

11 November 2022

The Hon Natasha Fyles MLA
Chief Minister of the Northern Territory
GPO Box 3146
DARWIN NT 0801

Dear Chief Minister

**RE: PROGRESS ON THE IMPLEMENTATION OF RECOMMENDATIONS FROM
THE FINAL REPORT OF THE HYDRAULIC FRACTURING INQUIRY – 1 MAY TO
11 NOVEMBER 2022**

General overview

The last progress report highlighted the importance of focusing on the purpose of the Inquiry's recommendations. The Inquiry was established to assess the scientific evidence in order to determine the nature and extent of the environmental impacts and risks, including the cumulative impacts and risks associated with hydraulic fracturing. The Inquiry was required to:

1. Advise on the nature of any knowledge gaps and additional research that is required [before the risk can be assessed].
2. Advise whether and how the impact of identified risks can be effectively reduced to a level that "would be considered acceptable in the Northern Territory context."

The Inquiry grouped risks associated with hydraulic fracturing of onshore unconventional shale gas reservoirs on the natural environment, social, cultural and economic conditions of the Northern Territory, under five broad areas:

1. the potential impact of any onshore shale gas industry on water resources, the landscape and the natural environment;
2. distrust in the government to make decisions in the best interest of the community and antipathy towards the current regulatory framework;
3. the potential negative impact of any onshore shale gas development on the health and well-being of local communities particularly on Aboriginal people and their culture;
4. the contribution of any onshore shale gas industry to climate change; and
5. scepticism about the likelihood of any real economic benefits of onshore shale gas industry flowing to local communities.

These five broad areas were expanded in the body of the Inquiry's Final Report to become eleven risk categories, encompassing over 60 specific risks. The Inquiry's recommendations all relate to the mitigation of these risks.

The Inquiry's Final Report states:

“the recommendations of this report are a complete package. That is, they must be implemented in their entirety” [further] “implementing the recommendations contained in this report represent a significant reform agenda for government.”

Recommendation 16.1 reinforces the finding that “significant reform” in many areas would be required to manage risks association with the onshore gas industry and is designed to underpin the new systems necessary to achieve this.

New systems have necessitated expanded capabilities and interdepartmental collaboration. Particularly in the areas of regulation and enforcement, informing and involving the public in the scrutiny of regulatory and approval processes (including both judicial and merits review) as well as new arrangements for departmental and ministerial authority and accountability.

It has been agreed that Agencies will report on implementation to demonstrate how they have established adaptive systems with robust processes of review, involving the community and stakeholders, so that the Inquiry's recommendations designed to mitigate risks are both implemented and will remain effective.

The SREBA has required a work program of comprehensive and detailed studies to be sustained over the last five years. This work has continued throughout this Dry Season and is nearing completion with teams focused on data analysis and finalising baseline reports. The Cultural Impact Assessment, delayed as result of Covid 19 restrictions, began direct engagement with affected communities this Dry and the information provided by Aboriginal people from communities across the Beetaloo Sub-basin area is now being compiled for a report to government.

Life cycle GHG emissions (R9.8)

In the last report it was noted that the measures available to the Territory Government alone will not meet the objective of recommendation R9.8 to ensure that there is no net increase in the life cycle GHG emissions emitted in Australia from any onshore shale gas produced in the Territory.

The Inquiry recognised that the Territory had no policy on limiting GHG emissions and so noted that this recommendation may “require strengthening existing policies” and would require the involvement of other Australian governments – in particular the Commonwealth. The Inquiry noted “a variety of strategies that may either be expanded and new strategies that could be implemented”.

The Commonwealth have agreed to “work with the Territory to support its implementation of recommendation 9.8 using available technology and policies”. The details of how this will be done are still being worked out. Nonetheless, the Commonwealth are legislating national targets for 2050 and 2030; reforming the Safeguard Mechanism to ensure it reduces emissions in line with Australia's targets and have commissioned an independent panel chaired by Professor Ian Chubb AC to review the integrity of Australian Carbon Credit Units.

EBPC Act amendments (R7.3)

The Territory requires support from the Commonwealth for recommendation R7.3 to be implemented.

The Commonwealth has not yet formally indicated support for implementing this recommendation, notwithstanding public statements of support by some members of the Government.

SREBA

The Inquiry recommended that “a SREBA must be undertaken to provide the additional scientific knowledge and baseline information required before a final risk assessment can be made” (R15.3). The data and analysis produced by the SREBA will inform critical decisions about the future of the onshore gas industry and will shape policy on how the costs and benefits of any onshore gas industry in the Territory are distributed.

Field work for most study areas of the SREBA has been completed this Dry, with work shifting to data analysis and finalising baseline reports. The Cultural Impact Assessment, delayed as result of Covid-19 restrictions, began direct engagement with affected communities this Dry.

Study areas relating to critical natural systems:

Water: Water quality and quantity studies to further develop the modelling, and a detailed gap analysis of water-related information for the Beetaloo Sub-basin have been completed. The additional monitoring bores necessary to fill information gaps in knowledge about the aquifers across the basin have been constructed and data from these and pre-existing bores is being used to assess the water resource.

Terrestrial ecosystems: Field studies were completed this Dry and resultant data collation and analysis is being used to map regional ecosystems. Targeted surveys for some threatened species were undertaken that adds to work already done in cooperation with the Commonwealth Government's Geological and Bioregional Assessment (GBA) program. The baseline report is expected to be completed early November and will define areas of high conservation value in the Beetaloo Sub-basin, as well as providing a comprehensive of the biogeographic patterns within the sub-basin.

Aquatic ecosystems: Field work finished with a final targeted survey for the Gulf Snapping Turtle completed in September. Mapping and classification of aquatic ecosystems is complete, along with data analysis and the baseline report. Stygofauna studies have been completed and the baseline report and data are also complete. Stygofauna were sampled from 26 bores and two springs in the region during 2019. Eighty-seven sites were sampled during 2021-2022 to ensure a comprehensive geographic and sampling depth coverage across the study region.

Environmental Health: Desktop studies analysing existing data on water quality and soils are complete along with baseline reports. Air quality and dust monitoring devices have been installed across the region at five locations: Daly Waters

airstrip, Mataranka, Elliot, Bulwaddy Conservation Reserve and Manbulloo station and are now producing data.

Greenhouse gas baseline: Data analysis has been completed and draft baseline reports have been produced by CSIRO and final reports are expected during November.

Social, Cultural and Economic study: Field work, which included participatory workshops to co-design local relevant indicators as well as targeted stakeholder engagement, commenced this Dry. Approximately 40 stakeholder groups, including land councils, regional councils, industry and business organisations, Native Title holders, pastoralists, and environment groups have been engaged in the study. The information gathered through this process is now being analysed.

Public access to SREBA data: A data management platform has been developed. It is planned that the platform will be populated from the SREBA data catalogue to enable live testing to commence in mid-November 2022.

Aboriginal Information Program

In addition to factsheets, now available in both printed and audio formats translated into Aboriginal languages spoken across the region and Territory, the Government has developed a guide for those consulting with Aboriginal people. The guide includes principles (published on the Hydraulic Fracturing Implementation website) that emphasise the importance of using interpreters when explaining complex scientific matters and recognise the significance of respecting community and culture when consulting with Aboriginal people.

Petroleum Legislation Amendment Bill

The Petroleum Legislation Amendment Bill 2022 was introduced to the Legislative Assembly during the October 2022 parliamentary sittings and is expected to be passed in November. The Bill includes amendments to the Petroleum Act 1984 (Act) designed to implement recommendations from the Inquiry and also several amendments quite separate from those required to implement the recommendations of the Inquiry. One of these amendments establishes the possibility for sale (or use) of gas to be approved before production licences, specifically:

- establish a process for the onshore gas industry to sell (or use) gas that would otherwise be emitted, in the process of proving a well's commercial output, through flaring or venting.

The amendment establishing the possibility for sale (or use) of gas to be approved before production licences, could be seen as undermining the Inquiry's finding that:

“all recommendations, including a SREBA, are to be implemented prior to the granting of any further production approvals. This is to ensure that the commercial production of any onshore shale gas cannot occur absent these recommendations having been implemented and absent a robust regulatory regime having been enacted.”

To allay concerns arising from this interpretation, the Minister has given public assurances that the recommendations of the Inquiry must have been implemented, before applications will be considered for the sale of gas under the new regulations.

Merits Review

The Bill contains amendments designed to implement the Inquiry's recommendations including merits review.

The Inquiry found that a process for both judicial and merits review is an essential element of any mature and robust regulatory system. Together, these review processes enable both those affected directly and indirectly by a decision to challenge that decision. To work best, the Inquiry recommended open standing in both judicial and merit reviews. Previous legislative amendments have implemented the recommendation (R14.23) covering open standing in Judicial Reviews.

The recently introduced amendments to the Petroleum Act and the Petroleum (Environment) Regulations reflect Cabinet's decision to substantially reduce the number of parties the Inquiry recommended be granted presumptive standing to challenge decisions using merits review.

The Inquiry recommended that merits review should be available to third parties to challenge decisions made in relation to the granting of all EMPs made in relation to any onshore shale gas development (R14.24).

This recommendation requires that, as well as parties that are directly affected, the following third parties should have standing to seek merits review:

- persons who are indirectly affected by the decision;
- members of an organised environmental, community or industry group;
- Aboriginal Land Councils;
- Registered Native Title Prescribed Body Corporate and registered claimants under Native Title Act;
- local government bodies; and
- persons who have made a genuine and valid objection during any assessment or approval process.

The recent amendments to Petroleum Act and the Petroleum (Environment) Regulations incorporate a reduced list for third parties, limited to:

- Aboriginal Land Councils;
- Registered Native Title Prescribed Body Corporate and registered claimants under Native Title Act;
- persons who have made a genuine and valid objection during any assessment or approval process.

Additionally, under the recent amendments, the groups listed below must have made a genuine and valid submission to the process leading to the Minister's decision in order to have "standing":

- persons who are indirectly affected by a decision;
- members of an organised environmental, community or industry group; and
- local government bodies;

Further, the recent amendments specify the decisions subject to merits review:

- A decision of the Minister to release specified blocks for exploration under section 16A(c);
- A decision of the Minister to grant an exploration permit under section 20
- A decision of the Minister to approve an environment management plan (EMP) under regulation 11(2)(a) or (3)(a); and
- A decision of the Minister to approve the revision of an environment management plan (EMP) under regulation 17.

Submissions will not be considered "genuine and valid" if "made by a person in the form of a form letter of petition prepared by another body or organisation, or a submission made after the end of the period specified for the making of submissions."

Human health and environmental risk assessments

- introduces the requirement to comply with nationally consistent guidelines for human health and environmental risk assessment (Rec 7.4 and 10.1).

Cost recovery

- provides for the implementation of new charges to recover the cost of undertaking the Strategic Regional Environmental Baseline Assessment (SREBA) studies, including the Strategic Social Impact Assessment (Rec 12.2);
- introduces a framework for new charges for industry, that will recover the costs associated with regulating the onshore gas industry (Rec 14.1);
- establishes a comprehensive financial assurance framework to improve securities and insurance requirements for onshore petroleum operations (Rec 14.13);
- introduces an orphan well levy and fund to enable the government to monitor orphan wells as well as to take action, as required, to secure the integrity of any orphan wells (Rec 14.14).

Regulation of land clearing, seismic surveys, well construction, drilling, hydraulic fracturing, and well decommissioning and abandonment

- enables the repeal of the Schedule of Onshore Petroleum Exploration and Production by establishing a legal framework for approving activity plans, assessment timeframes, approval criteria and reporting obligations in the

Act and introducing new regulation-making powers to support them (Rec 14.17).

Civil enforcement, cost rules and onus of proof for litigation brought in public interest

- strengthens community confidence in the regulatory framework by amending cost rules so that litigation genuinely brought in public interest may not be subject to a costs order, introducing new civil enforcement proceedings and reversing the onus of proof for pollution and environmental harm offences; (Rec 14.25; 14.31 and 14.32).

Sanctions, including remediation, rehabilitation orders and penalties

- enables a more rigorous legislative framework that will provide a strong deterrent for non-compliance. Inspectors appointed under the Act, and relevant CEOs will have broader powers and more ways to ensure that gas companies are compliant with the law (Rec 14.29);
- increases penalties and offences in the Act so that they will be comparable with or exceed equivalent penalties across all Australian jurisdictions (Rec 14.33)

Environment Protection Act 2019 amendments

The Environment Protection Legislation Amendment (Chain of Responsibility) Bill 2022 was introduced to the Legislative Assembly during the October 2022 parliamentary sittings and is expected to pass in the November sittings.

The Bill's amendments to the Environment Protection Act 2019 will establish an environmental chain of responsibility framework for onshore petroleum activities(R14.30).

Concluding remarks

The Inquiry considered their recommendations as a “complete package”, and that implementation would require “significant reform” in many areas of government. Only then would the identified risks associated with the onshore gas industry be acceptably managed.

New systems have been, and continue to be, developed including the capability for interdepartmental collaboration, monitoring and enforcement, informing and involving the public in the scrutiny of regulatory and approval processes.

It has been agreed that Agencies will now report on implementation to demonstrate how they have established adaptive systems with robust processes of review, involving the community and stakeholders, so that the Inquiry's recommendations designed to mitigate risks are both implemented and will remain effective.

The Inquiry recommended that, while the SREBA must be completed prior to the granting of any production approvals, acquisition of regional data will not cease with the completion a SREBA. Ongoing work will be required by both the regulator and the gas industry to progressively transition the information obtained from a SREBA into the operational performance and monitoring regimes established by implementing the recommendations in full. The Inquiry suggested that an

approach to achieving this would be to “develop and implement regional or area-based assessment for the gas industry” (R14.22).

As foreshadowed in the last report, the important work being undertaken for the cultural impact component of the SREBA is establishing relationships and expectations that will require work that could be productively undertaken as part of such a regional or area-based assessment.

I am in regular contact with Senior Officers from across the accountable agencies, members of industry, Protect Country Alliance, other NGOs, and the broader community who have an interest in this work.

This has informed my opinion that implementation continues in accordance with the Inquiry’s findings.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Dr David Ritchie', with a long horizontal flourish extending to the right.

DR DAVID RITCHIE
11 November 2022