LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

Legislation Scrutiny Committee

Inquiry into the Petroleum Legislation Miscellaneous Amendments Bill 2019

March 2020

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Chair's Preface

This report details the Committee's findings regarding its examination of the Petroleum Legislation Miscellaneous Amendments Bill 2019.

The inquiry generated a moderate amount of interest, with 10 submissions received by the Committee. A point of contention for many submitters was the inclusion of provisions on compensation and land access agreements in the regulations rather than the Act. Several submitters also considered that the determination of blocks to be released should be conducted prior to inviting applications for exploration permits rather than simultaneously as amended in the Bill.

The main purpose of the Bill is to amend the *Petroleum Act 1984* and the Petroleum (Environment) Regulations 2016 to give effect to a number of the recommendations made by the *Scientific Inquiry into Hydraulic Fracturing of Onshore Unconventional Reservoirs and Associated Activities in the Northern Territory* (the Inquiry). Having reviewed the evidence, the Committee considers that the Bill largely achieves this aim. Whilst acknowledging submitters' concerns regarding the implementation of some Inquiry recommendations through the regulations rather than the Act, the Committee notes that unless an Inquiry recommendation specifically states that the Act must be amended, its implementation is not limited to the inclusion of explicit provisions in the Act but can also occur through regulations, codes and policy documents or a combination of such instruments.

The Committee has recommended five amendments to the Bill. Recommendation 2 proposes that notices inviting applications for exploration permits be published online while recommendation 3 proposes removal of the ability of the Northern Territory Civil and Administrative Tribunal to review its own decisions in relation to compensation disputes. The Tribunal generally considers such decisions in full and review by the Supreme Court will continue to be available. Recommendation 4 is a technical amendment to clarify that setbacks from petroleum related structures or activities apply to a range of habitable dwellings as specified in Inquiry recommendation 10.2 rather than solely to land used as a "residence". The fifth recommendation proposes that written approvals to undertake prohibited operations must be sought from registered native title claimants as well as registered native title body corporates, bringing this provision into line with requirements under the *Native Title Act 1993* (Cth). Recommendation 6 proposes that interference with authorised activities conducted under a petroleum title be classified as an offence, as such interference has the potential to pose safety issues.

On behalf of the Committee I would like to thank all those who made submissions, or appeared before the Committee, for their advice and clarification of complex issues. The Committee also acknowledges the Department of Primary Industry and Resources for their assistance and advice. I also thank my fellow Committee members for their bipartisan commitment to the legislative review process.

Mr Tony Sievers MLA
Chair

Committee Members

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	Party:	Territory Labor
	Committee Membership	
	Standing:	House, Public Accounts
	Sessional:	Legislation Scrutiny Committee
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	Committee Membership	
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	**Mr Joel Bowden MLA** Member for Johnston	
	Party:	Territory Labor
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	Parliamentary Position:	Leader of the Opposition
	Committee Membership	
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	**Mrs Robyn Lambley MLA** Member for Araluen	
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	Committee Membership	
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Note: Pursuant to Standing Order 181, on Tuesday 10 March Member for Karama, Ms Ngaree Ah Kit MLA was discharged from the Committee and replaced by Member for Johnston, Mr Joel Bowden MLA.

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Acknowledgements

The Committee acknowledges the individuals and organisations that provided written submissions or oral evidence at public hearings.

Acronyms and Abbreviations

ALEC	Arid Lands Environment Council
APPEA	Australian Petroleum Production Association Limited
EDONT	Environmental Defenders Office NT
EMP	Environment Management Plan
ESD	Ecologically sustainable development
the Inquiry	Scientific Inquiry into Hydraulic Fracturing of Onshore Unconventional Reservoirs and Associated Activities in the Northern Territory
NLC/CLC	Northern and Central Land Councils
NT	Northern Territory
NTCAT	Northern Territory Civil and Administrative Tribunal

Terms of Reference

Sessional Order 13

Establishment of Legislation Scrutiny Committee

(1) Standing Order 178 is suspended.

(2) The Assembly appoints a Legislation Scrutiny Committee.

(3) The ordinary membership of the scrutiny committee will comprise three Government Members, one Opposition Member nominated to the Speaker in writing by the respective Whip and one non-party aligned Member to be appointed by motion.

The Committee's membership will be supplemented by alternate members who may be nominated to participate at meetings and undertake a role on the committee in the place of ordinary committee members. The nomination of alternate committee members will be in writing by the ordinary member to the committee chair.

Alternate Committee members must be from the same category of Members of the Assembly as the ordinary member nominating them such as the same political party or a non-party aligned Member.

(4) The functions of the scrutiny committee shall be to inquire and report on:

(a) any matter referred to it:

(i) by the Assembly;

(ii) by a Minister; or

(iii) on its own motion.

(b) any bill referred to it by the Assembly;

(c) in relation to any bill referred by the Assembly:

(i) whether the Assembly should pass the bill;

(ii) whether the Assembly should amend the bill;

(iii) whether the bill has sufficient regard to the rights and liberties of individuals, including whether the bill:

(A) makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review; and

(B) is consistent with principles of natural justice; and

(C) allows the delegation of administrative power only in appropriate cases and to appropriate persons; and

(D) does not reverse the onus of proof in criminal proceedings without adequate justification; and

(E) confers powers to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer; and

(F) provides appropriate protection against self-incrimination; and

(G) does not adversely affect rights and liberties, or impose obligations, retrospectively; and

(H) does not confer immunity from proceeding or prosecution without adequate justification; and

(I) provides for the compulsory acquisition of property only with fair compensation; and

(J) has sufficient regard to Aboriginal tradition; and

(K) is unambiguous and drafted in a sufficiently clear and precise way.

(iv) whether the bill has sufficient regard to the institution of Parliament, including whether the bill:

(A) allows the delegation of legislative power only in appropriate cases and to appropriate persons; and

(B) sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly; and

(C) authorises the amendment of an Act only by another Act.

(5) The Committee will elect a Government Member as Chair.

(6) The Committee will provide an annual report on its activities to the Assembly.

Adopted 27 November 2019

Recommendations

Recommendation 1

The Committee recommends that the Legislative Assembly pass the Petroleum Legislation Miscellaneous Amendments Bill 2019 with the proposed amendments set out in recommendations 2-6.

Recommendation 2

The Committee recommends that proposed s 16(1) be amended to require the Minister to publish the notice inviting applications for the grant of an exploration permit on the Department of Primary Industry and Resources or other relevant website as well as in a newspaper circulating throughout the Territory.

Recommendation 3

The Committee recommends that proposed section 82A be amended to state that section 140 of the Northern Territory Civil and Administrative Tribunal Act 2014 does not apply in relation to a decision of the Tribunal under this section.

Recommendation 4

The Committee recommends that proposed s 111(1)(b) be amended to replace the word “residence” with words to the following effect: “habitable dwelling (including all buildings or premises where people reside or work, schools and associated playgrounds, permanent sporting facilities and hospitals or other community medical facilities)” in accordance with recommendation 10.2 of the Scientific Inquiry into Hydraulic Fracturing in the Northern Territory.

Recommendation 5

The Committee recommends that proposed sections 111(2)(b) and (3)(b) be amended to refer to “registered native title claimants” as well as “the registered native title body corporate”.

Recommendation 6

The Committee recommends that the Bill be amended to provide that it is an offence for a person to interfere with authorised activities being conducted under a petroleum title or with the exercise by the titleholder of a right under the petroleum title.

1 Introduction

Introduction of the Bill

1.1 The Petroleum Legislation Miscellaneous Amendments Bill 2019 (the Bill) was introduced into the Legislative Assembly by the Minister for Primary Industry and Resources, the Hon Paul Kirby MLA, on 28 November 2019. The Assembly subsequently referred the Bill to the Legislation Scrutiny Committee for inquiry and report by 24 March 2020.[1]

Conduct of the Inquiry

1.2 On 29 November 2019 the Committee called for submissions by 29 January 2020. The call for submissions was advertised via the Legislative Assembly website, Facebook, Twitter feed and email subscription service. In addition, the Committee directly contacted a number of individuals and organisations.

1.3 As noted in Appendix 2, the Committee received 10 submissions to its inquiry. The Committee held a public briefing with the Department of Primary Industry and Resources on 9 December 2019 and public hearings with 12 witnesses in Darwin on 2 March 2020.

Outcome of Committee's Consideration

1.4 Sessional order 13(4)(c) requires that the Committee after examining the Bill determine:

(i) whether the Assembly should pass the bill;

(ii) whether the Assembly should amend the bill;

(iii) whether the bill has sufficient regard to the rights and liberties of individuals; and

(iv) whether the bill has sufficient regard to the institution of Parliament.

1.5 Following examination of the Bill, and consideration of the evidence received, the Committee is of the view that the Legislative Assembly should pass the Bill with proposed amendments as set out in recommendations 2-6.

Recommendation 1

The Committee recommends that the Legislative Assembly pass the Petroleum Legislation Miscellaneous Amendments Bill 2019 with the proposed amendments set out in recommendations 2-6.

[1] Hon Paul Kirby MLA, Minister for Primary Industry and Resources, *Draft – Daily Hansard – Day 3 – 28 November 2019*, http://hdl.handle.net/10070/755088, p. 14.

Report Structure

1.6 Chapter 2 provides an overview of the policy objectives of the Bill and the purpose of the Bill as contained in the Explanatory Statement.

1.7 Chapter 3 considers the main issues raised in evidence received.

2 Overview of the Bill

Background to the Bill

2.1 On the 3 December 2016 the Government announced the establishment of the *Scientific Inquiry into Hydraulic Fracturing of Onshore Unconventional Reservoirs and Associated Activities in the Northern Territory* (the Inquiry). The Inquiry's final report was presented to the Government in March 2018 with 135 recommendations for reducing the risks associated with the development of the petroleum industry to acceptable levels. In April 2018 the Government accepted all 135 recommendations and released an implementation plan in July 2018. The amendments made in this Bill are part of a larger legislative review arising from the Inquiry and the subsequent implementation plan. As noted by the Minister for Primary Industry and Resources, the Hon Paul Kirby MLA, 53 of the 135 recommendations have been completed by the Government, with this including 31 recommendations the Inquiry stated must be completed before exploration could recommence.[2]

Purpose of the Bill

2.2 As noted in the Explanatory Statement, the purpose of the Bill is to make amendments to the *Petroleum Act 1984* (NT) and the Petroleum (Environment) Regulations 2016 to give effect to a number of the recommendations made by the Inquiry. Inquiry recommendations being implemented by the Bill, or relevant to the Bill, are included at Appendix 1. The amendments require the Minister to consider the principles of ecologically sustainable development (ESD) in making certain decisions under the Act and Regulations by "requiring the Minister to give public notice of proposed land release (and allowing public submissions) and by empowering regulations to be made in relation to land access, compensation and environmental securities".[3]

[2] Hon Paul Kirby MLA, Minister for Primary Industry and Resources, *Draft – Daily Hansard – Day 3 – 28 November 2019*, http://hdl.handle.net/10070/755088, p. 14.
[3] Explanatory Statement, Petroleum Legislation Miscellaneous Amendments Bill 2019 (Serial 116), p. 1.

3 Examination of the Bill

Introduction

3.1 The majority of submissions were provided by environmental organisations,[4] with only one submission from industry,[5] three representing the interests of pastoralists[6] and one providing a perspective on Aboriginal and Torres Strait Islander concerns.[7] Support for the Bill varied but all submitters recommended changes. Several submitters fundamentally opposed the hydraulic fracturing industry but noted the importance of ensuring a robust, accountable and transparent regulatory framework. The discussion below considers the main issues raised in the evidence received together with advice provided by the Department of Primary Industry and Resources (the Department).

Implementation of Inquiry recommendations through the regulations rather than the Act

3.2 A key area of concern for the majority of submitters was the implementation of a number of the Inquiry recommendations through the regulations rather than the Act. The Bill partially or fully implements nine Inquiry recommendations (Appendix 1), of these, four are proposed to be implemented through the regulations, with the proposed sections set out in Table 1 creating the heads of power for these regulations.

Table 1: Inquiry recommendations to be implemented through the regulations

Inquiry recommendation	Proposed section
14.6 Statutory land access agreements	s 118(2)(pa) and s 118(6A)
14.7 Standard minimum protections	s 118(6A)(d)
14.8 Minimum mandatory compensation scheme	s 81(1)(c) and s 81(7A) provide heads of power for scheme to be implemented through the regulations.
14.13 Environmental security bonds	s 118(2)(pb) and s 118(6B)

3.3 The Committee sought comment from the Department regarding submitters' objections to the implementation of some of the Inquiry recommendations through the regulations rather than the Act and was advised that:

[4] Submission 3 – Heidi Jennings; Submission 4 – Lock the Gate Alliance; Submission 5 – Protect NT Inc; Submission 6 – Environmental Defenders Office NT (EDONT); Submission 7 – Arid Lands Environment Centre (ALEC).
[5] Submission 8 - Australian Petroleum Production and Exploration Association (APPEA).
[6] Submission 1 – Marylou Potts Pty Ltd; Submission 2 – Protect Country Alliance; Submission 10 – Northern Territory Cattlemen's Association.
[7] Submission 9 – Northern Land Council and Central Land Council joint submission (NLC/CLC).

> The Inquiry outlined in Chapter 14 of the Final Report the existing regulatory scheme for the petroleum industry noting that the Act sets out a statutory regime for the granting of petroleum interests and titles as well as an assessment of proposed technical works within these titles. The Final Report also noted that the Act does not set out a framework for the management of environmental risks and impacts and this is done by the Petroleum (Environment) Regulations 2016. Despite an extensive 18 month Inquiry, and the central importance of environmental regulation, the Inquiry did not recommend that the matters regulated by the Petroleum (Environment) Regulations 2016 should be in the Act - the Inquiry was satisfied that the obligations and requirements under the Regulations were legally effective, binding and appropriate for regulations (as opposed to the Act). Similarly the Inquiry did not recommend land access agreements, also of central importance during the Inquiry, needed to be specified in the Act. The Inquiry, in the main, sought to focus on outcomes and objectives as opposed to being prescriptive as to how the objectives were achieved - that is land access agreements must be legislated but not how the regulatory regime was to be amended.[8]

3.4 The Department further noted that:

- Where the Inquiry Panel considered that implementation of recommendations should occur through amendments to the Act this was specifically stated in the recommendation, for example, Inquiry recommendations 14.11 and 14.23.
- Including such matters in subordinate legislation and the regulations is consistent with other significant NT legislation such as Environment Management Plans which are required under the Petroleum (Environment) Regulations 2016.
- Including a regulation-making power under the Act is the most effective way of managing the complexity associated with retrofitting the existing regulatory regime with a land access regime. In addition, it allows the further consideration and policy development that is necessary in order to ensure effective implementation of the recommendations relating to land access agreements, the 24 standard minimum protections and the minimum mandatory compensation scheme.
- The process to make regulations is a robust one and includes scrutiny through the Executive, tabling before the Assembly, referral to the Public Accounts Committee, and the potential for the regulations to be disallowed by motion of the Assembly. Provisions in the Regulations are considered to be just as binding and legal as they would be in the Act.[9]

Committee's comments

3.5 The Committee is satisfied with the Department's rationale for implementing the above Inquiry recommendations through the regulations rather than the Act. It notes that the Department has established a working group with the two primary stakeholders, the Australian Petroleum Production and Exploration Association

[8] Hon Paul Kirby MLA, Minister for Primary Industry and Resources, *Responses to Written Questions*, 27 February 2020, https://parliament.nt.gov.au/committees/LSC/116-2019#TP, p. 10.
[9] Hon Paul Kirby MLA, Minister for Primary Industry and Resources, *Responses to Written Questions*, 27 February 2020, https://parliament.nt.gov.au/committees/LSC/116-2019#TP, p. 11-12.

(APPEA) and the Northern Territory Cattlemen's Association (NTCA), to progress the drafting of the regulations and has indicated that every gas company and relevant landholder will be consulted on these "before they are put into law".[10]

3.6 Whilst acknowledging submitters' concerns regarding the implementation of a number of the Inquiry recommendations through the regulations rather than the Act, the Committee emphasises that regulations have the force of law and are subject to scrutiny.

Consideration of principles of ecologically sustainable development (cl 5 – Part IA, proposed s 6A)

3.7 Proposed Part IA introduces provisions that require the Minister to consider and apply the principles of ecologically sustainable development (ESD) when making certain decisions under the Act and prescribed by regulation.

3.8 Although generally supporting this amendment, several submitters objected to the inclusion of proposed section 6A(2) which provides that the Minister is not required to specify how the principles were considered or applied unless otherwise expressly provided for under the Act, with this perceived as reducing transparency and accountability and not meeting the requirements of Inquiry recommendation 14.11.[11]

3.9 Inquiry recommendation 14.11 requires that consideration be given to the principles of ESD with respect to any onshore shale gas industry but does not require the Minister to specify how the principles were considered or applied. Proposed s 6A has been drafted in line with this recommendation and is also consistent with the *Environment Protection Act 2019* NT. Although subsection (2) limits the circumstances in which the Minister is required to specify how the principles were considered it does not eliminate the requirement altogether, as noted in the Explanatory Statement:

> given the existing requirements under the Petroleum (Environmental) Regulations 2016, how the principles are considered may be required to be expressly provided (for example as required by regulation 12(3)(a)(ii) of the Petroleum (Environment) Regulations 2016)".[12]

Committee's comments

3.10 The Committee is satisfied that proposed s 6A meets the requirements of Inquiry recommendation 14.11 and provides sufficient transparency and accountability.

[10] Committee Transcript, Public Hearing, 2 March 2020, https://parliament.nt.gov.au/committees/LSC/116-2019#PB, p. 19.
[11] Submission 5 – Protect NT, p. 1; Submission 6 – EDONT, p. 2; Submission 7 –ALEC, p. 1; Submission 9 – NLC/CLC, p. 9.
[12] Explanatory Statement, Petroleum Legislation Miscellaneous Amendments Bill 2019 (Serial 116), https://parliament.nt.gov.au/committees/LSC/116-2019#kd, p. 2.

Application for exploration permit and determination of release of blocks (cl 6 – s 16 amended; cl 7 – s 16A inserted)

Requirement for Minister to consider suitability criteria listed in Inquiry recommendation 14.2 before releasing land blocks

3.11 As noted in the Inquiry report, the main purpose of Inquiry recommendation 14.2 is to embed existing processes for land release into the legislation while also expanding the level of consultation from specific stakeholders, such as government agencies, Aboriginal Land Councils and local councils, to include the broader community.[13]

3.12 The proposed amendments in sections 16 and 16A enable the determination of the release of blocks to be undertaken simultaneously with the application process for exploration permits. Table 2 sets out Inquiry recommendation 14.2 and shows how the requirements of the recommendation will be met by existing sections of the Act and amendments proposed in the Bill.

Table 2: Inquiry recommendation 14.2 and relevant amendments

Inquiry Recommendation 14.2[14]	**Proposed amendments/sections of the Act**
That the Minister must immediately notify the public of any proposed land release for any onshore shale gas exploration.	Proposed s 16(1) and (2)
That the Minister must consult with the public and stakeholders and consider any comments received in relation to any proposed land release.	Proposed sections 16(2)(db); 16(2A); and 16A
That the Minister be required to take into account the following matters when deciding whether or not to release land for exploration: • The prospectivity of the land for petroleum; • The possibility of co-existence between the onshore gas industry and any existing or [sic] industries in the area; and • Whether the land is an area of intensive agriculture, high ecological value, high scenic value, culturally significant or strategic significance.	Reserved Blocks Policy, s 9, *Petroleum Act 1984* (NT) Proposed s 16A (taking into account proposed sections 16(2A) and 16(3))
That the Minister publish a statement of reasons why the land has been released and why co-existence is deemed to be possible.	Proposed s 16A(d)

3.13 Proposed s 16(1) requires the Minister to implement a public notification process to invite applications for an exploration permit in relation to the blocks proposed for release while proposed subsections 16(2)(db) and 16(2A) provide for submissions to be made on the blocks proposed for release in line with criteria specified by Inquiry

[13] *Final Report of the Scientific Inquiry into Hydraulic Fracturing in the Northern Territory*, Northern Territory Government, https://frackinginquiry.nt.gov.au/inquiry-reports/final-report, p. 384.
[14] *Final Report of the Scientific Inquiry into Hydraulic Fracturing in the Northern Territory*, Northern Territory Government, https://frackinginquiry.nt.gov.au/inquiry-reports/final-report, p. 384.

recommendation 14.2. Proposed s 16A requires the Minister to consider the applications and submissions received when determining which blocks to release for exploration and also requires publication of the reasons why the blocks are appropriate for exploration.

3.14 Several submitters considered that the proposed amendments in sections 16 and 16A did not adequately fulfil Inquiry recommendation 14.2.

3.15 Lock the Gate Alliance, the EDONT and the Arid Lands Environment Council (ALEC) commented that the Act should provide for an explicit obligation on the Minister to consider matters of suitability when making a determination of whether land is suitable for release, with EDONT commenting that:

> The Bill appears to attempt to implement the criteria set out in recommendation 14.2 by directing that public submissions in response to a land release proposal are to be directed only to those criteria (drafting note to s2A(b)). However, this does not carry the same legal weight as mandating that the Minister determine whether the applicable criteria are met or not, rather than simply considering submissions on those matters (as draft s16A proposes). Consistent with our comments above, the legislated criteria must guide the Minister's decision, not what may be included in submissions.[15]

3.16 Similarly, Lock the Gate Alliance and ALEC commented that the Bill should be amended to explicitly exclude the granting of exploration permits where there is no prospectivity or where coexistence is not possible.

3.17 The Committee sought clarification from the Department regarding how and at what points the Minister takes into consideration the criteria specified in Inquiry recommendation 14.2 and was advised that:

> The Northern Territory Government and Commonwealth Government, through their geoscience initiatives, has information on the prospectivity (or not) of areas of the Northern Territory.
>
> Before the Minister gives notice under section 16 (as amended) the Minister will consider all the available geoscience information on prospectivity. Proposed section 16(2)(da) requires the Minister to provide reasons for why the specified blocks are intended to be released for exploration.[16]

3.18 In addition, the Committee understands that blocks designated as "reserved" under s 9 of the *Petroleum Act 1984* (NT) (the Act) will not be eligible to be proposed for release under s 16 of the Act. Reserved blocks are being identified through the *Petroleum Reserved Blocks Policy* in accordance with Inquiry recommendations 14.3 and 14.4.[17] These recommendations list criteria for determining the types of land that should be reserved and deemed permanently unsuitable for petroleum exploration activities. The policy is being implemented in tranches and, to date, 13 percent of land in the Northern Territory has been reserved under s 9 of the Act.[18] The policy includes the following categories: parks and reserves; towns and residential areas; areas of high conservation value; Indigenous Protected Areas; areas of cultural

[15] Submission 4 – Lock the Gate Alliance, pp. 4-5; Submission 6 – EDONT, p. 6; Submission 7 – ALEC, p. 2.
[16] Hon Paul Kirby MLA, Minister for Primary Industry and Resources, *Responses to Written Questions,* 27 February 2020, https://parliament.nt.gov.au/committees/LSC/116-2019#TP, p. 1.
[17] Department of Primary Industry and Resources, Northern Territory Government, Petroleum Reserved Block Policy, July 2019, https://nt.gov.au/__data/assets/pdf_file/0005/715631/petroleum-reserved-block-policy.pdf
[18] Committee Transcript, Public Hearing, 2 March 2020, p. 17.

significance; areas of high tourism value; and areas with no petroleum potential. These categories are generally comparable with the criteria identified in Inquiry recommendation 14.2.

3.19 The *Petroleum Reserved Blocks Policy* provides a basis for selecting which blocks will be specified in the notice inviting applications for an exploration permit. However, it is not possible for all issues relating to suitability and coexistence to be known at any one point as land uses change over time. As advised by the Department:

> The Inquiry Panel (at page 384 of the Final Report) noted that issues of co-existence and land suitability would be identified on a case-by-case basis and at a particular point in time depending on what the current and proposed land use in the area is or will be. The Inquiry also anticipated the involvement of the community and other stakeholders in this process.[19]

3.20 The proposed amendments to s 16 in relation to the application (s 16(2)) and submission (s 16(2A) process will provide a further opportunity for any issues relating to suitability or co-existence that have not been previously identified to be raised and considered by the Minister (proposed s 16A).

3.21 Further safeguards to ensure that the Minister considers the criteria specified in Inquiry recommendation 14.2 are provided through s 19 (objections to the grant of an exploration permit), proposed s 16A(d) (Minister must publish reasons why blocks are suitable), and through the availability of judicial review of the Minister's decision (*Petroleum Act 1984,* Schedule 2, s 16A – A decision to release blocks for exploration).

Committee's comments

3.22 The Committee is satisfied that the Bill fulfils Inquiry recommendation 14.2 and notes that unless an Inquiry recommendation specifically states that the Act must be amended, its implementation is not limited to the inclusion of an explicit provision in the Act but can also occur through regulations, codes and policy documents or a combination of such instruments.

Limitation of the criterion "strategic importance" to nearby residential areas

3.23 The EDONT recommended that the words "to nearby residential areas" in note (e) *Note for subsection (2A)(b)* in s 16 be removed because land may have strategic significance to the community more broadly and should not be limited to nearby residential areas.

3.24 The Committee sought clarification from the Department regarding the effect on the operation of the Bill of removing the words "to nearby residential areas" from the note to s 16(2A)(b) and was advised that:

> The rationale for drafting proposed note (e) and limiting "strategic significance" to nearby residential areas was to align the drafting with recommendation 14.4

[19] Hon Paul Kirby MLA, Minister for Primary Industry and Resources, *Responses to Written Questions*, 27 February 2020, https://parliament.nt.gov.au/committees/LSC/116-2019#TP, p. 2.

> (which refers to areas that have assets of strategic importance to nearby residential areas).
>
> The effect of removing the words 'to nearby residential areas' from note (e) would be [to] create a broader capacity for submissions under section 16(2A)(b). It would also introduce a greater level of subjectivity as to what may be considered of strategic significance.[20]

Committee's comments

3.25 The Committee is satisfied with the Department's advice.

The Bill does not provide a statutorily mandated application period

3.26 The EDONT further noted that while s 16(2)(dc) states that the submission period is the same as the application period there is no statutorily mandated application period in the Act and recommended the Act be amended to include a minimum of 28 days for this period.[21]

3.27 The Department advised that:

> Section 16 of the Act does not currently specify the length of the application period, neither the minimum period nor the maximum period. The Bill does not amend that position.
>
> How long the application period (and therefore the submission period) [is] will be determined on a case by case basis and depends on a range of factors including the known features of the area and the number of specified blocks (and therefore the size of the area). Historically, applications for land release have been a competitive process with companies from Australia and overseas lodging applications. The Department advises that, in a past example of a land release under section 16 of the Act, the application period was 6 months.
>
> Specifying the length of the application period or the submission period was not considered to be required by the Inquiry Panel and was not a recommendation in the Final Report.[22]

Committee's comments

3.28 The Committee is satisfied with the Department's advice.

Public notification inviting applications for grant of an exploration permit

3.29 Both the EDONT and ALEC recommended that the notice inviting applications for the grant of an exploration permit be published on a government website as well as in a Territory wide newspaper.[23] The Northern and Central Land Councils (NLC/CLC) considered that notification should also be provided to all relevant landowners and native title parties.[24]

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[20] Hon Paul Kirby MLA, Minister for Primary Industry and Resources, *Responses to Written Questions*, 27 February 2020, https://parliament.nt.gov.au/committees/LSC/116-2019#TP, p. 3.
[21] Submission 6 – EDONT, p. 4.
[22] Hon Paul Kirby MLA, Minister for Primary Industry and Resources, *Responses to Written Questions*, 27 February 2020, https://parliament.nt.gov.au/committees/LSC/116-2019#TP, p. 3.
[23] Submission 6 – EDONT, p. 4; Submission 7 – ALEC, p. 2.
[24] Submission 9 – NLC/CLC, p. 10.

3.30 The Committee sought clarification from the Department regarding the effect on the operation of the Bill of expanding public notification requirements as suggested by submitters and was advised that "The Bill could be amended to require the publication of the notice on the Agency's website".[25] Regarding direct notification to relevant landowners and native title parties, the Department advised that:

> The effect of requiring the Minister to notify relevant landowners and native title parties would be to impose an additional obligation on the Minister (and the Department). The Department considers that if the notice is published in a Territory wide newspaper, and online (as indicated above), then there is sufficient opportunity for relevant landowners and native title parties to be notified and become engaged in the process.[26]

3.31 However, the Department further noted that:

> As a matter of Departmental practice, in a past example of a land release under section 16 of the Act, the Department did notify landowners and the Land Councils of the release.[27]

Committee's comments

3.32 The Committee is satisfied with the Department's advice. While the Committee deems it appropriate to require the notice to be published online it considers that direct notification to relevant landowners and native title parties should be at the discretion of the Department and determined by circumstances.

Recommendation 2

The Committee recommends that proposed s 16(1) be amended to require the Minister to publish the notice inviting applications for the grant of an exploration permit on the Department of Primary Industry and Resources or other relevant website as well as in a newspaper circulating throughout the Territory.

Notice of application for exploration permit (cl 8 – s 18 amended)

3.33 In line with Inquiry Rec. 14.10, proposed s 18(1)(e) removes the limitation on who is entitled to lodge an objection to the grant of an exploration permit. Although the Bill limits the specific matters that can be addressed in submissions (proposed s 16(2A)), it does not provide guidance in relation to objections. The Australian Petroleum Production and Exploration Association (APPEA), while not objecting to this amendment, have requested that guidance be provided as to the grounds on which objections can be made.[28]

[25] Hon Paul Kirby MLA, Minister for Primary Industry and Resources, *Responses to Written Questions*, 27 February 2020, https://parliament.nt.gov.au/committees/LSC/116-2019#TP, p. 4.
[26] Hon Paul Kirby MLA, Minister for Primary Industry and Resources, *Responses to Written Questions*, 27 February 2020, https://parliament.nt.gov.au/committees/LSC/116-2019#TP, p. 4.
[27] Hon Paul Kirby MLA, Minister for Primary Industry and Resources, *Responses to Written Questions*, 27 February 2020, https://parliament.nt.gov.au/committees/LSC/116-2019#TP, p. 4.
[28] Submission 8 – APPEA, p. 1.

3.34 The Committee sought clarification from the Department regarding the effect on the operation of the Bill of providing such guidance and was advised that:

> If the Bill was amended to provide guidance regarding the grounds on which an objection could be made it would necessarily restrict the type and content of objections. An example of the type of guidance which may be appropriate is that objections can only be made on matters relating to the effects of exploration (as opposed to production) as the notice is for an application for an exploration permit - it does not mean petroleum production activities will occur.[29]

Committee's comments

3.35 The Committee considers that while limiting objections to matters relating to exploration would provide quite broad parameters it would still have the potential to exclude views that might usefully inform the Minister's decision. It notes that limiting the grounds for objection may be contrary to the Inquiry's intent, particularly as the Inquiry Panel noted the importance of not limiting the Minister's access to information and of allowing "access to, and consideration of, a greater range of views and information" as a means of establishing a social licence to operate.[30]

Variation of conditions to exploration permits, retention licences and production licences (cls 10-12 - Sections 28, 41 and 55)

3.36 These clauses amend sections 28, 41 and 55 to require that applications be accompanied by the prescribed fee. As advised by the Department, these are "technical amendments to ensure that fees charged under the *Petroleum Regulations 1994* are properly empowered".[31]

3.37 Protect NT have recommended an additional amendment requiring that applications to vary conditions in relation to exploration permits, retention licences and production licences be published online and opened to public comment. They commented that:

> 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.[32]

3.38 The Committee sought clarification from the Department regarding why applications for exploration permits and for variation of conditions to exploration permits, retention licences and production licences, are not required to be published and made available for public comment and was advised that:

> The Inquiry's Final Report did not recommend that applications for exploration permits (and variations of conditions for exploration permits, retention licences and production licences) should be published and available for public comment. Additionally the applications contain commercial in confidence and confidential

[29] Hon Paul Kirby MLA, Minister for Primary Industry and Resources, *Responses to Written Questions*, 27 February 2020, https://parliament.nt.gov.au/committees/LSC/116-2019#TP, p. 5.
[30] *Final Report of the Scientific Inquiry into Hydraulic Fracturing in the Northern Territory*, Northern Territory Government, https://frackinginquiry.nt.gov.au/inquiry-reports/final-report, p. 400.
[31] Hon Paul Kirby MLA, Minister for Primary Industry and Resources, *Responses to Written Questions*, 27 February 2020, https://parliament.nt.gov.au/committees/LSC/116-2019#TP, p. 5.
[32] Submission 5 – Protect NT, p. 3.

> information. Following changes to the Act pursuant to this Bill (clause 8 amending section 18) there will be an ability for public comment on the intention to grant an exploration permit. Additionally if applications are made to vary conditions of an exploration permit, retention licence or production licence then a public comment process creates concerns about sovereign risk.[33]

Committee's comments

3.39 The Committee is satisfied with the Department's clarification.

Compensation to owners (cl 16 - Section 81 amended)

3.40 Sections 81(1)(a) and (b) of the Act provide for compensation in relation to deprivation of use or enjoyment of the land or any improvements, and for any damage caused by the permittee or licensee to the land or improvements. These provisions pre-date the Scientific Inquiry and so are not included in any Inquiry recommendations relating to compensation.

3.41 Clause 16 amends s 81 by inserting subsection (1)(c) – "any other prescribed reason or circumstance" and subsection 81(7A) which allows the regulations to provide for the calculation of compensation payable under s 81.

3.42 Compensation is one element of the relationship between pastoral lease holders and the petroleum company and this relationship will essentially be governed by the land access agreement. Consequently, there is an inter-relationship between the provisions on compensation and land access agreements both of which will be provided for in the regulations. The 24 minimum protections that must be included in all land access agreements (Inquiry recommendation 14.7) include matters for compensation.

3.43 Proposed s 81(1)(c) creates the head of power to allow regulations to be made in relation to compensation for land access agreements, the associated 24 standard minimum protections and any other compensation matters which are not already covered under s 81(1)(a) and (b). Proposed subsections 81(1)(c) and (7A) provide the heads of power for the creation of a minimum mandatory compensation scheme which the Department has advised will be implemented in line with Inquiry recommendation 14.8 once the significant remaining policy work has been completed.[34]

3.44 Set out below are issues raised by submitters in relation to the amendments proposed for section 81.

Compensation for loss of land value

3.45 Both EDONT and Lock the Gate Alliance considered that all matters for which compensation is available should be included in the Act rather than in the regulations

[33] Hon Paul Kirby MLA, Minister for Primary Industry and Resources, *Responses to Written Questions*, 27 February 2020, https://parliament.nt.gov.au/committees/LSC/116-2019#TP, p. 5.
[34] Hon Paul Kirby MLA, Minister for Primary Industry and Resources, *Responses to Written Questions*, 27 February 2020, https://parliament.nt.gov.au/committees/LSC/116-2019#TP, p. 6.

which "are more easily (and less transparently) amended".[35] Both submitters specifically recommended that the clause be amended to include diminution of or loss of land value in the Act as well as enabling the regulations to prescribe additional matters (proposed s 81(1)(c).

3.46 The Committee sought clarification from the Department regarding the effect on the operation of the Bill of including an additional subsection after s 81(1)(b) providing for compensation to be available for diminution of, and loss of land value and was advised that:

> The Department's intention is to legislate land access agreements through amending the Petroleum Regulations 1994. Inquiry recommendation 14.7 requires that land access agreements include 24 standard minimum protections and those protections include compensation for diminution of land value. Given the Department's intention, the effect of amending the Bill (to deal with compensation for diminution of land value) would be to fragment the regulation of land access throughout the Act and the Regulations.[36]

Committee's comments

3.47 The Committee is satisfied with the Department's advice.

Compensation for landowners for costs incurred in negotiating a land access agreement

3.48 Lock the Gate Alliance and Marylou Potts Pty Ltd stated that landholder costs related to negotiating a land access agreement should be paid by the petroleum title holder.[37]

3.49 The Committee sought clarification from the Department as to whether consideration will be given to including such costs as a matter for compensation in the regulations and was advised that:

> The Northern Territory Government has accepted all 135 recommendations of the Inquiry's Final Report and is implementing those recommendations in accordance with the Government's Implementation Plan.
>
> The 24 standard minimum protections specified for Inquiry recommendation 14.7 require that 'payment of all reasonable legal, financial and technical fees incurred in respect of the agreement must be borne by the gas company holding the approval for the activity'. Consistently with the other 23 standard minimum protections this will be implemented through the Petroleum Regulations 1994.[38]

Committee's comments

3.50 The Committee is satisfied with the Department's response.

Minimum mandatory compensation scheme

3.51 Inquiry recommendation 14.8 requires that "prior to the grant of any further exploration permits or production approvals, the Government enacts a minimum mandatory compensation scheme payable to Pastoral Lessees for all onshore shale

[35] Submission 4 – Lock the Gate Alliance, p. 4; Submission 6 – EDONT, p. 4.
[36] Hon Paul Kirby MLA, Minister for Primary Industry and Resources, *Responses to Written Questions*, 27 February 2020, https://parliament.nt.gov.au/committees/LSC/116-2019#TP, p. 6.
[37] Submission 1 – Marylou Potts Pty Ltd., p. 3; Submission 4 – Lock the Gate Alliance, p. 4.
[38] Hon Paul Kirby MLA, Minister for Primary Industry and Resources, *Responses to Written Questions*, 27 February 2020, https://parliament.nt.gov.au/committees/LSC/116-2019#TP, p. 7.

gas production on their Pastoral Lease", with compensation calculated by reference to the impact of the development on the pastoral lease and lessee.[39]

3.52 The EDONT recommended that proposed s 81(7A) be amended to state that any compensation scheme in the regulations is a "minimum mandatory" compensation scheme, consistent with Inquiry Recommendation 14.8, noting that:

> This would make it explicit that such a scheme would deliver mandatory compensation, and that it only sets a minimum baseline (rather than absolutely dictating an outcome, without scope for negotiation.[40]

3.53 The Committee sought clarification from the Department regarding the effect on the operation of the Bill of amending the Bill in this way and was advised that:

> Inquiry recommendation 14.8 requires a minimum mandatory compensation scheme to be enacted prior to the grant of any further exploration permits or production approvals. The proposed amendments to section 81 is [sic] to allow the significant policy work to be undertaken to implement recommendation 14.8 through regulations.
>
> The recommendation must be completed before any further exploration permits are granted or any further production approvals are granted. In relation to the Beetaloo Sub-Basin it is likely that production approvals are at least 3 years away (due the Inquiry's recommendation that all recommendations be completed before any further production approvals are considered) and during that time the significant consideration of the range of relevant policy issues will occur.[41]

3.54 The NTCA identified 13 matters that they consider should be included as matters for compensation. A number of these are already covered under s 81(1)(a) or (b) and through the 24 standard minimum protections proposed for inclusion in the regulations under proposed s 118(6A).

3.55 The Committee requested clarification from the Department regarding how concerns related to the incorporation of compensation matters into the regulations will be managed and was advised that:

> The Department will continue to liaise and consult with both NTCA and APPEA regarding the draft regulations. Additionally given that the NTCA and APPEA do not represent all owners of a pastoral lease and petroleum companies (respectively) the Department has considered the need to consult directly with all owners of a pastoral lease and companies with a granted exploration permit on the draft regulations.[42]

3.56 In relation to NTCA's specific concerns they advised that:

> The 13 matters raised by the NTCA, as heads of compensation, are relevant for Inquiry recommendation 14.8. The Department acknowledges that further work regarding compensation is required, given recommendation 14.8 which requires a minimum mandatory compensation scheme to be established. That scheme

[39] *Final Report of the Scientific Inquiry into Hydraulic Fracturing in the Northern Territory*, Northern Territory Government, https://frackinginquiry.nt.gov.au/inquiry-reports/final-report, p. 397.
[40] Submission 6 – EDONT, p. 4.
[41] Hon Paul Kirby MLA, Minister for Primary Industry and Resources, *Responses to Written Questions*, 27 February 2020, https://parliament.nt.gov.au/committees/LSC/116-2019#TP, p. 6.
[42] Hon Paul Kirby MLA, Minister for Primary Industry and Resources, *Responses to Written Questions*, 27 February 2020, https://parliament.nt.gov.au/committees/LSC/116-2019#TP, p. 6.

must be enacted prior to the grant of any further exploration permits or production approvals.[43]

Committee's comments

3.57 The Committee does not consider it necessary for the Act to be amended to explicitly state that the scheme is a "minimum mandatory compensation scheme", noting that proposed amendments to s 81 and the Department's commitment to progressing the policy work required to establish this scheme clearly demonstrate the Government's intention to implement this scheme as required in Inquiry recommendation 14.8.

3.58 With regard to the 13 matters for compensation raised by the NTCA, the Committee is satisfied that these matters will be considered as part of the Department's consultation programme.

The inclusion of royalties in the compensation component of the Bill

3.59 The NTCA recommended that the Bill be amended to enable "a royalty to be included in the compensation component" of the legislation.[44]

3.60 Inquiry recommendation 14.9 requires the Government to consider whether a royalty payment scheme should be implemented to compensate pastoral lessees. The Committee sought clarification from the Department regarding the status of this recommendation and was advised that:

> *Recommendation 14.9 is currently being considered by the Department of Treasury and Finance. In accordance with the Government's Implementation Plan the recommendation is not scheduled to be finalised until 2022. The Inquiry noted there are sound arguments against the establishment of the scheme including that (p 372, 396, 397):*
>
> *i. the pastoral lease holder will be compensated for the impact of petroleum activities on the pastoral lease through other mechanisms; and*
>
> *ii. such royalties would not be available to native title parties; and*
>
> *iii. the tenure of pastoral lease holders is not freehold; and*
>
> iv. *the Crown owns all the petroleum in the Territory and it is the Crown that provides public infrastructure and services (such as schools, hospitals etc).*[45]

Committee's comments

3.61 The Committee is satisfied with the Department's advice.

[43] Hon Paul Kirby MLA, Minister for Primary Industry and Resources, *Responses to Written Questions*, 27 February 2020, https://parliament.nt.gov.au/committees/LSC/116-2019#TP, p. 18.
[44] Submission 10 - NTCA, p. 2.
[45] Hon Paul Kirby MLA, Minister for Primary Industry and Resources, *Responses to Written Questions*, 27 February 2020, https://parliament.nt.gov.au/committees/LSC/116-2019#TP, p. 19.

Jurisdiction of Tribunal for disputes (cl 18 – Section 82A inserted)

3.62 The provisions in this clause replicate the provisions previously at subsection 81(3) and subsections 82(5) and (6) and consolidate provisions regarding the Tribunal's jurisdiction to deal with disputes about compensation under the Act.

3.63 Protect NT requested that the Bill be amended to include an additional "subsection 82A(b)" stipulating where a disputed Tribunal decision may be appealed. The Committee notes that s 140 of the *Northern Territory Civil and Administrative Tribunal Act 2014* (*NTCAT Act 2014*) provides for a person who is aggrieved by a decision of the Tribunal to apply for a review of the decision. A person who wishes to appeal on a point of law may appeal to the Supreme Court (s 141 of the *NTCAT Act 2014*).

3.64 In contrast to Protect NT, APPEA recommended that the Bill be amended to remove the ability of NTCAT to review its own decisions noting that this would be "consistent with other pieces of NT legislation and still allows for the review of decisions by the Supreme Court".[46]

3.65 The Committee sought clarification from the Department regarding the effect of such an amendment and was advised that:

> 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.
>
> …
>
> We have had some discussions with NTCAT at the coalface of planning this activity, and they seem relatively comfortable with that as well.[47]

Committee's comments

3.66 The Committee is satisfied with the Department's advice and considers it appropriate to amend the Bill to remove the ability of NTCAT to review its own decisions, noting that a party to a proceeding may still appeal to the Supreme Court against a decision of the Tribunal on a question of law.

Recommendation 3

The Committee recommends that proposed section 82A be amended to state that section 140 of the Northern Territory Civil and Administrative Tribunal Act 2014 does not apply in relation to a decision of the Tribunal under this section.

Prohibitions on certain operations (cl 19 – Section 111 replaced)

3.67 Clause 19 replaces s 111 and prohibits the permittee and licensee from undertaking certain activities and operations while also setting out exceptions to these prohibitions where written approval is received from the relevant person or entity. These

[46] Submission 8 – APPEA, p. 2.
[47] Committee Transcript, Public Hearing, 2 March 2020, https://parliament.nt.gov.au/committees/LSC/116-2019#PB, p. 18.

amendments primarily concern set-backs for operations and for the construction of wells, wellheads, pipelines, well pads and petroleum facilities.

Setbacks – proposed s 111(1)(b)

3.68 Although generally supportive of these amendments, the EDONT and Lock the Gate Alliance did not consider the amendment relating to proposed s 111(1)(b) to fully implement Inquiry recommendation 10.2.[48] Proposed s 111(1)(b) states that a permittee or licensee must not "construct a well, wellhead, pipeline or petroleum processing facility, which would otherwise be permitted under this Act, on land that is used as, or *within 2 km of land being used as a residence*". The EDONT and Lock the Gate Alliance recommended that this subsection be amended to ensure that the set-back applies to the full range of dwellings specified in Inquiry recommendation 10.2 which states that the set-back should apply to:

> a habitable dwelling (including all buildings or premises where people reside or work, schools and associated playgrounds, permanent sporting facilities and hospitals or other community medical facilities) in order to minimise risks identified in HHRA reports, including potential pathways for waterborne and airborne contaminants.[49]

3.69 It is notable that the Code of Practice under regulation 4A of the Petroleum (Environment) Regulations 2016 also requires set-backs to apply to the full range of dwellings referred to in Inquiry recommendation 10.2.[50]

3.70 The Committee sought clarification from the Department as to the effect on the operation of the Bill of amending proposed s 111(1)(b) in line with Inquiry recommendation 10.2 and was advised that:

> The Department agrees that section 111(1)(b) should be amended, subject to any drafting requirements, to refer to habitable dwelling (including all buildings or premises where people reside or work, schools and associated playgrounds, permanent sporting facilities and hospitals or other community medical facilities) in accordance with recommendation 10.2. This would make section 111 consistent with the Code of Practice: Onshore Petroleum Activities in the Northern Territory (Code of Practice).[51]

Committee's comments

3.71 The Committee is satisfied with the Department's response and recommends that the Bill be amended to reflect the intent of Inquiry recommendation 10.2.

Recommendation 4

The Committee recommends that proposed s 111(1)(b) be amended to replace the word "residence" with words to the following effect: "habitable dwelling

[48] Submission 4 – Lock the Gate Alliance, p. 4; Submission 6 – EDONT, p. 5.
[49] *Final Report of the Scientific Inquiry into Hydraulic Fracturing in the Northern Territory*, Northern Territory Government, https://frackinginquiry.nt.gov.au/inquiry-reports/final-report, p. 259.
[50] Northern Territory Government, *Code of Practice: Onshore Petroleum Activities in the Northern Territory*, https://denr.nt.gov.au/__data/assets/pdf_file/0011/705890/code-of-practice-onshore-petroleum-activity-nt.pdf, Section A.3.1(f), p. 14.
[51] Hon Paul Kirby MLA, Minister for Primary Industry and Resources, *Responses to Written Questions*, 27 February 2020, https://parliament.nt.gov.au/committees/LSC/116-2019#TP, p. 8.

(including all buildings or premises where people reside or work, schools and associated playgrounds, permanent sporting facilities and hospitals or other community medical facilities)" in accordance with recommendation 10.2 of the Scientific Inquiry into Hydraulic Fracturing in the Northern Territory.

Written approvals to carry out prohibited operations - proposed sections 111(2)(b) and (3)(b)

3.72 Proposed sections 111(2)(b) and (3)(b) require that the registered native title body corporate consent to prohibited activities. The Northern and Central Land Councils requested that these proposed sections be amended to also require the consent of registered native title claimants, noting that the *Native Title Act 1993* (Cth) provides registered native title claimants with the same procedural rights as native title bodies, including the right to negotiate an agreement with gas companies for the grant of petroleum tenements.[52]

3.73 The Committee sought comment from the Department regarding the concerns raised by NLC/CLC and was advised that:

> The Department agrees that section 111(2)(b) and 3(b) should be amended to refer to registered native title claimants (subject to any drafting requirements) .
>
> For context the Bill replaces section 111 of the Act. The reference to a registered native title body corporate was inserted into the Act by the *Lands and Mining (Miscellaneous Amendments) Act 1998*. The "future acts" regime under the *Native Title Act 1993* (Cth) does not differentiate between native title holders (who, as required by the *Native Title Act 1993* (Cth), have established a registered native title body corporate) and registered native title claimants, notwithstanding that Territory legislation may do so.
>
> The *Native Title Act 1993* (Cth) provides that native title holders (those who have had their native title rights and interests determined by the Federal Court) and registered native title claimants (those who have not yet had their native title rights and interests determined by the Federal Court) have specified procedural rights under the "future act" regime when an activity or development is proposed to be undertaken over an area covered by a native title determination or a registered native title claim. If procedural rights are available, the contents of those rights vary depending on the type of future act. Procedural rights include, but are not limited to, a right to be notified, a right to object to the future act or any other right that is available as part of the procedures that are to be followed when it is proposed to do the act.
>
> If the Bill was amended to require, at section 111, approval from both registered native title body corporates and registered native title claimants that would mean additional approvals would be required if certain activities would be undertaken within certain distances of certain infrastructure; however this is consistent with the position at law under the *Native Title Act 1993* (Cth).[53]

Committee's comments

3.74 The Committee is satisfied with the Department's advice and recommends that the Bill be amended accordingly.

[52] Submission 9 – CLC/NLC, pp. 11 and 17.
[53] Hon Paul Kirby MLA, Minister for Primary Industry and Resources, *Responses to Written Questions,* 27 February 2020, https://parliament.nt.gov.au/committees/LSC/116-2019#TP, p. 8.

Recommendation 5

The Committee recommends that proposed sections 111(2)(b) and (3)(b) be amended to refer to "registered native title claimants" as well as "the registered native title body corporate".

Implementation of Inquiry recommendation 7.11 – proposed s 111

3.75 The NLC/CLC commented that only one of the actions identified in Inquiry recommendation 7.11 is implemented in proposed s 111 and questioned how the remaining actions would be addressed. They further commented that Inquiry recommendation 7.11 would not be fully implemented "unless the Code of Practice: Onshore activities in the Northern Territory (Code) is amended to mandate that all wells are constructed to at least Category 9 (or equivalent)". [54]

3.76 The Committee sought clarification from the Department regarding the current implementation status of the actions specified in Inquiry recommendation 7.11 and was advised that:

> Inquiry recommendation 7.11 has been completely implemented. The amendments to section 111 were to ensure consistency between the Act and the Code of Practice.[55]

3.77 In their advice to the Committee the Department noted that the Code of Practice goes beyond the requirements of Inquiry recommendation 7.11 and explained why an amendment mandating that all wells are constructed to at least Category 9 (or equivalent) is unnecessary. The Department's detailed explanation can be found in the *Responses to Questions* on the Committee's inquiry website.[56]

Committee's comments

3.78 The Committee is satisfied with the Department's advice.

Land access agreements and Environmental securities (cl 21 – Section 118 amended (Regulations)

Land access agreements – Proposed sections 118(2)(pa) and 118(6A)

Matters specified in Inquiry recommendation 14.6 should be in the Act not the regulations

3.79 Proposed sections 118(2)(pa) and 118(6A) provide the means to implement Inquiry Recommendations 14.6 and 14.7 by empowering the Administrator to make regulations in relation to land access agreements. Recommendation 14.6 specifies that: a statutory land access agreement be required by legislation; the land access agreement must be negotiated and signed by both parties prior to undertaking any onshore shale gas activity on a pastoral lease; and that any breach of the land access

[54] Submission 9 – NLC/CLC, p. 12.
[55] Hon Paul Kirby MLA, Minister for Primary Industry and Resources, *Responses to Written Questions*, 27 February 2020, https://parliament.nt.gov.au/committees/LSC/116-2019#TP, p. 9.
[56] Hon Paul Kirby MLA, Minister for Primary Industry and Resources, *Responses to Written Questions*, 27 February 2020, https://parliament.nt.gov.au/committees/LSC/116-2019#TP, p. 9.

agreement be a breach of the relevant exploration or production approval. Recommendation 14.7 requires the land access agreement to contain a number of minimum protections for pastoralists as listed on pages 394-5 of the Inquiry Report.

3.80 As noted in paragraphs 3.2 to 3.5, the Government's approach to implementing these Inquiry recommendations is to provide "a comprehensive regime for land access and land access agreements" through the Petroleum Regulations 1994.

3.81 A number of submitters did not consider this approach to fulfil the requirements of Inquiry recommendation 14.6 and viewed the inclusion of these matters in the regulations rather than the Act as undermining the strength and enforceability of these provisions.[57]

3.82 In seeking clarification from the Department as to why these provisions were not included in the Act the Committee was advised that:

> The Inquiry's recommendation 14.6 stated that "a statutory land access agreement be required by legislation". Given the complexity of implementing a comprehensive land access regime, including 24 standard minimum protections, the Government is of the firm view that the Inquiry Panel's recommendation can be implemented (in full and in the spirit of the recommendation) by its intention to develop and draft regulations requiring a land access agreement to be in place when accessing pastoral leases.
>
> The Government firmly maintains that a requirement for a land access agreement in Regulations is just as lawful, legal, binding and appropriate as if it was in the Act.[58]

Committee's comments

3.83 The Committee is satisfied with the Department's response and considers that the provisions in proposed s 118(6A) provide clear parameters for the land access regime in accordance with the Inquiry recommendations. These parameters include the standard minimum protections (recommendation 14.7) and breaches of land access agreements (recommendation 14.6). The Committee notes that, with reference to Inquiry recommendations 14.6 and 14.7, the intention of the Bill was to achieve partial implementation by providing the heads of power to enable full implementation through the regulations.

Land access agreements and compensation rights

3.84 Protect Country Alliance commented that the Bill does not address the risk that a pastoralist who becomes party to a land access agreement may be waiving their rights to compensation under sections 81 and 82 of the Act.[59]

3.85 The Committee sought clarification from the Department regarding how the Act will deal with compensation in the context of land access agreements and was advised that:

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[57] Submission 1 – Marylou Potts Pty Ltd, p. 2; Submission 2 – Protect Country Alliance, p. 2; Submission 4 – Lock the Gate Alliance, p. 2; Submission 6 – EDONT, pp. 5-6; Submission 7 – ALEC, p. 2

[58] Hon Paul Kirby MLA, Minister for Primary Industry and Resources, *Responses to Written Questions*, 27 February 2020, https://parliament.nt.gov.au/committees/LSC/116-2019#TP, p. 11.

[59] Submission 2 – Protect Country Alliance, pp. 1-3.

> There is no intent, and the Bill does not provide that a land access agreement automatically waives a party's right to compensation under the Act. A land access agreement may, depending on the mutual wishes of parties to that agreement, only deal with matters of access (such as closing gates and negotiating access points) and will not deal with compensation other than as provided for by the 24 standard minimum protections. The 24 standard minimum protections provide that a land access agreement must deal with compensation for any decrease in the value of the land and a minimum amount of compensation payable for each well drilled. These forms of compensation are in addition to what is currently compensable under section 81 and 82 of the Act which described above.
>
> A land access agreement can only affect a pastoral lease holder's right to compensation under sections 81 and 82 under the Act if the pastoral lease holder makes an agreement that their rights to compensation under the Act are met upon payment of monies (or construction of improvements and infrastructure) under that agreement. There will be no requirement that a land access agreement must exhaustively deal with compensation under section 81 and 82 of the Act.
>
> In addition this potential risk is further decreased by the ability of the pastoral lease holder to obtain legal advice and other expert advice in relation to negotiating a land access agreement and their rights under the Act. Under the 24 standard minimum protections the petroleum company is responsible for the payment of such fees.[60]

Committee's comments

3.86 The Committee is satisfied with the Department's advice.

Financial capacity of companies signing land access agreements

3.87 Protect Country Alliance commented that companies unable to demonstrate the financial capacity required to remediate sites, pay compensation to landholders or pay penalties for damage or regulatory breaches incurred during exploration activity should be precluded from forming land access agreements. They stated that there are multiple examples of pastoralists being asked to sign agreements with shelf companies on behalf of larger companies, presumably to avoid liabilities, and requested that this practice be ended through the drafting of this Bill.[61]

3.88 The Department advised that:

> The Act currently has in place processes to ensure that the petroleum company is an appropriate person, has the financial resources and technical capacity to undertake the work and all works undertaken on an exploration permit are secured by an environmental security bond held by the Department.[62]

3.89 The Committee sought clarification from the Department as to whether it will be possible, under the amendments made through the Bill, for a statutory land access agreement to be made with an entity that might not be able to fully remediate any damage and was advised that:

> The 24 standard minimum protections provide that a land access agreement must provide appropriate guarantees where the holder of the exploration permit is not

[60] Hon Paul Kirby MLA, Minister for Primary Industry and Resources, *Responses to Written Questions*, 27 February 2020, https://parliament.nt.gov.au/committees/LSC/116-2019#TP, p. 13.
[61] Submission 2 – Protect Country Alliance, p. 3.
[62] Hon Paul Kirby MLA, Minister for Primary Industry and Resources, *Responses to Written Questions*, 27 February 2020, https://parliament.nt.gov.au/committees/LSC/116-2019#TP, p. 14.

> undertaking the activities but a contractor is. That is, the holder of the exploration permit must guarantee any obligations (including compensation) under any land access agreement.[63]

Committee's comments

3.90 The Committee is satisfied with the Department's advice.

Status of native title holders in relation to land access agreements

3.91 The Northern and Central Land Councils commented that most pastoral leases in the NT are also subject to registered native title claims or determinations and queried whether the proposed amendments contemplated any requirements for agreements with native title holders. They noted that most pastoral leases in the NT are subject to native title claims or determinations and sought clarification regarding how the regulations might address situations "where access agreements between native title holders and gas companies should be required in the absence of or in addition to agreements required under the ALRA or NTA", noting that such agreements "may be relevant to the Government's potential compensation liability under the NTA".[64]

3.92 The Committee sought clarification from the Department as to the status of native title holders in relation to land access agreements and was advised that the Act does not currently provide for land access agreements with native title holders, noting that:

> The *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) and the *Native Title Act 1993* (Cth) are comprehensive commonwealth legislative schemes that provide a framework for agreements to be reached with traditional Aboriginal owners and native title parties including for the grant of exploration permits, retention licences and production licences.[65]

3.93 The Department further commented that:

> the Inquiry Panel noted in the Final Report that "the Panel does not believe that the laws that govern land access to pastoral land should be the same as the laws that govern access to native title or Aboriginal land because the underlying property interests of pastoral leases, native title and Aboriginal land are very different" (page 387).
>
> All exploration permits, retention licences and production licences granted under the Act were granted in accordance with the requirements of the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) and the *Native Title Act 1993* (Cth) as applicable.
>
> Given the comprehensive commonwealth legislative scheme that applies under the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) and the *Native Title Act 1993* (Cth) the Act does not currently provide for land access agreements with native title holders. Following the 18-month Inquiry, the Inquiry Panel did not make recommendations in the Final Report in relation to this issue; the Government's first priority is to implement the recommendations of Inquiry to

[63] Hon Paul Kirby MLA, Minister for Primary Industry and Resources, *Responses to Written Questions*, 27 February 2020, https://parliament.nt.gov.au/committees/LSC/116-2019#TP, p. 14.
[64] Submission 9 – NLC/CLC, p. 11.
[65] Hon Paul Kirby MLA, Minister for Primary Industry and Resources, *Responses to Written Questions*, 27 February 2020, https://parliament.nt.gov.au/committees/LSC/116-2019#TP, p. 15.

> create the framework that will mitigate the Inquiry's identified risks associated with the onshore petroleum industry to an acceptable level.[66]

Committee's comments

3.94 The Committee is satisfied with the Department's advice.

Environmental Security – Proposed sections 118(2)(pb) and 118(6B)

3.95 The purpose of these proposed sections is to enable regulations to be made in relation to environmental securities.

3.96 Several submitters considered that the Bill should be amended to insert a provision in the Act that imposes a clear legal obligation for petroleum interest holders to provide an environmental security before commencing petroleum activities.[67] The NLC/CLC commented that there is "no mandatory requirement on Government to ensure a robust, consistent and transparent security bond procedure [is] in place" and drew attention to the importance of remedying this in order to reduce the risk of Government and taxpayers having to bear the costs of mine site rehabilitation.[68]

3.97 The Committee notes that while Inquiry recommendation 14.13 requires the Government to implement a financial assurance framework for the onshore shale gas industry it does not specify that this be accomplished through an amendment to the Act. As noted in paragraph 3.96, the purpose of these provisions is to enable regulations to be made for environmental securities, with work on these already commenced by the Department of Environment and Natural Resources under the Petroleum (Environment) Regulations 2016.[69]

3.98 The Act contains a number of provisions in relation to environmental security, with s 79 providing for the Minister to require an applicant to provide security in circumstances where this is appropriate, including for the purposes of securing the applicant's compliance with the Act and "with the conditions to which the grant, renewal or variation is made". In addition, the Department advised that:

> At the time of grant of an exploration permit or licence the Minister, under the Act, is required to consider that the holder of an interest has the technical capacity and financial resources to carry out the proposed technical works. The Minister is also required, under changes made to the Act by the *Petroleum Legislation Amendment Act 2019*, to consider whether the holder of that interest is an appropriate person. Additionally a petroleum company is required to lodge environmental securities with the Department in relation to their regulated activities on a pastoral lease. The money is held by the Department until the rehabilitation and remediation for the regulated activities has occurred (and been

[66] Hon Paul Kirby MLA, Minister for Primary Industry and Resources, *Responses to Written Questions*, 27 February 2020, https://parliament.nt.gov.au/committees/LSC/116-2019#TP, p. 15.
[67] Submission 4 – Lock the Gate Alliance, p. 3; Submission 6 – EDONT, p. 6; Submission 7 – ALEC, p. 2; Submission 9 – NLC/CLC, p. 10.
[68] Submission 9 – NLC/CLC, p. 10.
[69] Hon Paul Kirby MLA, Minister for Primary Industry and Resources, *Responses to Written Questions*, 27 February 2020, https://parliament.nt.gov.au/committees/LSC/116-2019#TP, p. 15.

> confirmed to have occurred to the requisite standard by the Department of Environment and Natural Resources).[70]

Committee's comments

3.99 The Committee is satisfied with the Department's advice and considers that full implementation of Inquiry recommendation 14.13 can be achieved through the Petroleum (Environment) Regulations 2016.

Provision of information and reports to landowners during land access agreement negotiations

3.100 The NTCA recommended that the environmental impacts of a gas company's proposed activities must first be jointly assessed by the gas company and the landowner and that the gas company must then supply all relevant reports to the landowner either before or during land access negotiations. They commented that, currently, gas companies do not have to supply this information until stakeholder engagement occurs during the EMP process.[71]

3.101 The Committee sought clarification from the Department regarding whether there are any processes in the Bill to ensure that a landowner has sufficient relevant information to effectively negotiate a land access agreement and was advised that:

> Once the Bill is passed and commenced (subject to passage through the Legislative Assembly), the Petroleum Regulations 1994 will be drafted to provide that a land access agreement must be in place prior to a petroleum company having access to the land and therefore before any proposals to undertake on-ground activity . As such, the land access agreement sets the framework between the pastoral lease holder and the petroleum company as to how the relationship between the two parties will operate including in relation to access, conduct and information sharing (such as in relation to environmental impacts and reports). Land access agreements required by regulation must contain the 24 standard minimum protections as detailed by the Inquiry.
>
> If pastoral lease holders specifically want certain information about anticipated environmental impacts that information (if it exists) can be provided by the petroleum company during the negotiation process for a land access agreement. Given that a land access agreement will be required for entry onto the land the petroleum company has a significant incentive to provide all reasonable information (if it exists) to the pastoral lease holder during any negotiation for a land access agreement to ensure that an agreement can be reached.
>
> However it must be noted that some information may need to be provided after an agreement is reached and the information sharing process can be agreed in the agreement - given that access requires an agreement certain reports may not be available (those reports which require on-ground access for data accumulation) until after an agreement is in place. A petroleum company may not be able to supply environmental reports that don't exist because there has been no access.[72]

[70] Hon Paul Kirby MLA, Minister for Primary Industry and Resources, *Responses to Written Questions*, 27 February 2020, https://parliament.nt.gov.au/committees/LSC/116-2019#TP, p. 14.
[71] Submission 10 – NTCA, p. 2.
[72] Hon Paul Kirby MLA, Minister for Primary Industry and Resources, *Responses to Written Questions*, 27 February 2020, https://parliament.nt.gov.au/committees/LSC/116-2019#TP, pp. 16-17.

Transitional Arrangements (Cl 22 – Part VII, Division 4, Schedule 1 inserted)

3.102 Clause 22 provides for a number of transitional arrangements relating to amendments which require the Minister to consider the principles of ecologically sustainable development when making certain decisions under the Act.

3.103 The EDONT, Lock the Gate Alliance and NLC/CLC objected to the exclusion of the requirement for the Minister to consider and apply the principles of ESD in relation to the decisions set out in proposed sections 128-132.[73] These provisions relate to transitional arrangements and refer to decisions made prior to the commencement of Part 2 of the *Petroleum Legislation Miscellaneous Amendments Act 2019*. The Committee notes that it is standard practice that amendments are not implemented retrospectively due to the effect this would have of unfairly imposing a penalty on a person or entity who acted legally at the time in question.

Other Matters

Offence provision for interference with authorised petroleum activities

3.104 APPEA commented that under s 149 of the *Mineral Titles Act 2010* NT it is an offence for a person to interfere with authorised activities being conducted on a mineral title or with the exercise by the titleholder of a right under the mineral title.[74] They recommended that a commensurate provision be included in the *Petroleum Act 1984* (NT) as this would provide consistency with most other Australian jurisdictions and allow reasonable rights for a titleholder.[75]

3.105 The Committee sought clarification from the Department regarding the effect on the operation of the Bill of including an amendment to this effect and was advised that:

> This amendment could be incorporated into the Bill; it would mean that the Act would be consistent with other resources legislation (see section 107 of the *Geothermal Energy Act 2009*, section 149 of the *Mineral Titles Act 2010* and section 66(2) of the *Energy Pipelines Act 1981*). Specifically it means that the interference with activities authorised under an exploration permit or licence under the Act would be an offence. The Department notes that the interference with activities authorised under the Act could have implications in terms of the safety (including human, animal and environmental) of those activities.[76]

Committee's comments

3.106 The Committee considers it appropriate to amend the Bill to make it an offence to interfere with activities authorised under an exploration permit or licence under the Act, particularly given the potential safety risks that could arise from such interference.

[73] Submission 4 – Lock the Gate Alliance, p. 4; Submission 6 – EDONT, p. 2; Submission 9 – NLC/CLC, p. 9.
[74] Submission 8 – APPEA, p. 2.
[75] Submission 8 – APPEA, p. 2.
[76] Hon Paul Kirby MLA, Minister for Primary Industry and Resources, *Responses to Written Questions*, 27 February 2020, https://parliament.nt.gov.au/committees/LSC/116-2019#TP, p. 16.

Recommendation 6

The Committee recommends that the Bill be amended to provide that it is an offence for a person to interfere with authorised activities being conducted under a petroleum title or with the exercise by the titleholder of a right under the petroleum title.

Review of existing unsatisfactory agreements

3.107 Protect Country Alliance expressed concerns that some potentially disadvantageous land access agreements have been imposed on pastoralists and requested that "any agreements signed under duress be subject to review and extinguishment if requested by the landholder".[77]

3.108 Under the existing policy framework, the *Stakeholder Engagement Guidelines Land Access* sets out a non-statutory process for the negotiation of land access agreements between pastoralists and petroleum companies. Where parties find it difficult to come to agreement either party may request that the matter be adjudicated by the Government's Land Access Arbitration Panel.[78] This may result in a mutually agreed land access agreement or, where agreement cannot be reached, a determination by the Arbitration Panel. Under the current Act, there is no requirement for a land access agreement and consequently pastoralists do not have to sign an agreement. However, refusal to sign an agreement does not affect the petroleum company's entitlement to access the land provided all other requirements have been met and 14 days' notice is given to the landholder/manager of the property. Where a party disagrees with the Panel's decision they may seek further review through the judicial system. The Panel has no statutory powers and will be discontinued if the Bill is passed and once the regulations are in place.

3.109 In response to the Committee's request for clarification as to whether the implementation of Inquiry recommendation 14.6 would affect existing land access agreements, the Department advised that:

> The Department is not a party to any existing agreements reached and is not aware of the terms and conditions of such agreements between pastoral lease holders and petroleum companies - this is because it is not required by the Act.
>
> As is normal procedure when implementing new legislative requirements the Department does not intend to disturb agreements already made. The Department notes there are already general law remedies if a party feels they have been subject to undue influence or unconscionable conduct.
>
> The Department's general understanding, from being briefed by external stakeholders, is that most existing land access agreements are not long-term agreements. If an existing agreement is not yet expired, the parties to that agreement could agree to terminate that agreement or allow the agreement to expire (in accordance with the agreement's terms and conditions) and then, if access is still required to the property, the parties would negotiate a land access

[77] Submission 2 – Protect Country Alliance, p. 3.
[78] Department of Primary Industry and Resources, Northern Territory Government, *Stakeholder Engagement Guidelines Land Access*, https://nt.gov.au/__data/assets/pdf_file/0010/203320/guideline-land-access-agreements.pdf

agreement in accordance with the procedures to be implemented under the Petroleum Regulations 1994.[79]

Committee's comments

3.110 The Committee is satisfied with the Department's advice.

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[79] Hon Paul Kirby MLA, Minister for Primary Industry and Resources, *Responses to Written Questions*, 27 February 2020, https://parliament.nt.gov.au/committees/LSC/116-2019#TP, pp. 13-14.

Appendix 1: Scientific Inquiry Recommendations

Recommendation 7.11

- That prior to the grant of any further exploration approvals, in order to minimise the risk of groundwater contamination from leaky gas wells:
    - all wells subject to hydraulic fracturing must be constructed to at least Category 9 (or equivalent) and tested to ensure well integrity before and after hydraulic fracturing, with the integrity test results certified by the regulator and publicly disclosed online;
    - a minimum offset distance of at least 1 km between water supply bores and well pads must be adopted unless site-specific information of the kind described in Recommendation 7.8 is available to the contrary;
    - where a well is hydraulically fractured, monitoring of groundwater be undertaken around each well pad to detect any groundwater contamination using multilevel observation bores to ensure full coverage of the horizon, of any aquifer(s) containing water of sufficient quality to be of value for environmental or consumptive use;
    - all existing well pads are to be equipped with multilevel observation bores (as above);
    - as a minimum, electrical conductivity data from each level of the monitor bore array should be measured and results electronically transmitted from the well pad site to the regulator as soon as they are available. The utility of continuous monitoring for other parameters should be reviewed every five years or as soon as advances in monitoring technology become commercially available; and
    - other water quality indicators, as determined by the regulator, should be measured quarterly, with the results publicly disclosed online as soon as reasonably practical from the date of sampling. This monitoring regime should continue for three years and be reviewed for suitability by the regulator.

Recommendation 10.2

That in consultation with the gas industry, landholders, Land Councils, local government and local communities, the Government mandates an appropriate setback distance from all gas well heads, pipelines and gas processing facilities to a habitable dwelling (including all buildings or premises where people reside or work, schools and associated playgrounds, permanent sporting facilities and hospitals or other community medical facilities) in order to minimise risks identified in HHRA reports, including potential pathways for waterborne and airborne contaminants. Such setback distances should not be less than 2 km and should apply to all exploration and production activities**.**

Recommendation 14.2

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

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

Recommendation 14.3

That Government not approve any application for an exploration permit in relation to areas that are not prospective for onshore shale gas or where co-existence is not possible. Priority must be given to the areas identified in Recommendation 14.4.

Recommendation 14.4

That prior to the grant of any further exploration approvals, the following areas must be declared reserved blocks under s 9 of the Petroleum Act, each with an appropriate buffer zone:

- areas of high tourism value;
- towns and residential areas (including areas that have assets of strategic importance to
- nearby residential areas);
- national parks;
- conservation reserves;
- areas of high ecological value;
- areas of cultural significance; and
- Indigenous Protected Areas.

Recommendation 14.6

- That a statutory land access agreement be required by legislation.
- That prior to undertaking any onshore shale gas activity on a Pastoral Lease (including but not limited to any exploration or production activity), a land access agreement must be negotiated and signed by the Pastoral Lessee and the gas company.
- That breach of the land access agreement be a breach of the relevant exploration or production approval giving rise to the onshore shale gas activity being carried out on the land.

Recommendation 14.7

That in addition to any terms negotiated between the pastoralist and the gas company, the statutory land access agreement must contain the above standard minimum protections for pastoralists. (NB Refer to pp. 394-5 of Inquiry Report for minimum protections)

Recommendation 14.8

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

Recommendation 14.10

- That any person may lodge an objection to the proposed grant of an exploration permit within a prescribed time limit.
- That all objections received by the Minister must be published online.
- That the Minister must, in determining whether to grant or refuse the application, take into account any objection received**.**

Recommendation 14.11

- That the Petroleum Act be amended to make the principles of ESD a mandatory relevant consideration for any decision made under that Act in relation to any onshore shale gas industry.
- That the principles of ESD must be taken into account and applied by a decision-maker in respect of all decisions concerning any onshore shale gas industry.

Recommendation 14.13

That prior to the grant of any further production approvals, the Government develops and implements a financial assurance framework for the onshore shale gas industry that:

- is transparent and is developed in consultation with the community and key stakeholders;
- 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; and
- requires the public disclosure of all financial assurances and the calculation methodology

Appendix 2: Submissions Received

Submissions Received

1. Marylou Potts Pty Ltd
2. Protect Country Alliance
3. Heidi Jennings
4. Lock the Gate Alliance
5. Protect NT
6. Environmental Defenders Office (EDONT)
7. Arid Lands Environment Centre (ALEC)
8. Australian Petroleum Production and Exploration Association Limited (APPEA)
9. Northern Land Council and Central Land Council (NLC/CLC)
10. Northern Territory Cattlemen's Association (NTCA)

Note

Copies of submissions are available at: https://parliament.nt.gov.au/committees/LSC/116-2019

Appendix 3: Public Briefing and Public Hearings

Public Briefing – 9 December 2019

Department of Primary Industry and Resources

- Rod Applegate: Deputy Chief Executive Officer
- James Pratt: Executive Director, Onshore Gas Development
- Emma Jane Farnell: Director, Onshore Gas Development

Public Hearing – 2 March 2020

- Ashley Manicaros: Chief Executive Officer, Northern Territory Cattlemen's Association
- Gillian Duggin: Managing Lawyer, Northern Territory Environmental Defenders Office
- Greg McDonald: Manager, Mineral and Energy, Northern Land Council
- Tom Weston: Lawyer, Northern Land Council
- Keld Knudsen: Director, Australian Petroleum Production and Exploration Association Northern Territory (APPEA NT)
- Stephanie Stonier: Corporate Affairs Manager (Northern Australia) Origin Energy and Chair of APPEA NT onshore working group
- Lauren Mellor: Spokesperson, Protect Country Alliance
- Rod Dunbar, Owner of Nutwood Downs Station at Daly Waters
- Alister Trier: Chief Executive, Department of Primary Industry and Resources
- James Pratt: Executive Director, Onshore Gas Development, Department of Primary Industry and Resources
- Emma Farnell: Director, Onshore Gas Development, Department of Primary Industry and Resources
- Paul Purdon, Executive Director, Environment Protection, Department of Environment and Natural Resources

Note

Copies of hearing transcripts and tabled papers are available at: https://parliament.nt.gov.au/committees/LSC/116-2019#PB

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