LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

13th Assembly

LEGISLATION SCRUTINY COMMITTEE

Public Hearing Transcript

Petroleum Legislation Miscellaneous Amendments Bill 2019

10.00 am – 10.20 am and 12.30pm – 2.40 pm, Monday 2 March 2020

Litchfield Room, Level 3 Parliament House

Members:
Ms Ngaree Ah Kit MLA, Chair, Member for Karama
Ms Sandra Nelson MLA, Deputy Chair, Member for Katherine
Mrs Lia Finocchiaro MLA, Member for Spillett
Mr Tony Sievers MLA, Member for Brennan

Alternate Member:
Mr Jeff Collins MLA, Member for Fong Lim, in place of Mrs Robyn Lambley MLA, Member for Araluen

Witnesses:

Northern Territory Cattlemen's Association
Ashley Manicaros, Chief Executive Officer

Environmental Defenders Office
Gillian Duggin, Managing Lawyer

The Northern and Central Land Councils
Greg McDonald, Manager, Mineral and Energy
Tom Weston, Lawyer

Australian Petroleum Production and Exploration Association
Keld Knudsen, Director, Northern Territory
Stephanie Stonier, Corporate Affairs Manager (Northern Australia)
Origin Energy, and Chair of APPEA NT onshore working group

Protect Country Alliance
Rod Dunbar, Owner, Nutwood Downs Station
Lauren Mellor, Spokesperson

Department of Primary Industry and Resources
Alister Trier, Chief Executive
James Pratt, Executive Director, Onshore Gas Development
Emma Farnell, Director, Onshore Gas Development
Paul Purdon, Executive Director, Environment Protection, Department of Environment and Natural Resources.

Northern Territory Cattlemen's Association

Madam CHAIR: Good morning, Ashley and thank you for joining us. I am Ngaree Ah Kit, the Member for Karama and Chair of the Legislation Scrutiny Committee. On behalf of the committee, I welcome everyone to this public hearing on the Petroleum Legislation Miscellaneous Amendments Bill 2019.

I acknowledge my fellow committee members in attendance today, Jeff Collins, the Member for Fong Lim; Tony Sievers, the Member for Brennan; and Sandra Nelson, the Member for Katherine.

I welcome by teleconference to give evidence to the committee, from the Northern Territory's Cattlemen's Association, Ashley Manicaros, Chief Executive Officer. Thank you for appearing before the committee. We appreciate you taking the time to speak to the committee and we look forward to hearing from you today.

This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee apply. This is a public hearing which is being webcast through the Assembly's website. A transcript will be made for use of the committee and may be put on the committee's website.

If, at any time during the hearing, you are concerned that what you say should not be made public, you may ask that the committee go into a closed session and take your evidence in private.

Could you please state your name and the capacity in which you appearing then we will proceed to the committee's questions.

Mr MANICAROS: My name is Ashley Manicaros. I am the Chief Executive Officer of the Northern Territory Cattlemen's Association.

First of all, I thank the committee and especially you, Madam Chair, and the staff of the scrutiny committee for being so flexible in allowing me to give evidence. I will be stepping on a plane in roughly an hour's time and I would have missed the prearranged deadline. I apologise for that inconvenience and thank you at the same time.

My evidence—briefly I would like to cover off on a couple of key points, if that is okay, and hopefully that can lead to an efficient use of questioning.

In general, the Northern Territory Cattlemen's Association presented to the scientific inquiry into Hydraulic fracturing a series of concerns specifically about land access and land access agreements. We put to the scientific inquiry's Justice Pepper that there should be a 24 minimum standard that needs to be included in all land access agreements. It was our belief that if there was no land access agreement, then there should be no land access.

Notwithstanding that the actual evidence was also for a veto, Justice Rachel Pepper—and that is still the Northern Territory Cattlemen's Association policy today—rejected the issue of a veto and went along with the minimum standards. Since that time, we have been negotiating and discussing with the Department of Primary Industry and Resources and, in particular, the other gas industries and the onshore gas industry regarding the minimum standards.

The NTCA developed a working group made up of private and corporate landholders' legal advisers, and we went through each of the minimum standards, line by line, and the compensation requirements to formulate our response. A copy of that has been submitted to the scrutiny committee for your assessment.

We also then sat down in discussions with the NT government and the gas industry. At this stage without seeing a final draft of the regulations, it appears to us that the 24 minimum standards have been subject to some minor changes with wording which we have been largely satisfied with being put into place, as per the Pepper recommendations.

There are a couple of areas we bring to your attention where we do not wish to see the prescriptive language used. For example, I refer to you Justice Pepper's recommendation—I do not have it in front of me—where she described a minimum price per well to be paid by gas companies to landholders. It is our opinion that no minimum price should be set. It is our submission that no minimum price should be set. We believe that it is not possible to come up with a formula that will properly satisfy that, primarily because the value of one property is different to the value of another. For example, one property could have 600 water points, another could have 50. Yet, the suggestion from Justice Pepper was that there be a minimum price per well, when clearly the impacts will be different.

We believe there is uniform agreement with that in regard to the gas industry. I am not speaking for them, but in discussions they are coming at it from a different perspective. Our concern is that there would be a race to the bottom—being that it would only ever be a minimum standard, a minimum price. We do not believe that is, in fact, constructive from a negotiation point of view.

That is, primarily, where negotiations sit today. I cannot emphasise enough from our point of view that we are satisfied with the land access agreements that are being foreshadowed in the draft legislation and *Petroleum Act* and that now land access agreements will need to be in place before there can be land access, because at the moment under the law, if you put landholders, native title holders, the government and onshore gas resourcing companies in one room, it is the landholder, the pastoralist, who has the least amount of rights. We are going to see an improvement in the balance of power from that point of view.

Madam CHAIR: Thank you very much, Ashley. Does the committee have any questions in regard to the testimony or the submission we have received?

Ms NELSON: Thank you Ashley. It is Sandra Nelson, the Member for Katherine. I do not have any questions but I want to take a couple of minutes to say thanks for the submission. It is a really good submission, very thorough.

Mr MANICAROS: Yes, thank you. The process has been a good process to participate in. I cannot speak highly enough of the efforts of the Department of Primary Industry and Resources. In particular, rightly or wrongly, I would like to thank James Pratt and Emma Farnell for the detail and the hard work they put in because it made the process quite easy from my point of view.

There has been a lot of discussion. I understand this discussion in regard to whether or not it is legislation or regulation. That is entirely a decision for the Northern Territory Government to make. However, when you go through and have a look at the way regulations work, for example—and I understand Mr Collins is a lawyer—the entire *Traffic Act*, or the penalties and infringements operate under regulation. When we asked the question about that, we were satisfied that there were enough reviewing mechanisms from the Minister, through to Cabinet, through the Public Accounts Committee, through to the Administrator, that would enable regulations to go through a level of scrutiny.

It is an important point to make because it is a decision for government. I understand that there has been plenty of public discussion about it. We will operate in the environment that is required. It is the content of the environment that is critical from our point of view.

The committee suspended.

Environmental Defenders Office

Madam CHAIR: Good afternoon, everyone, thank you for joining us. I am Ngaree Ah Kit, the Member for Karama and Chair of the Legislation Scrutiny Committee. On behalf of the committee, I welcome everyone to this public hearing on the Petroleum Legislation Miscellaneous Amendments Bill 2019.

I acknowledge my fellow committee members in attendance today, Jeff Collins, the Member for Fong Lim; Tony Sievers, the Member for Brennan; Lia Finocchiaro, the Member for Spillett; and Sandra Nelson, the Member for Katherine.

I welcome to the table to give evidence to the committee from the Environmental Defenders Office, Gillian Duggin, Managing Lawyer. Thank you for coming before the committee. We appreciate you taking the time to speak to the committee and look forward to hearing from you today.

This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee apply. This is a public hearing which is being webcast through the Assembly's website. A transcript will be made for use of the committee and may be placed on the committee's website.

If, at any time during the hearing, you are concerned that what you say should not be made public, you may ask that the committee go into a closed session and take your evidence in private.

Could you please state your name and the capacity in which you appear before I proceed to the committee's questions.

Ms DUGGIN: Gillian Duggin. I am the Managing Lawyer at the Environmental Defenders Office in the Northern Territory.

Madam CHAIR: Thank you very much. I will now open to the committee for any questions they may have for you.

Mr SIEVERS: Hi, Gillian. We have been through your submission, but we would all like you to recap your main points.

Ms DUGGIN: Sure. The main points I want to highlight today go to the current issue with this Bill about including in it a requirement that a land access agreement be in place. Currently, the Bill just proposes that that matter be dealt with by regulation. In my view, that is quite inappropriate that such a significant right should be relegated to discretionary regulations, rather than included in the Act. The same concern applies for environmental securities. That is only established as a regulation-making power rather than an actual right or obligation.

The second issue I have goes to the land release process and the objection process that the Bill sets out. In my view, the Bill does not actually implement the Fracking Inquiry recommendations on that issue. It does not require the minister to go through a strategic process to identify what land should or should not be required for release prior to actually initiating a permit process.

They are the two key concerns I have. I would be happy to talk about them in more detail, if you have any questions.

Mr SIEVERS: Sometimes things are in regulations so they can evolve with time. You would rather them be in the Bill itself?

Ms DUGGIN: I actually think it is entirely appropriate that some of the details should be in regulations, but the right for a landholder to have a land access agreement over their property should be in the Act, so that fundamental right is not subject to change in the future by regulation. That is a much less transparent process.

I think it is the higher-order legal right or obligation that should be in the Act and then details in the regulations. All those matters that the Fracking Inquiry identifies that should be in the minimum standards for an access agreement, that is appropriate to go in regulations but there is no actual obligation proposed for the Act right now, which I think is very problematic.

Madam CHAIR: Are there any further questions from the committee? Gillian, is there anything else you wold like to leave us with?

Ms DUGGIN: I would like to make a general comment that I am concerned that this Bill repeats some of the previous issues with this reform process and the Fracking Inquiry. It seems to take the bare minimum standards put into the legislation rather than actually do the best and most rigorous approach possible to legislative amendments. I think that is a troubling pattern and it is contrary to the spirit of the Inquiry really.

I would like to see all the recommendations in our submission implemented to strengthen this Bill and to see the Fracking Inquiry properly implemented.

The committee suspended.

Northern and Central Land Councils

Madam CHAIR: Good afternoon, everyone. Thank you for joining us. I am Ngaree Ah Kit, the Member for Karama and Chair of the Legislation Scrutiny Committee. On behalf of the committee, I welcome everyone to this public hearing on the Petroleum Legislation Miscellaneous Amendments Bill 2019.

I also acknowledge my fellow committee members in attendance today. We have the Member for Fong Lim, Jeff Collins; the Member for Brennan, Tony Sievers; the Member for Spillett, Lia Finocchiaro; and the Member for Katherine, Sandra Nelson.

I welcome to the table to give evidence to the committee from the Northern and Central Land Councils, Greg McDonald, Manager, Mineral and Energy; and Tom Weston, Lawyer. Thank you for coming before the committee. We appreciate you taking the time to speak to the committee and look forward to hearing from you this afternoon.

This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee apply. This is a public hearing which is being webcast through the Assembly's website. A transcript will be made for use of the committee and may be put on the committee's website.

If, at any time during the hearing, you are concerned that what you say should not be made public, you may ask that the committee go into a closed session and take your evidence in private.

Could you each please state your name and the capacity in which you appear before I proceed to the committee's questions.

Mr McDONALD: Greg McDonald, Manager, Minerals and Energy, Northern Land Council.

Mr WESTON: Tom Weston. I am a Lawyer with the Northern Land Council.

Madam CHAIR: Thank you very much. I will now open it to the committee for any questions they may have.

Ms NELSON: I do not have any questions for the Northern Land Council. I appreciate the recommendations you have attached. I will be following these recommendations in the questions I ask the department that will be presenting this afternoon. There are some very thorough recommendations.

Mr COLLINS: Perhaps rather than have you sit there and say nothing, as Tony asked about the last, can you give us an overview of what your most important points are about this?

Mr McDONALD: Thank you. I welcome your question and am happy to do so. We provided a summary of the submissions and the view and key aspects of that as Appendix 2 to the submission in the table format, which is useful for this purpose. I might just refer to that and reiterate some of those key points we pull out from the submission.

In regards to clause 4 and section 5 amended, that is supported. We are pleased to see that in the Bill.

In regards to clause 5, section 6A inserted, that the minister not be required to specify how the principles of ESD have been applied when making a decision, the view of the Northern Land Council is that this section should be amended to require the minister to specify how the minister considered or applied the principles of ESD when making the relevant decisions. That is in relation to—sorry, Tom, you might remind me of those.

Mr WESTON: Sure, that is in relation to sections 127 to 132.

Mr McDONALD: That is correct. We question or would like to know if the committee was aware of the rationale for exempting those proposed sections from the requirements for the minister to specify that.

Would you like me to keep going?

Mr SIEVERS: Keep going, yes.

Mr COLLINS: (Inaudible).

Mr McDONALD: Okay. In relation to the release of blocks and application, the NLC's view is that section 16 should be amended to provide that notice should be given to owners, registered native title bodies corporate, registered native title claimants and native title representative bodies. That is for the purposes of ensuring consistency with the rights of native title holders under the *Native Title Act*.

The insertion of section 16A sets out the process for the determination of blocks. However, this section should include a requirement to notify the landowners.

I will turn over the page now. In relation to certain operations being prohibited—that is relevant to clause 19, section 111—on the last page of the table in Appendix 2 in our submission. The NLC's view is that sections 111(2)(b) and (3)(b) should be amended to require the consent of registered native title claimants to prohibited activities. I believe it currently only provides those rights for prescribed bodies corporate in the current wording of the Bill. Is that correct, Tom? I believe …

Madam CHAIR: Greg, could you explain how that would work in practice?

Mr McDONALD: That would work in practice through the relevant land councils, being the native title representative bodies, being notified. We would then have the obligation to inform the native title holders.

Madam CHAIR: Could you explain to me the difference between the native title representative body, which would be the land council, and the body corporate?

Mr WESTON: Is this in relation to the prohibited activities?

Madam CHAIR: I am just trying to figure out the separate entities and what the process is at the moment, and what it would like under the model that you are proposing here on behalf of the land councils, to make sure that native title claimants are aware of this. Is it just adding? There is a process already in place but it does not necessarily get back to each of the claimants. Is that what you are saying?

Mr McDONALD: No, that is not the intent of our submission. Tom, do you want to say something here?

Mr WESTON: Yes. Just to go back a couple of steps, proposed subsections 111(2)(b) and (3)(b) provide that certain activities can be done with the consent of certain persons, including any registered native title body corporate. However, there is no equivalent requirement to obtain the consent of a registered native title claimant.

Under the proposed sections, consent is required from registered native title body corporates but not native title registered claimants. We are not entirely sure of the rationale; it could be an omission and we would maybe follow that up with questions to you and recommend that it is included.

Madam CHAIR: Because you would assume that a native title body corporate would be there to represent the interests and pass on the information. It sound like there is a gap there, that the claimants do not necessarily get the information.

Mr McDONALD: In certain circumstances, a registered native title body corporate may not yet have been established or appointed to represent the claimants. There may be instances where it is not necessarily envisaged in the current drafting of the bill how the native title claimants would then be notified because they are not named in that.

Ms NELSON: You look at Katherine where there is a native title dispute between Wardaman, Jawoyn and Dagoman. All of sudden, tomorrow, we find that there is gas there and we want to issue an exploration licence. How would that work? There is a native title dispute; we do not really know who the native title owners are. Would we then go to you? Is that where you fit?

Mr McDONALD: In regard to that process …

Ms NELSON: Because that is not addressed here either.

Mr McDONALD: No, that is right. I do not think it is intended to be addressed in this particular part of the Bill but the process for notifying people and holding the consultations are set out in the *Native Title Act*.

Ms NELSON: Yes.

Mr McDONALD: The NLC is familiar with those provisions. I do not think there is anything with regard to prohibited activities that would be relevant to that particular circumstance that you have phrased there. The current process under the *Native Title Act* establishes the right to negotiate for petroleum exploration proposals which would also include a provision to notify and consult, and go through the agreement-making process which we have been doing successfully with all proponents in good faith.

Ms NELSON: Yes. The *Native Title Act* is not being undermined in any way in regard to the prohibited activities?

Mr McDONALD: Thank you for your question. With regard to our submission and to clause 19 subsections 111(2)(b) and (3)(b) of this bill, our view is that in its current drafting, it is not consistent with the requirements of the *Native Title Act* to ensure that the rights of native title claimants as well as the prescribed body corporates are recognised. Our view is that the recommended insertion of the native title claimants, as we have proposed, would sufficiently address our concerns.

Ms NELSON: Thank you. I was trying to articulate that.

Mr McDONALD: If you are happy for me to do so, we have two more key concerns. We note the code of practice. It is referenced that the proposed amendments would satisfy a recommendation 7.11 of the inquiry. We submit that there would need to be further amendments to the code of practice for that to be achieved; we outline what those amendments are.

They relate to quite a significant part of the code of practice; that wells must be constructed to at least category 9 or equivalent. Currently the code of practice provides for some exemptions to that, under certain circumstances. We feel that is inconsistent with the recommendations of the inquiry.

With regard to environmental securities, clause 21 section 188 amended. The clause amends section 118(2)(p) and relevantly grants the administrator discretionary power to make regulations in relation to environmental securities. It is the view of the NLC that we feel there should be a mandatory requirement within the act for this provision, which creates an environmental securities process, the details of which could be contained in the regulations.

Madam CHAIR: Thank you, Greg, for that overview and to you and Tom for appearing before us today. Are there any final comments you would like to leave with the committee today?

Mr WESTON: Thank you, Madam Chair. To return to Greg's earlier point where we asked a question in relation to the principles of ecologically sustainable development. Is the committee aware of any rationale for the exemption of proposed sections 127 to 132 at clause 5 from the principles of ecologically sustainable development?

Madam CHAIR: Definitely something that the department will be listening to and if you stay around, they will be able to address that as a part of their testimony.

Mr McDONALD: Thank you, we would appreciate if that could be put to the department.

Mr WESTON: Thank you.

Mr WESTON: A further question to put to the committee. In relation to land access agreements, is the committee aware of any rationale for recommendation 14.6, which is that a statutory land access agreement be required by legislation, not being implemented in full?

Madam CHAIR: Again, we will pose that to the department.

The committee suspended.

Australian Petroleum Production and Exploration Association

Madam CHAIR: Good afternoon, everyone and thank you for joining us. I am Ngaree Ah Kit, the Member for Karama and Chair of the Legislation Scrutiny Committee. On behalf of the committee, I welcome everyone to this public hearing on the Petroleum Legislation Miscellaneous Amendments Bill 2019.

I acknowledge my fellow committee members, Jeff Collins, the Member for Fong Lim; Tony Sievers, the Member for Brennan; Lia Finocchiaro, the Member for Spillett; and Sandra Nelson, the Member for Katherine.

I welcome via teleconference to give evidence to the committee from the Australian Petroleum Production and Exploration Association Keld Knudsen, Director, Northern Territory; and Stephanie Stonier, Corporate Affairs Manager (Northern Australia) Origin Energy and Chair of APPEA NT onshore working group. Thank you for appearing before the committee. We appreciate you taking the time to speak to the committee and look forward to hearing from you today.

This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee apply. This is a public hearing which is being webcast through the Assembly's website. A transcript will be made for use of the committee and may be put on the committee's website.

If, at any time during the hearing, you are concerned that what you say should not be made public, you may ask that the committee go into a closed session and take your evidence in private.

Could you each please state your name and the capacity in which you are appearing and then we will proceed to the committee's questions.

Mr KNUDSEN: Good afternoon. My name is Keld Knudsen, Director for Northern Territory and Exploration, APPEA.

Ms STONIER: Stephanie Stonier, the elected Chair of the APPEA NT onshore steering committee.

Madam CHAIR: Thank you very much. I will now invite the committee to ask any questions they may have.

Mrs FINOCCHIARO: Keld and Stephanie, it is Lia Finocchiaro, Member for Spillett. I am wondering if you can take us to your key points of your submission.

Mr KNUDSEN: Thank you Lia, we have two points in our submission. Firstly, we are strongly supportive of the inclusion of land access provisions in the legislation as there has been a push in that for some time.

Secondly, we have two main points. The first is the bill sets a process for the NTCAT to play a role in dispute resolution between pastoralists and title holders should there be a clear dispute. Currently, there is a process in the NTCAT where it can review its own decisions, under section 140. Their advice is that this is accepted

considering that there will already be review processes and an existing appeals process through the Supreme Court. Our recommendation is that be removed, or that potential for them to review their own decisions be removed.

We also suggested the inclusion of provision in the Bill that, similar to the Northern Territory *Minerals Titles Act* and indeed that is consistent with legislation around Australia and the Northern Territory where there is provision in that to make it an offence to interfere with authorised activities of a title holder or the exercising the rights that are conferred on the company by the title. This is primarily for a consistency issue and protection of lawful rights of the petroleum company.

They are our two additions under our submission.

Mrs FINOCCHIARO: With that proposed addition to the Bill, could you explain in layman's terms what that is designed to protect? Where is this coming from?

Mr KNUDSEN: It is rarely used. When we did the research, it has only been used once or twice and effectively it means that persons who are interfering with the lawful activities of a petroleum title holder, whether it be through exploration of anything else, it is an offence under the *Petroleum Act* if it is deemed to be deliberate and has implications in particular for safety.

It is a common provision and it applies generally to those that are deemed to be intentionally and deliberately trying to sabotage or interfere with other's activities; especially when those activities are conferred onto a company by the government.

Mrs FINOCCHIARO: Okay, thank you.

Mr SIEVERS: Keld, it is Tony Sievers. You commented on removing NTCAT out of the process when you have two other court jurisdictions to take care of that. What was your thinking; would not NTCAT be a quicker and cheaper process?

Mr KNUDSEN: We certainly do not think it is removing the review process. That review would still be available to the Supreme Court and through the internal mechanisms of the NTCAT, which has gone through that process. It would remove the ability for them to have to review their own decisions. History has shown that it is unlikely this additional step would make a difference to the decision that has already been handed down. To be clear, they cannot review their own decisions.

Madam CHAIR: Are there any further questions from the committee? No further questions. Do you have any final comments you would like to leave with the committee?

Mr KNUDSEN: I will pass to my colleague, Stephanie, for a closing comment.

Ms STONIER: Firstly, we would like to acknowledge the work of the government and, in particular, the public servants, that worked tirelessly since the moratorium was lifted in March or April 2018, to effectively implement the first suite of recommendations from the Pepper inquiry.

There were some 35 to 30 recommendations that need to be implemented before exploration could begin and the public servants across multiple departments delivered a regulatory regime that we believe had improved the current standard of the regulations in the NT.

I also acknowledge again that we agreed in principle to all of the recommendations from the NT inquiry. With this Bill we are satisfied that we are moving in the right direction. We support the Bill and look forward to seeing the detail of how it will be rolled out within the regulations.

Finally, I acknowledge that the Northern Territory's prospectivity in the Beetaloo Basin is one that we are yet to understand comprehensively. It requires a material amount of additional exploration work. I caution that we have a long way to go yet with the recommendations that need to be implemented. There is another 100 of them. It was very sensible and pragmatic for the inquiry to separate them out so we focused on the priority areas early on in the implementation stage.

Once again, thanks to the public servants who have regulated this industry for the last 40 years safely in the Northern Territory and for raising the bar again on the back of the NT inquiry. Thank you.

The committee suspended.

Protect Country Alliance

Madam CHAIR: Good afternoon, everyone and thank you for joining us. I am Ngaree Ah Kit, the Member for Karama and Chair of the Legislation Scrutiny Committee. On behalf of the committee, I welcome everyone to this public hearing on the Petroleum Legislation Miscellaneous Amendments Bill 2019.

I acknowledge my fellow committee members in attendance today, Jeff Collins, the Member for Fong Lim; Tony Sievers, the Member for Brennan; Lia Finocchiaro, the Member for Spillett; and Sandra Nelson, the Member for Katherine.

I welcome via teleconference to give evidence to the committee from Protect Country Alliance, Rod Dunbar, Lexcray and Nutwood Downs Cattle Station; and Lauren Mellor, spokesperson. Thank you for coming before the committee. We appreciate you taking the time to speak to the committee and look forward to hearing from you today.

This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee apply. This is a public hearing and is being webcast through the Assembly's website. A transcript will be made for use of the committee and may be put on the committee's website.

If, at any time during the hearing, you are concerned that what you will say should not be made public, you may ask that the committee go into a closed session and take your evidence in private.

Could you now each please state your name and the capacity in which you are appearing before I proceed to the committee's questions.

Mr DUNBAR: Rod Dunbar. I am the owner and manager of Nutwood Downs Station at Daly Waters.

Ms MELLOR: Lauren Mellor on behalf of the Protect Country Alliance. I work with regional and remote communities and pastoralists, and other land holders who are impacted by the proposal for an onshore gas industry across the Northern Territory.

Madam CHAIR: Thank you Rod and Lauren. I will now open it up to the committee for any questions they may have for you.

Mr SIEVERS: Hi Rod and Lauren. It is Tony Sievers. I am reading through your submission. Some of the key points you are talking about are land access rights and the impost to the pastoralists or the landowners of costs associated with legal fees and other matters. Could you talk us through that?

Mr DUNBAR: You can talk about that, Lauren.

Ms MELLOR: I have prepared a couple of opening statements. Would that be alright? I thought we were able to put a few opening statements in relation to the Department of Primary Industry's responses to our submission. I thought that might give more information

Madam CHAIR: That is fine, Lauren.

Ms MELLOR: Thank you, Chair. Both Rod and I have opening statements to respond to the department's responses to our submission today. We thank the committee, the members that are there today and the public servants that have contributed to this work.

We will start by using this opportunity to reiterate our strong resolve that the land access provision must be placed in the *Petroleum Act* and not hived off in the regulations. We will go through why.

We are calling on the committee today to consider that the current Bill must be amended to include the precise details of the land access provisions. These should be available in full for public feedback and parliamentary contribution to ensure the strongest possible outcome for Territorians.

We note through the feedback from the department so far, that the Department of Primary Industry and Resources recognises that the land access provisions are complex and does not wish to take a fragmentary approach to this. We commend them on that but the DPIR has failed to justify against why the most rigorous and transparent methods available to be utilised are being used to enact these provisions and that would be simply to ensure that they are protected under the *Petroleum Act*.

In relation to fragmentation, all the provisions can just as easily be placed in the statute, in the act where they belong, not the regulations.

DPIR talks about an intent to avoid a patchwork of amendments. If that is the case, we recommend putting it all in the act and put it all out for public scrutiny. That is the only way that we can ensure that landholder rights are protected from the risks and impost to the gas industry, as it seeks access to peoples' properties.

We covered off on a number of examples of the land access negotiations that are going on at the moment and Rod can talk to those in more detail.

I would like to make a couple of other opening statements. There are entities with experiencing negotiating land access from the occupier, landholder or pastoralist perspective that could provide useful insights into the provisions of land access.

Organisations such as the Environmental Defenders Office and other legal firms acting for landholders, land councils, traditional owners, local government authorities and shires and land access specialists. By putting the provisions in regulation, as is proposed in this Bill, these stakeholders and their relevant expertise and experience are being shut out of the process.

From our perspective there is no rationale for denying landholders, occupiers or pastoralists from using these and other representative voices and expertise to give feedback on land access provisions in the Act.

Going back to the Pepper inquiry where these recommendations for land access agreements originated, the Pepper inquiry, unlike for other aspects, did not state that the land access provisions should go into the regulations. It was very clear on this matter. Why then has the government chosen to take a closed-door approach to the drafting of this very important provision? There is no reason why, in our opinion, all of these important provisions cannot be listed transparently in the *Petroleum Act*, with the full ability for public scrutiny to ensure the best possible outcomes.

The department noted in its response the difficulty in retrofitting the land access provisions into the existing framework. Therefore, we argue it is far more appropriate to ensure a rigorous parliamentary process to utilise and put the provisions in the *Petroleum Act*. This is past the period for the proposed close-door and closed-group approach where government, staff, the gas lobby group, APPEA and the Northern Territory Cattlemen's Association are supposed to make decisions on the wording of these important provisions.

We also highlight that there is a significant expertise imbalance between the organisation APPEA, acting for oil and gas company interests, and the Northern Territory Cattlemen's Association when it comes to land access issues. We are not confident that this can be rectified to ensure that the pastoralists are no worse off as a consequence of the petroleum titleholders' activities on their land. We are also not confident that this imbalance could be rectified simply by consulting more widely amongst pastoralists. Further, this closed-door process to consultation denies the many other landholders—including local government authorities, native title holders, pastoralists and farmers not represented by the NTCA—and a host of others, the right to participate in the formation of laws governing access to their properties and the conditions under which they operate. These are important discussions that deserve the full scrutiny of those other landholders.

The imbalance, in our opinion, would be better rectified by opening up the process to more comprehensive scrutiny which is gained by going through the process of enacting or statutorily enshrining parliamentary process and putting the land access provisions in the Act. Importantly, putting all the land access provisions in the regulations, as is proposed, sets a precedent for all future land access provisions and amendments being in the regulations. This would put all future significant changes out of the parliamentary scrutiny arena, to be made behind closed doors by the Minister with the gas lobby, without public consultations or scrutiny. This impacts not only the landholders of today, but the landholders in the future who will be dealing with the gas industry demanding access to their properties. This process should be open and the provisions should be clearly in the Act.

In relation to our submission, a significant amount of trust and goodwill has been placed in the Pepper inquiry and its recommendations, and now the government, to follow through on its commitment to implement, in full, those recommendations. We do not believe that work can be appropriately outsourced to department staff, and certainly not to the gas industry whose interests in general do not align with those pastoralists where they are seeking access to their land—or any other landholder, for that matter.

We believe members of the committee have a responsibility to the people of the Northern Territory. At the moment, a closed-door process on land access laws does not have that same level of accountability that was proposed by the Pepper inquiry.

I might let Rod speak to his opening statement now about some of the personal experiences that Rod and other authors of submissions and stakeholders have put to this committee on this Bill. These are some of the significant land access issues that landholders—and in particular pastoralists—in the Beetaloo, McArthur and Georgina Basins rights now are dealing with.

The power imbalance between those landholders and the gas industry is significant and we feel this Bill serves to deepen the disadvantage that landholders are experiencing at the moment. I will cross over to Rod to talk about some of the experiences he has had in dealing with gas companies seeking land access to his property at the moment.

Mr DUNBAR: Thanks, Lauren. Thank you very much for allowing me to speak to you today. I will, basically, relate some of my personal real-life experiences between my family and our company and two gas companies and the Department of Primary Industry and Resources.

We have negotiated with two separate gas companies in the last seven or eight years. We have failed to come to an agreement with one and the sticky point there is compensation. We had a very short agreement with the second one prior to the Pepper inquiry, which expired. They have come back recently and wanted to renew it and go on with their activities. We cannot come to an agreement with them either.

The experience that has come out of the last one is that they have referred 'the dispute', as they call it, to a panel that has been set up, apparently, outside of the law of the Territory by the department of Primary Industry, the APPEA and the NTCA. I am told that is was 'set up in good faith' to get things done. Well, our experience with that process, which is run and operated by the DPIR, is one of threat and bullying. The panel would have to be biased because it only consists of Northern Territory public servants and one member, I think, of the APPEA.

We have no right to access any of the evidence that might be given by other parties, et cetera, and the whole process has been a very demoralising and threatening arrangement. We put in a submission. Originally, we were not going to put in a submission because we do not believe that this panel has any jurisdiction. However, our solicitor said that we should comply. We have not heard back from them at this stage.

The fact is that we do not see any need to have any sort of access agreement, when they have the right, under the *Petroleum Act*, to come on anyhow. We cannot work out why there is so much enormous pressure being put on us by the DPIR to sign an access agreement that the DPIR is not even a party to. That is very concerning to us because there is no one from the Northern Territory government who has consulted with us and tried to find out what our concerns and problems are—no one at all. All we have heard from the NT is threatening letters from DPIR.

Apparently, under this panel, the gas industry people can make an application and if you agree and go to the panel and have them decide on your future, you must then comply with their findings and there is no right of appeal, which we find very disturbing.

Some of the things that happened in that process were equally disturbing. One of them was that in the submission put by the gas industry there was an annexure to that which compiled a lot of newspaper cuttings and articles and interviews I had with media outlets et cetera. They correlated that and submitted to the panel that my personal political activities and beliefs were to be taken in evidence by the Northern Territory government's arbitration panel. The panel was being asked to consider that as evidence of guilt of some felony that it was alleged I had committed against the permittees. I am flawed that anyone would even consider doing that and that the Northern Territory government is a party to this. They are the ones that are operating this.

I do not know how many other pastoralists have had to endure this, but I can tell you, ladies and gentlemen, nobody should. We lost sleep over this. We had a drought at the time, trying to run a station, and having threatening emails and this sort of thing is terrible.

Anyhow, I do not believe that it should be compulsory—which is what the department of Primary Industry sources are saying to me in emails—to sign access agreements. I am taking that as being Northern Territory government policy. If it is, it should be stopped immediately because we should have the right to decide who comes on and who does not.

I have seen some documents in recent times where DPIR has said, in answer to questions to your committee, I think, or to some government committee, that an access agreement need only be about if someone chains the gate properly or what access point. That is totally misleading and wrong. Why would you go into an access agreement with someone like a gas company unless there was compensation for damage done? This is not real. The DPIR should not be saying these things. We should be getting more support from the government than we are—and we are currently getting none at all. I object to that and I implore your committee to do something about that.

Madam CHAIR: Thank you very much, Rod and Lauren. I will just check in with the committee at the interval to see if there are any questions.

Ms NELSON: Thank you Rod and Lauren. This is Sandra Nelson, Member for Katherine. Thank you for taking the time to speak to the committee. I read your submission and letter and it has raised some questions for me to ask the department.

Madam CHAIR: Rod and Lauren, there does not appear to be any questions from the committee. I will go back to you for the next couple of moments to see if there are any further comments you would like to add. Then we will be having the testimony from the department straight afterwards, so they will be able to listen to the testimony you have given and, hopefully, provide some commentary as well.

Mr DUNBAR: Okay, thank you.

Ms MELLOR: Thanks, Chair. We have some questions arising from the DPIR's response to stakeholder submissions. Would it be appropriate to put those to the committee now …

Madam CHAIR: Yes, please.

Ms MELLOR: … in the hope that DPIR can elaborate on some of their responses.

Madam CHAIR: Yes, please, thank you.

Ms MELLOR: That would be great, thank you. In relation to one issue that was raised by stakeholders in the submissions, at present there are land access negotiations occurring at the moment between pastoralists and other landholders and gas companies, using the old regime, not, of course, the updated legislation as proposed by the Pepper inquiry.

We would like to know, through the department, why these land access negotiations are allowed to proceed using this outdated and inappropriate—as identified by the Pepper inquiry—regime which disadvantages landholders in these negotiations and does not introduce a lot of the recommendations of the Pepper inquiry has stated would be necessary to reset and make fair the balance between landholders and the gas companies.

There is one example at the moment where it seems this proposed legislation or regulations are being rushed through which do not take into account the Pepper inquiry recommendations. I note in the following changes in the Act, pursuant to this Bill, clause 8 amending section 18, there will now be the ability for public comment on the intention to grant an exploration permit, noting that Santos and the Northern Territory government have not waited for the recommended changes to the act to be implemented.

Santos is currently in the process of being granted exploration permit DP354, yet there is no ability for public comment, as recommended by the Pepper inquiry. Surely, it was the intent of the inquiry recommendations that they should be implemented in time to actually improve the process. Why has the department not worked with Santos to delay this exploration licence process—for a few months even—to allow for the improved process recommended by the Pepper inquiry to be introduced.

The issues at the moment where landholders are being forced to negotiate using an outdated and inappropriate land access regime, it is our strong view that those negotiations should cease.

In relation to some of the costs that I believe Tony Sievers raised earlier—the costs that are being imposed on landholders to access legal representation and support to negotiate the myriad of regulations at the moment, and to try to assert their rights to protect their properties, their livelihoods and businesses from unwanted gas exploration—some pastoralists are being hit with tens of thousands of dollars in legal fees just to open discussion with these gas companies.

Essentially, they are not being told their rights. We do not believe the department has done enough to educate landholders about what their rights currently are under the existing *Petroleum Act* provisions, let alone the proposed changes. What they are being left with is having to seek their own legal advice, usually outside of the Northern Territory, to find the expertise about land access to sit down with these gas companies. Reasonable offers to negotiate are being rejected by major gas companies in the Northern Territory and pastoralists are being told that their legal fees will be capped at something extraordinarily small, around $1500 in some cases, leaving pastoral businesses significantly out of pocket just because gas companies want access to their land.

The time away from their businesses is having a huge impact, both personally and financially on pastoralists. These things need to be considered before this Bill moves ahead. We need to ensure that gas companies are not able to use the old regime to advance exploration permits or to make agreements with landholders where they have fewer rights than what is being proposed at the moment.

I raise another issue in relation to the department of Primary Industry's statement. They have responded to concerns about no-go zones not being properly implemented and addressed across the Northern Territory. These would be areas where gas exploration would not be approved. There was a criteria set by the Northern

Territory government which states that areas of high ecological value, high scenic value, cultural significance or strategic importance to nearby residential sites should be reserved from gas exploration.

At the moment, the department has identified 9% of the Northern Territory which has so far been put into reserve blocks to protect those areas from fracking—just 9%. I ask the committee if they believe there is more than 9% of the Northern Territory that fits into this criteria of ecological and cultural significance. We believe that there are. Most Territorians would believe there are. It is clear that the no-go zone process has not worked to properly look at all the exploration applications that are out there and appropriately reserve areas that should be off limits to fracking.

It was clear from the Pepper inquiry we do not yet have a full understanding of the ecological and cultural values across the Northern Territory, nor our ground water resources. Those have not been properly mapped. Some of those will be in process in the next two years through the SREBA process, but as for scenic value, as an example, we can all agree that there is more than 9% of the Northern Territory that is of high scenic value and should be protected from gas field development.

We think it would be appropriate for the department to fully understand all the areas that fit into those categories and put in place protections in reserve blocks before fracking companies are making major investment decisions about whether they will proceed with exploration there. This is allowing sovereign risk to be created by companies making investments in those permit acreages, which may then be rejected at a further date. We think this is clearly in the wrong order and we should be identifying these areas of ecological and cultural significance well before we allow gas companies to proceed with explorations.

Our question to the department of Primary Industry is when can we expect to see more reserve blocks being declared based on these identified values?

Madam CHAIR: Thank you very much.

Ms MELLOR: Just one further statement …

Mr DUNBAR: There was just …

Ms MELLOR: Oh, sorry, you go, Rod, then I have one final thing for the department please.

Mr DUNBAR: I want to tell the committee that from my and my family's perspective, we wrote to Minister Kirby and Minister Lawler on 29 January this year and set out our issues. I am sure, if the committee speaks to the minister's office, that the minister would give them a copy of the correspondence. It might be of some value.

Madam CHAIR: Thank you for letting us know that, Rod. Lauren, you have one final matter?

Ms MELLOR: Thanks. It goes back to the process for enacting the Pepper inquiry recommendations. We all want to see them in there in the most robust way possible that goes to the heart of what the Pepper inquiry identified as being necessary to protect landholders in the Territory, particularly those that are critical to economic value, the pastoral industry, farming, tourism and cultural values. All of those things need to be protected and this Bill clearly does not do that.

The process from here, as proposed, would mean that parliamentary scrutiny for any further aspect of land access and minimum standards is hived off to regulations. The group sitting there developing the regulations—that is, the conditions under which gas companies can access people's properties, the length of time, the compensation required, the activities that can take place—all of that will only be discussed by APPEA, the oil and gas lobby, and the Northern Territory Cattlemen's Association, with members of the department.

We do not think that is an appropriate way to deal with the multitude of risks and concerns that landholders hold about gas industry access to their properties. We reiterate that is why, if these changes are placed into the *Petroleum Act*, then there is a public process where landholders can contribute. At the moment, what is being proposed would not allow landholders a seat at the table, while instead, wholly inappropriately, allowing the gas industry to sit behind closed doors and make the rules governing gas access.

I ask committee members to really consider the implications of the proposed Bill and go back to both the spirit and full intent of the Pepper inquiry recommendations about this and ensure that those processes happen under the *Petroleum Act*.

I note that both APPEA and the Northern Territory Cattlemen's Association have said that they are 'okay' with this being in the regulations. The department said it has established a working group with the two representative stakeholder bodies to discuss inquiry recommendations 14.6 and 14.7. They will continue to liaise and consult with both of those groups regarding the draft regulations, but to our mind, it is no coincidence that these two interest groups are okay with the process that puts the important details, including minimum standards and land

access provisions, into the regulation because those two groups will be included in the process of drafting those regulations, to the exclusion of all other landholders and stakeholders in the Northern Territory.

The issue being raised by stakeholders, including in our submission and key pastoralists whose land is currently being affected by gas exploration, is that by putting the inquiry recommendations into the Act, as in our jurisdictions around Australia, there is a legal requirement for consultation with everyone. Such a critical suite of recommendations surely deserves the benefit of a parliamentary scrutiny process.

That is all from me. I am not sure if Rod has anything else.

Mr DUNBAR: No.

Ms MELLOR: I want to say thank you to committee members, particularly those who have offered support to landholders who have raised these concerns in the past. This is an incredibly important set of reforms and one we cannot afford to get wrong.

Madam CHAIR: On behalf of the committee, Lauren and Rod, I thank you again for your testimony this afternoon. I hope you enjoy the rest of your day. We look forward to welcoming the department shortly to provide some commentary. Thank you very much.

The committee suspended.

Department of Primary Industry and Resources

Madam CHAIR: Good afternoon, everyone. Thank you for joining us. I am Ngaree Ah Kit, the Member for Karama and Chair of the Legislation Scrutiny Committee. On behalf of the committee, I welcome everyone to this public hearing on the Petroleum Legislation Miscellaneous Amendments Bill 2019.

I acknowledge my fellow committee members in attendance today: Jeff Collins, Member for Fong Lim; Tony Sievers, Member for Brennan; Lia Finocchiaro, Member for Spillett; and Sandra Nelson, Member for Katherine.

I welcome to the table to give evidence to the committee from the Department of Primary Industry and Resources Alister Trier, Chief Executive; James Pratt, Executive Director, Onshore Gas Development; Emma Farnell, Director, Onshore Gas Development; and Paul Purdon, Executive Director, Environment Protection. Thank you for coming before the committee. We appreciate you taking the time to speak to the committee and look forward to hearing from you this morning.

This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee apply. This is a public hearing which is being webcast through the Assembly's website. A transcript will be made for use of the committee and may be placed on the committee's website.

If, at any time during the hearing, you are concerned that what you say should not be made public, you may ask that the committee go into a closed session and take your evidence in private.

Could you each please state your name and the capacity in which you appear this afternoon before proceed to the committee's questions.

Mr TRIER: Alister Trier, Chief Executive, Department of Primary Industry and Resources (DPIR).

Mr PURDON: Paul Purdon, Executive Director, Environment Protection, Department of Environment and Natural Resources.

Mr PRATT: James Pratt, Executive Director, Onshore Gas Development, DPIR.

Ms FARNELL: Emma Farnell, Director, Onshore Gas Development, DPIR.

Madam CHAIR: I will check with the committee to see if we are happy to get the Department to address issues. We will hand it over to you, thank you, Alister.

Mr TRIER: Thanks. Could I start by giving a brief statement, please? Yes.

Good afternoon, Chair and members of the committee. Thank you for inviting me to speak on behalf of the Department of Primary Industry and Resources about the *Petroleum Legislation Miscellaneous Amendments*

Bill 2019, which I will now refer to as just the Bill. I also extend that thanks for allowing Paul Purdon as well to be here.

I will keep my statement relatively brief. It is important there is an opportunity for the committee to ask questions. I note that my Department has already provided a response to 43 questions arising from the public submissions. That response is now publicly available on the committee's website.

I also take this opportunity to thank all the organisations and individuals who have made submissions on the Bill and who appeared before the committee today.

Some of the submissions made relate to matter which are outside the scope of the Bill, but are related to other recommendations of the Independent Scientific Inquiry into Hydraulic Fracturing. I reiterate that the Government has committed to implementing all 135 recommendations, as detailed in its Implementation Plan.

Notwithstanding that, we have read all the submissions and we will take the comments into consideration when undertaking further reforms relating to the inquiry's recommendations and the *Petroleum Act*, which I will refer to as the Act.

The Bill implements, in whole or in part, nine recommendations of the Independent Scientific Inquiry into Hydraulic Fracturing. The Bill implements the following recommendations in whole by directly amending the Act:

- recommendation 14.2, clauses 6 and 7 of the Bill, provides a process for notification of an intention to release land and community consultation in relation to coexistence;

- recommendation 14.10, clauses 8 and 9 of the Bill, provides for any person to lodge an objection to the proposed grant of an exploration permit;

- recommendation 14.11, clause 5 of the Bill, inserts Part 1A into the Act and requires the principles of ecological sustainable development to be considered in decision-making under the Act;

- recommendations 10.2 and 7.11 amends the Act to create consistency with the Code of Practice, Onshore Petroleum Activities in the Northern Territory.

The Bill implements in part the following recommendations by creating a regulation-making power under the Act:

- recommendation 14.6 in relation to statutory land access agreements

- recommendation 14.7 in relation to the 24 standard minimum protections

- recommendation 14.8 in relation to the minimum mandatory compensation scheme for production activities

- recommendation 14.13 in relation to environmental security bonds for a regulated activity.

The Department of Primary Industry and Resources acknowledges the constructive efforts of both the Northern Territory Cattlemen's Association and the Australian Petroleum Production and Exploration Association in developing the policy for statutory land access agreements, including the 24 standard minimum protections.

I am very happy to receive questions from the committee, but before I do so I put on the record my thanks to the staff who have been involved in this process today.

Madam CHAIR: Thank you very much. I will check with the committee to see if there are any questions.

Mr COLLINS: Hey, Alister. There are a few questions that have arisen. I think you heard the last couple, but you might not have heard the Environmental Defenders Office submissions and testimony.

Talking about the ecological sustainable development provisions and the Minister having to take them into account, why was it specifically excluded that the Minister needs to make those decisions or that information available? 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 the principles.

Mr PRATT: Member for Fong Lim, if I understand your question correctly, you are asking about the decisions that are not required for ecologically sustainable development? Is that your question? Apologies.

Mr COLLINS: Sorry, it is section 6A.

Mr PRATT: Section 6A. Thank you.

Mr COLLINS: Principles of ecological sustainable development. The Minister must consider and apply the principles of economically sustainable development in making the following decisions specified under Schedule 1, a decision made under a direction given by the Minister, any other prescribed decisions. Then, subsection (2) of the section says unless expressly provided, in making the decision, the Minister is not required to specify how he considered those.

Mr PRATT: Member for Fong Lim, that section of the proposed Bill is in line with the *Environment Protection Act*. I will hand to my colleague, Mr Purdon.

Mr PURDON: As James has said, the alignment is intended to make this legislation consistent with the *Environment Protection Act*, which was passed late last year. The aim is to require the decision-maker to consider the principles of ESD where they are most relevant. Not every decision under the Act really requires the ESD principles to be considered, and will be an onerous and cumbersome process for that decision-maker. But where those decisions are, for example, environment-related decisions, then the principles of ESD ought to be considered and that proposed section actually requires that decision-maker to consider them in those circumstances.

Ms NELSON: So, that is for the Minister for Environment—is that right?—under the *Environmental Protection Act* or is that …

Mr PURDON: Yes, it does apply to the Minister for Environment in her decisions under the *Petroleum (Environment) Regulations*. All of her decisions require her consideration of principles of ESD but the list in Schedule 1, as I understand, also includes decisions for the Minister for Primary Industry and Resources as well when he needs to consider principles of ESD. It covers both …

Ms NELSON: It covers both?

Mr PURDON: It is just not every decision under the legislation.

Ms NELSON: So, then, if that is the case, why not just include it in the petroleum legislation? Say, something like referred to …

Mr PRATT: Member for Katherine, we are utilising the *Environment Protection Act* aspect and then requiring those decisions in the *Petroleum Act* to hinge off that for ecologically sustainable development. Part of that in Schedule 1 related to decisions, for example, to revoke a reserve block—not that is currently on the table to do, but the Minister would have to consider ecologically sustainable development for that.

Some of the decisions that have not been included for ecologically sustainable development, as Paul outlined, are over the top and do not necessarily relate to the appointment of an inspector under the *Petroleum Act*, for someone to go out and inspect authorised activities. There is not a lot of rationale for the principles of ESD to be applied to that.

Mrs FINOCCHIARO: And the principles are the same?

Mr PRATT: Correct.

Madam CHAIR: I am not sure if you were listening to Protect Country Alliance. They raised a number of questions. I believe I have only captured four. I am hoping that the rest will come back to me.

Why is DPIR using land access negotiations according to the old outdated regime?

Mr TRIER: I will hand to James in a sec, but there is a point in time process where we have to maintain continuity of activity while this legislation and subsequent regulations are being developed.

Mr PRATT: I can add to that. Prior to the Pepper Inquiry, land access was not required by law, which is why we are here today. Also, it had been left to landholders and gas companies to come to agreement regarding land access, although it is noted in law that companies did not have to do that, and they could have just given 14 days notice to attend.

The Inquiry, obviously, found some challenges and problems with that and made recommendations to it. As part of that, a land access agreement panel was established with the NTCA and APPEA in about 2015 to try to resolve issues when land access could not be agreed and negotiated. It was not a lawful, nor was it purported to be, a lawful group that made laws regarding access, it was a way to get parties together if matters were not agreeable.

That group, I guess, exists in theory and pastoralists and gas companies can approach the Department now for support through that group. However, notwithstanding that, if this Bill is passed and we have statutory land access agreements in place, that group is null and void and will be defunct and not required.

Gas companies have been contacting the Department seeking advice, if you like, of how to get agreements with landholders prior to this Bill being finalised. As we know, the moratorium was lifted in 2018. We have instructed gas companies to adhere to the 24 minimum provisions when trying to get agreements with landholders, noting that it will be in law soon. We have, in no way, instructed gas companies to go forth and demand agreements from landholders. Our direction to gas companies is the 24 minimum provisions that are in Pepper's report and are clear for all to see. That should be the minimum basis for them having conversations with landholders about getting agreements until it is in law.

Mr SIEVERS: On that, James, I heard from a number of submission that land access is a complex procedure or issue. Why will it be in the regulations when a lot of the submissions are saying it should be in the Act or in the Bill?

Mr PRATT: Sure, Member for Brennan. For this particular recommendation, Justice Pepper did not prescribe that the *Petroleum Act* be amended. She said it had to be in legislation. There are a number of other recommendations she has been very clear that the *Petroleum Act* or the *Petroleum (Environment) Regulations* had to be amended. For this recommendation, she stated that it required to be in legislation.

This Department, and Government, regards regulations as lawful as the Act. There are many examples of Regulations that are upheld and people abide by for safety. Traffic infringements are done through Regulation. So, we see it as fully comprehensible and enforceable and to be adhered to in Regulation as much as it would if it was in the Act anyway.

I can cite an example. Environment Management Plans for petroleum, which has been in the public sphere a lot, is the authorising activity that Minister Lawler, as Minister for Environment, approves activities to happen on the ground—that is, drilling and fracking. That is done through the *Petroleum (Environment) Regulations*. So, under this Act, we have an approval mechanism through the *Petroleum (Environment) Regulations* to conduct drilling, seismic surveys, well pads, et cetera. We see it on the same platform as requiring land access agreements in Regulation as well.

Mr PRATT: I also add that Dr David Ritchie, the Independent Oversight Officer, also endorsed this process at his most recent report, when it was flagged last year.

Madam CHAIR: Lauren Mellor also raised the issue of no-go zones with 9% being identified as reserve blocks. Did you …

Mr TRIER: I will hand over to Mr Pratt, but just in an opening statement, the no-go zones has been announced as a tranche process—that is, for grant or tenure. There is a process that Government will need to go through, through the various tranches. That will take time and it is important to get that process right. I am sure James can add some more detail.

Mr PRATT: Member for Karama, Ms Mellor is partly correct. As of last Wednesday, 13% of the Territory has been declared reserve blocks. There was a gazettal notice in the government *Gazette* declaring another 34 areas reserved blocks. That is in accordance with Justice Pepper's Recommendation 14.4. Thus far, the Government's reserve block policy identified four tranches to be declared.

We have now completed tranche one and two, and that takes into account areas of no geological prospectivity, national parks, cultural areas, sites of conservation significance—and there is more that alludes me at the moment. In essence, we have declared 13% of the Northern Territory.

The remaining areas now are on granted exploration permits and Aboriginal land, each having their own tenure, I guess, characteristics. Granted exploration permits with a national park on it requires Government to enter negotiations with gas companies for those to be relinquished and declared reserve blocks.

I guess all the non-exploration permit land and non-Aboriginal land has now been declared in accordance with Justice Pepper's recommendations. Most importantly, areas of no geological prospectivity is included in that. Areas where there is no shale source rocks are not on the areas to be explored.

Ms NELSON: So, the current list is not a definitive list—this is it, we are done?

Mr PRATT: Member for Katherine, the reserve block policy details all the areas to be declared in accordance with Justice Pepper's criteria. However, the Strategic Regional Environmental Baseline Assessment, which is being conducted in the Beetaloo Sub-Basin, obviously is looking at baseline data and may identify some of the areas that need to be considered for reserve block declaration.

It should be noted that Justice Pepper did not require every reserve block to be declared before production could occur. She required reserve block policies to be in place prior to exploration recommencing. I can categorically say that every gas company with an exploration permit has been written to and provided maps for the areas identified that will be reserve blocks. They have been advised that if they apply for an Environment Management Plan approval on an area that is a reserve block, my colleagues in the Department of Environment and Natural Resources would not be accepting and processing that.

Madam CHAIR: I want to make sure we capture the NLC and the CLC's two questions. I did not write them down in full detail. I am hoping that the department was listening and can respond.

Ms NELSON: Have there been exemptions from section 127 and 135?

Ms FARNELL: I was listening to the Northern Land Council before the committee. I can say that sections 127 to 132, which are to be introduced into the Act, are transitional provisions. They only deal with applications which are currently before the Department. The Department does not consider it appropriate to retrospectively require ecological sustainable development to be considered in applications which currently sit with the Department.

The Department says that clause 5, which introduces section 6A into the Act, specifies that for all applications which will be lodged after the commencement of the amending Bill will require ecological sustainable development to be considered, which includes renewal of exploration permits, applications to vary. These are all listed in Schedule 1.

Mr COLLINS: The other one I cannot find. I was looking at it before and now I cannot find it. It was the provision about notification of native title holder corporations, but not the claimants. The claimants were not included. Sorry, I cannot quote …

Ms FARNELL: Again, I can provide some assistance, Member for Fong Lim. I recall that there was a discussion about section 111 which is in relation to prohibited activities, which is clause 19. There were comments made by the Land Council that consent is required to be obtained from native title body corporates. The question which was raised was why not, in accordance with the *Native Title Act,* where registered native title claimants need to provide consent? In our response to the Scrutiny Committee last week, we acknowledged that that language needed to be updated to ensure that registered native title claimants should be required to provide approval to that.

Mr COLLINS: The other issue was the one raised by APPEA, I think it was, about the review process—going through the NTCAT and then the NTCAT review before …

Mrs FINOCCHIARO: Why have you decided NTCAT can review its own decisions, yes?

Ms FARNELL: Member for Spillett, I understand that section 140 of the *Northern Territory Civil and Administrative Tribunal Act* provides that NTCAT has original jurisdiction for a range of decisions and then is able to review its own decisions. There are a number of pieces of legislation which exclude NTCAT reviewing its own decision. I understand that APPEA's submission, which the Department can see some sense in, is that these decisions are generally weighty and we expect NTCAT to consider these in full, and that in those circumstances removing the review process is appropriate.

There would still be appeal for NTCAT decisions to the Supreme Court in certain circumstances. We are not prohibiting an appeal of NTCAT's decision, it is merely whether it can review its own internal decisions.

Mrs FINOCCHIARO: Has the Department a particular view, one way or another, on that, or …

Mr PRATT: We are happy with the proposed approach that they do not review their own decision. We have had some discussions with NTCAT at the coalface of planning this activity, and they seem relatively comfortable with that as well.

Mr SIEVERS: Good.

Madam CHAIR: I have a question in regard to sections 81(1)(a) and (b). Why have they been left in the Act while all other types of compensation have been prescribed in the Regulations under section 81(1)(c)? Is this because deprivation of use and enjoyment and damage are not included in the 24 minimum protections?

Ms FARNELL: Member for Karama, section 81 is a longstanding provision that has been in the Act, I understand, from nearly the beginning. When the Inquiry considered the issues of compensation, they took as read the existing provisions of the Act in relation to compensation. So, the 24 minimum provisions and the other recommendations in relation to compensation are merely to add on to the existing rights of compensation under the Act, which is as you have identified—sections 81(1)(a) and (1)(b).

Madam CHAIR: I will do a quick scan to see if I have any outstanding issues to raise. The last one was from Protect Country Alliance. We heard from Rod, who was a station owner, talking about the costs to people like him to seek legal advice in order to try to progress the negotiations of a land use agreement. Rod also mentioned that no one from Government has actually spoken to him about this going forward.

We also heard from Lauren Mellor about the fact that NT Cattlemen's Association does not look after every pastoralist. We have heard from James as well talking about the panel that was set up. How is the Department making sure that every landowner is being brought along in this process and being updated so that they know what the way forward is for these reforms?

Mr TRIER: Thanks, Member for Karama. It is a good question. As in our response, we recognise that APPEA does not represent all oil and gas companies and the NTCA does not represent all pastoralists. That is fair enough. The NTCA claims to represent 90% of pastoralists, but that is not 100%.

As a part of our process, we have indicated that we will consult beyond APPEA and the NTCA to ensure that we get a range of views. Do you want to add anything?

Mr PRATT: About the only thing further to that is that we write to every exploration permit holder—that is, gas company. Not all of them are members of APPEA—and provide them with the draft Regulations to comment on. Similarly, every pastoral leaseholder will also get the same.

We never envisaged this process—there has been a lot of assumptions earlier today—as being closed through working with APPEA and NTCA. We are working with the two key stakeholder groups or peak bodies, if you like, to get this framework in place. Obviously the detail affects every gas company and landholder. We propose to consult with them on the draft Regulations before they are put into law.

Ms FARNELL: Member for Karama, I can address your initial point in relation to the costs incurred by pastoralists. One of the minimum 24 provisions provides that the petroleum company which is negotiating a land access agreement is to be responsible and pay the costs of the pastoralists in relation to things such as legal expenses, accounting expenses and others, because it is appropriate, as identified by the Inquiry, that that is the case.

Ms NELSON: How is that enforced?

Mr PRATT: Member for Katherine that will be enforced through the Regulations. Through our discussions thus far with the NTCA and APPEA, there has not been a minimum threshold, if you like, put on that. I think I heard earlier a figure of $1,500 was put on that for legal advice, which does not get you a lot of legal advice these days …

Mrs FINOCCHIARO: We know what you are talking about.

Mr PRATT: Too many lawyers in the room. The wording in the minimum provisions is 'fair and reasonable'. Obviously, if parties do not come to an agreement with 'fair and reasonable', there will be dispute resolution mechanisms put in place for that. It is in good faith that most people agree $1,500 is not acceptable for legal advice.

Ms NELSON: From Mr Dunbar's perspective, what is fair and reasonable? From a colloquial understanding?

Mr TRIER: To add to James' point, fair and reasonable can mean different things to different people. Where there is a disagreement, it goes through a dispute resolution process.

Mr PRATT: Because gas companies will need these land access agreements to get onto pastoral leases, it is in their interest to ensure there is cooperation to get them to enter an agreement, whether it is through legal advice or other technical advice as well.

Mr COLLINS: Another issue was raised by Protect Country Alliance paper. I want your view on this—whether it is apocryphal or not, I am not sure. It says here about the risk that companies with minimal financial assets are being used by large petroleum exploration companies to enter into contract with landholders, increasing the risks of defaulting on penalties. That is a process that clearly happens generally with companies. What sort of conditions is the Department applying to make sure that sort of thing does not happen?

Mr PRATT: There is a range of mechanisms. The fit and proper person test, which was passed by the House last year, requires some financial tests and accountability. There is environmental securities, which the Department of Environment already takes from companies to ensure they can rehabilitate or remediate the land. That would become law if this Bill is passed.

We also require security bonds for well operations and the like. Paul's group looks after the environmental side of things, we look after the technical side of things.

There are enough provisions in place. The onus of responsibility is on the permit holders. They cannot default and say, 'The small tier four company that came in and did that exercise is now defunct', and pass liability that way.

Madam CHAIR: I want to raise the issue Rod Dunbar also mentioned about bullying. He felt like he was bullied and victimised from your Department. I want to give you the opportunity to respond.

Mr TRIER: Thank you very much, Chair. I guess that is the view of Mr Dunbar. From my point of view, we try to be very open and transparent in our processes. I cannot really go any further than that.

Madam CHAIR: I will open it to the committee to see if there are any final questions.

Ms NELSON: I have a question. This is coming from the recommendations the NLC has put forward. It is about Recommendation 14.13 that says that prior to the grant of any further production approval the government develops and implements financial assurance framework for the onshore shale gas industry that (a) is transparent and developed in consultation with the community and key stakeholders, (b) clarifies the activities that require a bond or security to be in place and describe how the amount of the bond or security is calculated. The final one was requires a public disclosure of all financial assurances and the calculation methodology.

That is part of the bond that the recommendations, the legislation and the Act is asking for or demanding, is it not? That is all …

Mr PURDON: I am not quite sure I follow the question. That recommendation sits with the Department of Environment and Natural Resources right now to pursue. We are working on the early stages of amendments to our *Petroleum (Environment) Regulations* to implement the requirements of that recommendation, which we fully support.

At the moment, we have environmental security requirements on the gas industry, so any EMP approval issued by the Minister will also be accompanied by a security bond requirement. We do not have strong regulatory support for that process we have now, so those recommendations and implementation of them will give us a very robust regulatory system for that.

Does that help, for your question?

Ms NELSON: It does help, yes, absolutely.

Mr PRATT: Member for Katherine, I also add that while Justice Pepper made that recommendation, our Department, up until the change of power that went to Paul's Department, still required companies to provide environmental securities, while it was not in law. Activities being conducted—I will put an approximate time stamp on it—over the last six years, have always required environmental securities for a calculation method. It just was not in law.

Ms NELSON: Thank you for that clarification. I knew that there were bonds required and all that. This threw me off a little. Thank you.

Madam CHAIR: I have two questions in regards to NT Cattlemen's Association. You will note that we made an opportunity for the CEO, Ashley Manicaros, to give testimony this morning. Two of the issues that Ashley raised were the minimum price per well. NTCA has some concerns with that. Also, about—I will get it wrong—the formula that was created by Justice Pepper in—maybe that is the minimum price per well. I have here minimum price versus …

Ms NELSON: His concern is that minimum price—each property is valued on a different …

Madam CHAIR: So, the formula does not actually add up, yes.

Mr COLLINS: There should be some sort of application of different …

Mr PRATT: I can assist here, if I may. I heard Mr Manicaros' comments early this morning. Obviously, we have been doing some work in the working groups with them, with both the NTCA and APPEA. Justice Pepper's recommendation said a minimum price per well be provided in compensation, or words to that effect. We explored that with both the NTCA and APPEA. In essence, neither wanted a minimum prices, almost like a floor price, if you like, which is what Ashley's comment was this morning. Ashley felt that by saying—I will use a number of $5,000 per well, a random number—that that almost then sets the minimum price, therefore, in the

process of negotiation the gas company will not give any more than that because that is the minimum and that is all that is required.

In essence, a dollar figure has not been, at this point, put on that minimum price. Both parties agree that it should be negotiated, depending on, obviously, where the well is, the land type it is, the effect on a pastoralist operation et cetera. If I may, Ashley was, I guess, happy there was no minimum price—or comfortable is a better word.

Mr TRIER: To add to that, to give an example, we might have a well in a totally unproductive piece of land from a pastoral point of view, and another one in a highly productive piece. Having no ability or a minimum price does not allow for the recognition of that difference in effect to the pastoralist.

Madam CHAIR: I believe that concludes the committee's questions. Are there any final comments, Alister, you would like to leave with us?

Mr TRIER: Thank you very much for the opportunity to appear and for the whole process. As has been pointed out by other people submitting to the Inquiry, this is a very important process and we are pleased to be a part of it. Thank you.

Madam CHAIR: Thank you to you and your staff for appearing today. It was great to hear the evidence and testimony from previous people who appeared before us. It has become quite apparent that your department has done a wonderful amount of work. I believe both Emma and James were congratulated by name as well. Thank you, everybody.

That now concludes the public hearing for today. On behalf of the committee, I thank all those who appeared before us and gave testimony, all of those who provided submissions to the bills we are currently looking at. Have a nice day.

The committee concluded.
