy Resources (Common Provisions) Act 2014 "A person must not enter private land to carry out an advanced activity for a resources authority unless each owner and occupier of the land (a) is a party to a conduct and compensation agreement about the advanced activity …*

The Bill also doesn't propose a statutory obligation for a land access agreement to be in place prior to activities commencing, contrary to the explicit language in the Inquiry report.

There must be a clear legal requirement in the Act for a land access agreement to be in place before any activities take place.

Further, the Inquiry Recommendation 14.7 states: **That in addition to any terms negotiated between the Pastoralist and the gas company, the statutory land access agreement must contain the above standard minimum protections for pastoralists.**

We recommend that the draft Bill is updated to include a provision in the Bill which sets out the standard minimum protections for pastoralists as required in recommendation 14.7.

The updated text could read something like:

(i) an access agreement must be negotiated and signed by a pastoral lessee and a gas company prior to undertaking any onshore gas activity.
(ii) the statutory land access agreement must contain the standard minimum protections set out in Recommendation 14.6.

If, once improvements to the draft Bill ensure substantive land access provisions are in the statute, there any additional detail left in the Regulations, then it would be in the public interest to allow for public feedback on the draft Regulations. All pastoral leaseholders should have a say, plus and broad public consultation would help ensure the intent of the Inquiry recommendations are upheld.

Environmental securities

The Act should include a clear legal obligation to provide an environmental security. Again, this does not belong in regulations, but in the Act. This could be inserted via an amendment to section 79(2) of the Act.

Clauses 16 - 17: compensation to owners, compensation for right of access

The Alliance notes the proposed amendments to the Act include the NT Civil and Administrative Tribunal maintaining jurisdiction to deal with disputes regarding compensation and this referral of jurisdiction. This clause also inserts subsection (7A) which will allow regulations to be made to prescribe how compensation payable under section 81 may be calculated. It also consolidates provisions regarding the Tribunal's jurisdiction to deal with disputes about compensation under the Act.

This is supposed to implement recommendation 14.8 of the Inquiry. Recommendation 14.8 states: **That prior to the grant of any further exploration permits or production approvals, the Government enacts a minimum mandatory compensation scheme payable to Pastoral Lessees for all onshore shale gas production on their Pastoral Lease. Compensation should be calculated by reference to the impact that the development will have on the Pastoral Lease and the Pastoral Lessee, for example, the number of wells drilled, the value of the land (both before and after), and the area of land cleared and rendered unavailable for pastoral activities.**

Landholders are concerned about being forced into participating in an access agreement in the first place. Landholders should have more say with regard to compensation through this process. What safeguards are in place to ensure the Tribunal has the best interests of Territory landholders in mind, and are adequately valuing the time/land/infrastructure of the landholder? How will landholders have a say on the calculation of compensation to be set out in the regulations?

There is a serious power imbalance here, as often gas companies do not release the full detail of their planned activities to the landholder when these negotiations are live. Gas companies are granted exploration licences, and then expect access agreements without fully disclosing the impacts that the landholder will be forced to endure. The clearer the requirements for compensation arrangements, the better protection the landholder will receive to ensure they are not being short changed through difficult negotiations.

Surely the intent of the updated Act should be "*the landholder/occupier must be no worse off as a consequence of the petroleum title holder's proposed activities on the land*". This principle encompasses compensation to landowners for the time they take away from their business operations to consider the requests of the petroleum title holder's use of their land. All landholder costs and landholder expert costs should be paid by the petroleum title holder (ie

hydrologist, hydrogeologist, valuer, accountant, legal and landholder time should be paid by the petroleum title holder as per the terms of invoice). That includes costs related to breaches by the petroleum title holder of the access arrangement, and any court and appeal court costs.

The Bill should be updated so that section 81 clearly lists all the matters that compensation is available for, as identified in recommendation 14.8, and to ensure no landholder is any worse off. It must also include a loss of land value (currently omitted from the Act), loss or damage (currently only 'damage' is included in the Act), and deprivation of use or enjoyment of the land, plus compensate for a landowner's full legal costs and costs for experts. It is important to ensure these matters are clearly given the force of law and are entrenched in the Act rather than inserted into Regulations, which are more easily (and less transparently) amended.

Clauses 6 – 7: release of blocks for exploration

It may be useful for the Committee to revisit the intent of the changes for land release as outlined in the Inquiry Final Report:

Recommendation 14.2 That the Minister must immediately notify the public of any proposed land release for any onshore shale gas exploration.

That the Minister must consult with the public and stakeholders and consider any comments received in relation to any proposed land release.

That the Minister be required to take into account the following matters when deciding whether or not to release land for exploration:
• the prospectivity of the land for petroleum;
• the possibility of co-existence between the onshore gas industry and any existing or proposed industries in the area; and
• whether the land is an area of intensive agriculture, high ecological value, high scenic value, culturally significant or strategic significance. That the Minister publish a statement of reasons why the land has been released and why co-existence is deemed to be possible.

We submit that the Minister must give public notice of proposed land release (and allowing public submissions) before any consideration of exploration permits could be granted, as is the intent of the Inquiry report. This is not how the Bill is currently drafted.

The updated 'land release' process in the *Petroleum Act 1984* must be prior to the grant of any further exploration permits. Further, we put forward that in line with the Inquiry recommendation, no land release process should be considered until the studies have been completed to understand '*whether the land is an area of intensive agriculture, high ecological value, high scenic value, culturally significant or strategic significance'*. The Act must be updated to clearly mandate that the Minister consider these matters and make a decision

regarding these matters. If co-existence is not deemed possible, the Act should include the obligation on the Minister not to release any block where co-existence is not possible.

This understanding would then be required first in order to allow for the Minister to consider and publish a statement of reasons why the land has or has not been released and why or why not co-existence is deemed to be possible. It should be clear in the Act that exploration permits on these areas would only be considered once this legally required preliminary process is complete.

We also suggest that the Bill's extra and new qualifying statement at subsection (2A)(b) to link 'strategic importance' to 'nearby residential areas' is not in the original wording of Recommendation 14.2. There are far more areas of strategic importance to a community and it is questionable how this extra qualifier made its way into the draft. It should be removed.

Currently, the drafting of the Bill fails to implement Recommendation 14.2 and must be improved to implement all of the above.

Clause 19: section 111 replaced

We are concerned that section 111 does not properly implement recommendation 10.2. The proposed clause (1)(c) now only includes a setback of 2km of wells from land being used as a 'residence' rather than what the Inquiry specifically stated in the Final Report, requiring a setback of 2km from a 'habitable dwellings,' being all buildings or premises where people reside or work (including playgrounds, sporting fields, medical facilities, etc). Why is the wording of the clear recommendations being tampered with in this draft Bill? Please amend this clause to properly implement the Inquiry's Recommendation 10.2.

Clause 22: transitional arrangements

It is appropriate that the principles of ESD are now included in the Act. The requirement for the Minister to consider and apply ESD principles should also be enacted during transitional arrangements – it is straightforward, smart and has been on the cards since the Final Report of the Inquiry was handed down.

In closing, the Lock the Gate Alliance is concerned that the draft Bill misses the opportunity to implement the Inquiry's recommendations adequately. Thank you for the chance to provide feedback on how this could be improved. It is important these improvements can be made to the Bill.

Yours sincerely,

Naomi Hogan

Lock the Gate Alliance