

Petroleum Legislation Miscellaneous Amendments Bill 2019

Submission from: Protect NT Incorporated

Dear Legislation Scrutiny Committee,

Protect NT Incorporated is a group with over 800 members, determined to protect our land, water, climate and lifestyles for future generations of Territorians. Onshore shale oil and gas hydraulic fracturing and its associated activities (fracking) threatens everything we value about living in the Northern Territory. While we would prefer and will continue to demand a permanent Territory-wide ban on all onshore unconventional shale oil and gas activities, it is crucial that any legislation allowing this highly risky industry to continue be of the utmost rigor and integrity.

The following is our comments on the Petroleum Legislation Miscellaneous Amendments Bill 2019, as found at <https://parliament.nt.gov.au/committees/LSC/116-2019> . We sincerely recommend you read and implement our suggestions.

Clause 4. Section 5 amended (Interpretation)

This clause references the Environment Protection Act 2019 to define “environment” and “principles of ecologically sustainable development”.

Protect NT Inc was unable to locate or access the Environment Protection Act 2019. We tried Google and both the Northern Territory Legislation database (https://legislation.nt.gov.au/en/LegislationPortal/Acts/By-Title#header_act_acc_E) and the NTEPA website (<https://ntepa.nt.gov.au/about-ntepa/legislation>). This means that we are unable to read the definitions or comment on this clause.

Clause 5. Part IA inserted

Protect NT Inc applauds the statement, “The proposed new section requires the Minister consider and apply the principles of ecologically sustainable development in making certain decisions under the Act and prescribed by regulation” (Petroleum Legislation Miscellaneous Amendments Bill 2019 Explanatory Statement). However, we vehemently disagree with the following comment, “the Minister is not required to specify how the principles have been considered or applied when stating the reasons for a decision” (Explanatory Statement).

The Minister must specify how ESD principles have been considered or applied when stating the reasons for all decisions, not just those prescribed in the Petroleum (Environment) Regulations 2016. The Minister’s disclosure of reasoning would create accountability for decisions and provide the transparency Territorians expect and deserve.

Section 6A(2), which states, “Unless otherwise expressly provided, in making a decision under this Act and stating the reasons for that decision, the Minister is not required to specify how the Minister considered or applied these principles”, must be removed from this Bill and its subsequent Act.

Clause 6. Section 16 amended (Application for exploration permit)

We are pleased to note that in accordance with Recommendation 14.2 of the NT Fracking Inquiry, there is no limitation on who can make a submission regarding the release of blocks for exploration.

We also welcome the insertion of subsection 16(2A), “which provides that the submissions which can be made to the Minister are in relation to whether exploration and industry can co-exist and whether the land is suitable for exploration” (Explanatory Statement).

We request that rather than a “Note for subsection (2A)(b)”, an additional subsection is inserted between 16(2A)a and 16(2A)b, stating that, ‘if there are other existing or proposed uses or (a) subject to intensive agriculture; or (b) of high ecological value; or (c) of high scenic value; or (d) culturally significant; or (e) of strategic importance to nearby residential areas; or (f) of high recreational value; or (g) of other valued uses for a specified block – whether exploration of the specified block is possible at the same time;’. These land uses are far too valuable to Territorians to be listed as a foot note.

This would also allow subsection 16(2A)(b) to be used as it reads, to submit “whether the land of a specified block is suitable”, and allows for in reasons not listed above to be considered.

Clause 7. Section 16A inserted

The Explanatory Statement says, “This clause inserts a new section which requires the Minister to consider any submissions regarding the release of specified blocks for exploration, any applications received and determine the blocks to be released (if any). The Minister must publish their determination online. The determination will also be subject to judicial review.”

The Minister’s determination must also be open to merit review as discussed by the Inquiry Panel at community consultations. This will allow protection of areas which may pass legislative criteria but not be otherwise suitable for fracking, and manage any subjective decisions made. The opportunity for merit review is crucial to ensuring transparent, ethical and reasonable decisions are made by the Minister.

We would like to see 16A(a) changed from “consider any applications received and any submissions received; and”, to *‘consider any applications received and all submissions received; and’*.

Clause 8. Section 18 amended (Notice of application for exploration permit)

We fully support amending section 18(1)(e) and omitting subsection 18(3) to remove the limitation on who is entitled to lodge an objection to the grant of an exploration permit.

Clause 9. Section 19 amended (Objections)

To better serve this subsection’s “purposes of increasing transparency and accountability” (Explanatory Statement). subsection 19(2A) must be changed from, “The Minister must, as soon as practicable after receiving the objections, publish the objections on the Agency's website.”, to *‘The Minister must, as soon as practicable after receiving submissions of objections or support, publish all submissions on the Agency's website.’*

Clause 10. Section 28 amended (Variation etc. of condition of exploration permit)

Protect NT Inc would also like to see the addition of a *Subsection 28(1B)*, stating that, *'Applications to vary, suspend or waive a condition on a permittee's exploration permit must be published online and opened to public comment'*. This is required to maintain trust in the permit process by preventing unscrupulous variations from being accepted, and to ensure EMP's and standards are met. It would also provide a mechanism to notify the public of changes, such as Origin changing direction of the horizontal portion of their Kyalla 117, to avoid the media furore that erupted over lack of transparency.

Clause 11. Section 41 amended (Variation, &c., of conditions of retention licence)

As with Section 28, Section 41 requires the addition of a *subsection 41(1B)*, stating, *'Applications to vary, suspend or waive a condition on a licensee's retention licence must be published online and opened to public comment'*. This is required to maintain trust in the permit/licencing process, to ensure continued transparency, and EMP's and standards are met.

Clause 12. Section 55 (Variation, &c., of conditions of production licence)

Section 55 also requires a subsection 55(1B), stating, *'Applications to vary, suspend or waive a condition on a licensee's production licence must be published online and opened to public comment'*. This is required to maintain trust in the permit/licencing process and ensure EMP's and standards are met, and transparency is maintained.

Clause 18. Section 82A inserted

We would like to see a subsection 82A(b) created, to stipulate where a disputed Tribunal decision may be appealed.

Clause 19. Section 111 replaced

The distances listed under subsection 111(a) are not far enough to meet safety criteria or people's expectations. For example, subsection 111(1)(a)(i) states, "within 50 m of land being used as, a residence, yard, garden, orchard or cultivated field". This does not meet the Inquiry's recommendation of prohibiting the construction of a well, wellhead, pipeline or processing facility within 2km of a residence. All of these distances must be increased before this Bill can be passed.

Section 111 refers to surface infrastructure such as "well, wellhead, pipeline or petroleum processing facility", but not the underground activities. Protect NT Inc would like this section to also include underground horizontals. Eg. The horizontal portion of the well must not be drilled within 2km of a residence, not just the well head.

We trust you will implement the changes we have requested to ensure transparency, accountability and rigor are maintained in our legislation,

Yours Sincerely,

Pauline Cass
for Protect NT Inc