

31 May 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 – NOVEMBER 2021 TO 31 APRIL 2022

General overview

In this 10th progress report and the fifth year of implementing the Inquiry's recommendations, it is useful to reflect on the purpose of the recommendations and what has been achieved.

The recommendations were designed to establish a comprehensive system to mitigate the risks associated with hydraulic fracturing of onshore unconventional shale gas reservoirs on the natural environment, social, cultural and economic conditions of the Northern Territory. The Inquiry grouped these risks under five broad areas:

- the potential impact of any onshore shale gas industry on water resources, the landscape and the natural environment;
- distrust in the government to make decisions in the best interest of the community and antipathy towards the current regulatory framework;
- 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;
- the contribution of any onshore shale gas industry to climate change; and
- scepticism about the likelihood of any real economic benefits of onshore shale gas industry flowing to local communities.

There is now a clear path to implementing the recommendations relating to these areas of risk - with the exception of the contribution of any onshore shale gas industry to climate change. The Inquiry found that this could not be managed within the NT and that the Commonwealth Government must play a major role 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 NT.

Life cycle GHG emissions (R9.8)

The capacity of the Territory to ensure that there is no net increase in life cycle GHG emissions emitted in Australia from any onshore shale gas produced in the Territory is limited by opportunities for offsets available within the Territory. Since the Inquiry handed down its findings the NT Government has:

- legislated to ensure greenhouse gas emissions can be regulated under the *Petroleum (Environment) Regulations 2016* and the *Environment Protection Act 2019*;
- established minimum standards for monitoring and managing emissions from upstream gas infrastructure;
- developed a draft policy on “Greenhouse Gas Emissions Offsets” - which will be put to Government for consideration in June 2022;
- set expectations for the management of emissions from onshore petroleum industry through the policy “Greenhouse Gas Emissions Management for New and Expanding Large Emitters” which is now being applied to EMP approvals for onshore petroleum exploration activities.
- commissioned GISERA to investigate and report on the availability of abatement options to achieve net zero life cycle emissions from onshore petroleum production in the Territory. This report is due mid-2022.

These measures alone will not meet the objective of recommendation 9.8: 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. For recommendation 9.8 to be implemented, the Territory must have the support of the Commonwealth Government to make the necessary legislative and policy changes.

EBPC Act amendments (R7.3)

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

The Inquiry found that: under the Commonwealth Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act), water resources are considered “matters of national environmental significance” and the coal seam gas industry must obtain approval from the Commonwealth Minister for the Environment if there is any likelihood of significant impact on a water resource. This requirement does not apply to onshore shale gas industry - despite water resources clearly being of environmental significance to these developments.

The Commonwealth has not yet indicated support for implementing this recommendation, notwithstanding representations by the Territory Government.

SREBA

The SREBA is designed to improve our knowledge about critical natural systems and also to understand issues concerning people and communities affected by the industry. The knowledge gained through the SREBA is critical to our understanding, and mitigation of, the risks arising from the impact of any onshore shale gas industry on water resources, the landscape and the natural environment and health and well-being of local communities - particularly on Aboriginal people and their culture.

The observation, made in previous reports, remains pertinent. 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.

Study areas relating to critical natural systems:

Water: water quality and quantity reviews to further develop modelling and a detailed gap analysis of water-related information for the Beetaloo Sub-Basin have been completed. New water monitoring bores in poorly studied western parts of the basin were established during 2021 and drilling for additional new water monitoring bores to fill information gaps in other parts of the basin is currently underway and will continue throughout 2022. An extensive array of existing bores were tested for water quality during 2021 and testing will continue in 2022.

Terrestrial ecosystems: work in the Beetaloo Sub-basin has been undertaken in cooperation with the Commonwealth Government's Geological and Bioregional Assessment (GBA) program, which has also funded additional ecological studies. Draft mapping of regional ecosystems has been completed and is currently being finalised using the large amount of additional site data that has been collected. Regional surveys for fauna and flora, along with targeted surveys for some threatened species, are nearing completion, with data collation and analysis to be completed by October 2022. The data collected during these ecological studies will be used to define areas of high conservation value in the Beetaloo Sub-basin.

Aquatic ecosystems: field work will be completed during the 2022 dry season, with the aquatic team in the process of mapping and classifying aquatic ecosystems, describing assemblages of aquatic biota and identifying dry season refuges. The specialist stygofauna team commenced sampling towards the end of 2021 and have completed their field work with diagnostics and analysis to be completed before October 2022. Stygofauna were sampled by CSIRO and CDU from 26 bores and two springs in the region during 2019, for a GISERA-funded project. Eighty-seven additional sites have been sampled under the SREBA program during 2021-2022 to ensure a more comprehensive geographic and groundwater depth coverage across the study region.

Environmental Health: The Scope of Works (SoW) is has been approved and comprises four components: population health, air quality, water quality and soils. These studies will be largely based on desktop analysis of existing data and are expected to be completed by October 2022. The air quality study will establish five sites for air and dust sampling across the region with preliminary results available in November 2022.

Greenhouse gas baseline: field work commenced mid-dry season 2021 with Commonwealth Scientific Industrial Research Organisation (CSIRO) undertaking on-ground sampling throughout 2021-2022. The last rounds of field work are scheduled for June-July with data analysis and reporting expected to be completed by October 2022.

Social & cultural impact assessment

In recognition that the success of this work depends on establishing trust with the people and communities affected by the onshore gas industry, this part of the SREBA was designed to ensure that affected communities and stakeholders were involved in developing the scope of works. This was achieved at a series of workshops involving around 40 stakeholder groups including the land councils, Aboriginal Areas Protection Authority, regional councils, industry and business organisations, Native Title holders, pastoralists, and environment groups and representatives from NT Government agencies. The design of the SoW has now been independently approved by UQ's

accredited Human Research Ethics Committee to ensure that the project is conducted properly and remains independent.

The SoW was approved in January 2022 by the Minister for Environment. Participatory workshops have recently been completed (March 2022) to establish indicators for the baseline and ongoing monitoring and reporting.

Data management and sharing

A platform for sharing the data informing the SREBA is under development to ensure all results from the SREBA are publicly available. The NT Government is collaborating with the Commonwealth Government's GBA program to ensure that data collected in the Beetaloo sub-Basin by both GBA and SREBA is seamlessly available to the public.

Aboriginal Information Program

This program has taken longer to establish than expected. The Inquiry recommended an independent third-party be engaged on both design and delivery of the program so that the program would be trusted. CSIRO were engaged to work collaboratively with land councils and the Aboriginal Areas Protection Authority to develop information packages which are now with the Aboriginal Interpreter Service (AIS) for translation. Several fact sheets have now been re-scripted by the AIS and are being translated into the 18 languages for which AIS are able to offer translation services.

The program requires an ongoing capability to respond to questions from Aboriginal people that will emerge in the course of the cultural and social impact assessments. A new five-year agreement with CSIRO will deliver the Community Engagement and Information Program through their Indigenous Science and Knowledge team based in Darwin.

Cost recovery & financial assurance framework

The outcomes of consultation with industry and stakeholders and the design principles for a Cost Recovery System are scheduled to be considered by Government in the second half of 2022.

The Inquiry's recommendations state, that the regulation of any onshore shale gas industry in the NT should be conducted on a full cost recovery basis and that a transparent "financial assurance framework" be established for the onshore shale gas industry, including a shale-gas well abandonment fund, will be given effect through amendments to the Petroleum Act. These changes in legislation will:

- provide for the implementation of new charges to recover the cost of regulating the onshore gas industry (Inquiry Recommendation 14.1);
- provide for the implementation of new charges to recover the cost of undertaking the Strategic Regional Environmental Baseline Assessment (SREBA) studies, including the Strategic Regional Assessment (Inquiry Recommendation 12.2).

These reforms are also forecast to be considered by Government in mid-2022:

- introducing the recommended legislated financial assurance framework to improve securities for onshore petroleum operations (Recommendation 14.13);
- introducing a non-refundable levy for the long term-monitoring, management and remediation of abandoned wells, as well as act to secure the integrity of any orphan wells (Recommendation 14.14);

Merits Review and other legislative change

The Inquiry found that: “review and appeal processes must exist to enable those directly and indirectly affected by a decision to challenge that decision”. This finding underpins several recommendations designed to:

- rebuild trust in the government to make decisions in the best interest of the community;
- reduce antipathy towards the current regulatory framework;
- improve decision-making; and
- maintain accountability and integrity in any onshore shale gas industry.

These recommendations are also being implemented through amendments to the Petroleum Act planned to be introduced into the Legislative Assembly in the second half of 2022 and (subject to Government consideration) which will:

- establish a merits review process for decisions under the petroleum legislation with third party standing (Recommendation 14.24);
- amend cost rules where litigation is brought forward genuinely in the public interest (Recommendation 14.25). This will confirm that Northern Territory courts may not make an order for the payment of costs against an unsuccessful public interest litigant;
- increase the range of sanction powers available to the regulators (Recommendation 14.29); and
- modernise criminal offences in line with world-leading practice (part of Inquiry Recommendation 14.33).
- repeal the Schedule of Onshore Petroleum Exploration and Production (Recommendation 14.17).

Civil Enforcement

Reforms to be implemented through amendments to the Petroleum Act will give effect to the Inquiry’s recommendations relating to civil enforcement including ensuring that, in civil proceedings relating to environmental harm, the onus of proof lies with gas companies rather than the complainant.

- introduce civil enforcement proceedings (Recommendation 14.31) to be introduced into the Legislative Assembly in second half of 2022;
- enacting provisions that reverse the onus of proof and create rebuttable presumptions for pollution and environmental harm offences (Recommendation 14.32) forecast to be considered by Government in mid 2022 along with;
- review and increase to criminal penalties (Recommendation 14.33).

Guidelines for human health and environmental risk assessments

The Petroleum Act amendments will also:

- adopt the Commonwealth framework on human health risk assessment for all onshore shale gas developments (Recommendations 7.4 and 10.1).

Concluding remarks

Over the last six months, substantial work has taken place on the SREBA, including the preparations for further on-ground work this Dry season. The work has been done to ensure Bills are ready for the sittings of Parliament in the second half of the year to enact recommendations relating to: cost recovery & financial assurance framework,

merits review, civil enforcement and guidelines for human health and environmental risk assessments.

The critical field-work on the social and cultural impact component of the SREBA only started in 2022. Consultations with communities so far indicate that the objectives and approach of the work is welcomed and that this important work will establish relationships and expectations that, as anticipated by the Inquiry, will require work with communities beyond the completion of the SREBA.

The Inquiry recommended that the Government implement all recommendations and further, that implementation of all recommendations must be clear, timely and transparent. There is a perception that, for some recommendations, the imperative for timeliness has come at the cost of transparency. The changes to organisational structures and Ministerial responsibilities necessary to implement recommendation 14.34 had to be made quickly and there are areas where accountabilities are still not transparent.

It is important that agencies create systems with robust processes for review, involving the community and stakeholders, so that the way recommendations have been implemented is visibly achieving their intended purpose.

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 'David Ritchie', with a long horizontal flourish extending to the right.

DR DAVID RITCHIE
31 May 2022