

Attention: ECONOMIC POLICY SCRUTINY COMMITTEE  
Re: Water Legislation Amendment Bill 2018

I have been alerted to respond to the request for comment on this Bill, by a notice in a bulletin from the hydraulic fracturing implementation taskforce.

I participated fully in all formal processes that have somehow led to the bad decision to lift the moratorium on fracking in the NT, despite the inquiry finding that:

- the vast majority of Territorian respondents strongly oppose fracking;
- no guarantees can be offered regarding the likely impact of over-consumption of our precious finite water resources on regional groundwater-dependent ecosystems;
- the likely contamination of local aquifers remains unaddressed, and must be investigated by subsequent regional assessments;
- the NT has no way of balancing the immense carbon burden fracking represents, vastly eclipsing that of the infamous Adani Charmichael coal mine, rendering it impossible for the Commonwealth to meet their international obligations towards reducing emissions (towards which the NT has recognised no responsibility)

The notice from the taskforce claims:

*"The amendments would remove the exemption for mining and the petroleum industry from the Water Act, which would in turn require that mining, oil and gas activities be subject to the provisions of the Water Act in line with requirements for any other industry"*

- a very welcome and long-awaited reform, as promised from the first Hawke inquiry.

It is disappointing, however, to read that this belated arrival to 21st century environmental law reform explicitly exempts, in section 113, activities which began, or were applied for, before these amendments. This is at odds with the intent of the Mining Management Act, which requires regular renewal of permits, giving the authorising authority the opportunity for existing operations to catch up to improved environmental management practices and standards.

We are further assured:

*"In relation to hydraulic fracturing, these would specifically include (but are not limited to) a requirement to apply for and be granted bore work permits to construct bores and groundwater extraction licences to extract groundwater for the purposes of hydraulic fracturing"*

- as it should be. Well, that is to say: new fossil fuel projects should not be approved at this time in history, but no industry should be exempt from allocation planning to manage extraction from shared finite water resources.

But consumption is only one part of the story. And that's where the promise of bringing '*oil and gas activities ... in line with requirements for any other industry*' goes off the rails.

Because these amendments before us do nothing to address specific exemption, in section 7.2(a), for water pollution that occurs in the course of carrying out a petroleum activity (such as fracking for shale gas).

Contrary to the advertised merits of this Bill, the petroleum industry would continue to enjoy specific exemption from controls, protections and penalties that any other industry remains

subject to.

The final report of the fracking inquiry identified 6 potential vectors for groundwater contamination from industrial fracking for shale gas. Two of these:

- groundwater contamination from on-site surface spills of wastewater; and
- contamination of groundwater with hydraulic fracturing fluids and wastewater from leaky wells

were listed among four '*high priority issues*' where the panel found '*insufficient information to enable a full risk assessment*'. These high priority risks were simply deferred to subsequent regional assessments.

In fact, the retention of this specific exemption is contrary to Recommendation 7.17 of the inquiry panel's final report:

*That prior to the grant of any further exploration approvals, the discharge of any onshore shale gas hydraulic fracturing wastewater (treated or untreated) to either drainage lines, waterways, temporary stream systems or waterholes be prohibited.*

Clearly, then, this proposed Bill falls well short of addressing real concerns identified and left unanswered by the fracking inquiry.

In fact, there are a number of specific recommendations of the inquiry panel's final report that are not referenced in this Bill, which we might presume is planned to be the only such amendment to the Act before the regulators turn on the methane taps.

The final report recommendations include:

*Recommendation 7.6 – That prior to the grant of any further exploration approvals, the use of all surface water resources for any onshore shale gas activity in the NT be prohibited.*

This is a straightforward, direct recommendation of the inquiry panel's final report, and yet we find no representation in this Bill.

Two other recommendations - 7.8, pertaining to a 1km exclusion zone around existing domestic and stock bores, and 7.9, regarding reinjection of wastewater, are not so clear as they recommend relegation to Strategic Regional Assessments. Nonetheless, the Water Act is the appropriate instrument for instantiating these recommendations, yet we find nothing to address these most fundamental concerns.

The implementation taskforce's bulletin went on to assure us that '*the Bill also brings penalties under the Water Act in line with contemporary standards.*' This claim needs some examination.

Yes we note that there is an increase in some relevant penalties. But not to the extent that would bring the NT Act in line with standards in other jurisdictions. For example, the maximum corporate penalty for intentional or reckless mismanagement under NSW Water Management laws is over \$5M - well more than an order of magnitude beyond the highest corporate penalty referenced in the amendments.

Further to these items, it is noteworthy that the opportunity has not been taken to address long

standing criticisms of the water allocation planning process, and the unchecked powers of the Controller of Water. We find no recognition of recent failures of the Act to guard against inappropriate extra-procedural licensing for extraction and waste discharge. In their haste to ram through a bad decision to accelerate climate chaos with unbridled fossil fuel exploitation, our legislators appear to have ignored an opportunity for considering broader reform.

While the removal of some exemptions for future mining and petroleum activities is welcome, this Bill does not go anywhere near far enough to meet community expectations.

Back to the drawing board!

Justin Tutty