

10th March 2023

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 – FINAL  
CONSIDERATIONS 2023**

**1 Summary**

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.”<sup>1</sup>

The purpose of this advice is to assist Cabinet in their consideration of the Final Implementation Report (2023)<sup>2</sup> and whether identified risks have been reduced to a level that is acceptable.

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<sup>1</sup> Inquiry's Final Report - Appendices page 5.

<sup>2</sup> i.e. the report compiled by DCMC (2023) titled: “The Scientific Inquiry into Hydraulic Fracturing Final Implementation Report”.

This advice is to be read in conjunction with: The Final Implementation Report (2023) and the Northern Territory Government Onshore Gas website.

The Final Implementation Report (2023) to be considered by Cabinet explains how the knowledge gaps have been closed, and risks identified by the Inquiry have been mitigated through the implementation of the Inquiry's recommendations.

The Inquiry noted that "The meaning of an "acceptable" level of risk is a fluid concept and will change over time as community attitudes change..."<sup>3</sup>

The social and political context in which decisions are being made today about onshore gas has changed from the context five years ago when the recommendations were made. Arguably, the most significant change has been in community expectations that government will do something about climate change. There has also been significant change in expectations for meaningful engagement with Aboriginal people, especially those in remote communities, about their traditional concerns.

Changes in community attitudes and their implications are discussed in Section 3 of this advice.

Cabinet's attention is directed to the discussion in Section 4 of this advice about material departures to the recommendations made by the Inquiry, to mitigate:

- The risk of excessive emissions of lifecycle greenhouse gases
- Risks generated by distrust in government
- Risks to Aboriginal people and their culture

The Conclusion (section 5) provides a summary of central issues of concern and includes:

- The importance of a "regional or area-based assessment"<sup>4</sup> for the Beetaloo sub-basin that incorporates knowledge already obtained through the SREBA, and the ongoing work necessary to complete cultural impact assessment.

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<sup>3</sup> Inquiry's Final Report page 409.

<sup>4</sup> i.e. within the meaning of the Inquiry's recommendation 14.22 "...the Government considers developing and implementing regional or area-based assessment for the regulation of any onshore shale gas industry in the NT."

- The importance of continuing to improve and maintain the capabilities developed during implementation.

## **2 The Final Implementation Report (2023)**

The Final Implementation Report (2023) details how the completed recommendations mitigate the risks identified by the Inquiry. Mitigation measures for some risks involve several Agencies, and some risks require several mitigation measures and hence are subject to several recommendations.

The Final Implementation Report (2023) responds to the Implementation Plan endorsed by Cabinet in 2018 which stated: “The government’s role is to provide strong leadership and sound governance” in order that we:

- Fundamentally re-set our regulatory environment
- Increase our baseline knowledge
- Effectively assess, monitor and mitigate any risks
- Set new standards for transparency in decision making
- Build trust through transparency<sup>5</sup>

The Final Implementation Report (2023) details the way risks identified by the Inquiry have been mitigated through implementation of the Inquiry’s recommendations. Importantly, the Report outlines processes in place for ongoing monitoring and review to ensure that, once reduced, these risks remain at acceptable levels.

The Implementation Plan approved by Cabinet required some of the most fundamental reforms since Self-Government involving; major changes to the legislation governing environmental protection, management of natural resources and, specifically, regulation of the petroleum industry.

The risk mitigation systems documented in the Final Implementation Report (2023) could not have been achieved without the collaboration of staff across all the Agencies involved. A large portion of the task has fallen to a few dedicated officers who have followed the process through from the beginning and have together managed to bring about some of the most fundamental reforms since Self-Government.

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<sup>5</sup> NTG Implementation Plan (2018): page 7.

This work is underpinned by the comprehensive interdisciplinary “strategic regional environmental baseline assessment” (SREBA) which now forms the most comprehensive body of knowledge assembled for any area of the Territory. Work to improve our understanding of the biophysical and cultural environment will continue<sup>6</sup>, especially the unfinished work on cultural impact. 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.

In order for Cabinet to be satisfied that the risks identified by the Inquiry have been mitigated to an acceptable level, Cabinet may wish to consider two critical issues:

**1. Changed Context**

What changes in the social, political and/or economic context over the last five years should be considered before Cabinet makes its decision? The question to be considered is: whether there are changes, and if so, are they significant enough to require a review of the risks and reconsideration of what is acceptable?

**2. Departures from what was recommended by the Inquiry**

Have departures from any of the Inquiry’s recommendations meant that some risks will remain at unacceptable levels?

These two issues are discussed in sections 3.1 and 3.2. below.

**3 Changes in social & political context since 2018**

*“The meaning of an “acceptable” level of risk is a fluid concept and will change over time as community attitudes change...”<sup>7</sup>*

There are two areas where significant changes in the social and political context may justify a reassessment of risk by Cabinet. Firstly, heightened community concern about greenhouse gas emissions contributing to climate change and, secondly, heightened concern about the social harm caused by lack of meaningful

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<sup>6</sup> Final Assessment Report (2023) Chapter 2 “Risks generated by lack of knowledge” and section 8.3 “Ongoing monitoring & review.

<sup>7</sup> Inquiry’s Final Report page 409.

engagement with Aboriginal people in remote communities about their traditional concerns.

### 3.1 Community concern about climate change

Perhaps the most important change has been increased community concern about climate change.

In the five years since the Inquiry's findings were accepted, the risks posed by climate change and hence greenhouse gas (GHG) emissions, have become more central to the community's attitude to the onshore gas industry.

When the Inquiry Panel carried out their work there was no policy or specific legislation in the Northern Territory regulating the emission of greenhouse gases.

Since then, the lived-experience of Territorians (in common with fellow Australians) has elevated community awareness to the potential consequences of climate change and concern about what is causing it and what governments can do to prevent it. Across the Territory maximum (and minimum) temperatures and rainfall records have repeatedly been broken<sup>8</sup>, while across Australia (and in many other countries) there have been record breaking weather events causing massive losses - the catastrophic 2019-20 Black Summer bushfires, the Queensland floods in 2021, and floods up the entire East Coast of Australia in 2022.

There have been several court cases in the Territory and elsewhere in Australia that have made it clear that the effect of GHG emissions on the climate must be considered when making decisions that are likely to affect the environment and/or public health.

In response to this, all Australian governments have developed and strengthened policies for limiting GHG emissions.

The increased community support for reducing the GHG emissions that contribute to climate change is reflected in the Territory Government's "Climate Change Response", and in the Greenhouse Gas Emissions Offsets Policy. In addition, there have been amendments to the Environment Protection Act and Petroleum

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<sup>8</sup> 2018 see < <https://www.abc.net.au/news/2018-12-06/qld-heatwave-moves-west-nt-records-broken/10591438>>  
2021 see <http://www.bom.gov.au/climate/current/annual/nt/summary.shtml#recordsTmaxDailyHigh> also <  
<https://www.abc.net.au/news/2022-06-29/cold-weather-snap-katherine-nt-rain-dry-season/101190202>>

(Environment) Regulations to mandate assessment and regulation of GHG emissions, the Large Emitters Policy, and the proposed Onshore Gas Industry policy. These reforms are consistent with the Inquiry's Recommendation "That the NT and Australian governments seek to ensure there is no net increase in the lifecycle emissions emitted in Australia from any onshore shale gas produced in the NT."<sup>9</sup>

However, as the Inquiry noted, to offset GHG emissions at the scale required for any onshore gas industry will require collaboration between the NT and Australian governments. This critical issue is discussed in the section 4 of this report "Departures from what was recommended by the Inquiry".

### 3.2 Engagement with Aboriginal people in remote communities about their concerns

The other area of growing community concern is around the inadequacy of meaningful engagement with Aboriginal people in remote communities about their traditional concerns – particularly the use of ground water. The Inquiry's attention was drawn to this issue in the course of consultations with affected communities and in submissions from the Central Land Council (CLC) and the Northern Land Council (NLC). These emphasised the marginalised nature of many Aboriginal people in the NT, indicating that some Aboriginal communities are likely to be far from resilient, and therefore, potentially more at risk than other communities in different jurisdictions.<sup>10</sup>

The final report of the Social, Cultural and Economic Studies of the SREBA (SCE Study 2022), completed in December 2022 found that, when asked about their political voice and inclusiveness in governance and decision making:

*"Two very strong messages emerged ... people do not trust the onshore gas industry to 'do the right thing' by the people of the Beetaloo region or the environment, and they also have little trust in governments to regulate the industry".<sup>11</sup>*

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<sup>9</sup> Inquiry's [Final Report](#) recommendation 9.8.

<sup>10</sup> CLC submission 1151; NLC submission 647.

<sup>11</sup> University of Queensland (2022) "Social, Cultural and Economic (SCE) studies of the Strategic Regional Environment and Baseline Assessment (SREBA) for the Beetaloo Sub-basin" – page 29.

These sentiments have remained consistent in the years since the Inquiry's Final Report. For example, the NT Treaty Commission's, Final Report<sup>12</sup>, revealed:

*"a lack of trust in Government(s) generally and their capacity to honour their commitments both in action and spirit"*

*"a strong view that current government approaches are not working for Aboriginal people in the NT. There is a keen sense that transformational change is required"*

*"the importance of water and water management; particularly to Aboriginal people in the Katherine region and further south, and ... the way in which water allocations for commercial purposes are made".<sup>13</sup>*

Also in 2020, the Nurrdalinji Aboriginal Corporation was established to represent Aboriginal people across the Beetaloo and Barkly regions because enough people in that region felt that the concerns about both hydraulic fracturing and ground water extraction held by native title holders for the region had not been listened to.

Nationally, the Australian Government has recently accepted the Report and findings of the Joint Standing Committee on Northern Australia, on the Destruction of the Indigenous Heritage Sites at Juukan Gorge<sup>14</sup>. This includes, among other things, a need to "review and change" the way Australia's obligations to The UN Declaration on the Rights of Indigenous People are put into effect – specifically the right of "Indigenous peoples to maintain, control, protect and develop their cultural heritage".<sup>15</sup>

An unintended consequence of the imperative to meet the 31 December 2022 target in Government's Implementation Plan resulted in affected traditional owners in the Beetaloo Basin not being given the opportunity to participate on a regional Water Advisory Committee<sup>16</sup> to advise the Controller of Water on the Georgina-Wiso water allocation plan covering the aquifers underlying their traditional lands.

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<sup>12</sup> The NT Treaty Commission commenced their consultations in 2020.

<sup>13</sup> NT Treaty Commission (2022) Final Report pg. 23.

<sup>14</sup> The destruction of Juukan cave in Western Australia and another sacred site by Rio Tinto in 2020 brought systemic disregard for Aboriginal cultural concerns to world attention.

<sup>15</sup> From: United Nations (2007) Declaration on the Rights of Indigenous People – Article 31.

<sup>16</sup> Section 23, *Water Act (1992)*.

The fact that regional Water Advisory Committees have not yet been appointed for the areas where the onshore gas industry plans to expand their operations has reinforced the perception held by many Aboriginal people in affected communities that the traditional significance of groundwater has been ignored by government and industry.

In the five years since the Inquiry's Final Report, the inadequacy of meaningful engagement with Aboriginal people in remote communities about their traditional concerns has continued to draw both condemnation and calls for remedial action by governments. In the words of the Northern Territory Treaty Commission: the government is not trusted "...to honour their commitments both in action and spirit" [and further] "there is a keen sense that transformational change is required".<sup>17</sup>

#### **4 Departures from what was recommended by the Inquiry**

Cabinet's acceptance of any recommendation can be taken as their acceptance of both the risk and the mitigation measures that form the basis of the recommendation to manage that risk.

The Final Implementation Report (2023) outlines how the risks have been mitigated by implementing the Inquiry's recommendations. Cabinet's attention is directed to the following risks and departures from what was recommended by the Inquiry to mitigate these risks:

- Risk of excessive emissions of lifecycle greenhouse gases
- Risks generated by distrust in government
- Risks to Aboriginal People and their Culture

##### 4.1 The risk of excessive emissions of lifecycle greenhouse gases (including methane): R9.4, R9.8

The Inquiry found that life cycle GHG emissions from the Beetaloo sub-basin would create "unacceptable risk levels" and recommended that this could be reduced to a 'low' risk by fully offsetting the life cycle GHG emissions, namely, that there is no net increase in life cycle GHG emissions in Australia from any

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<sup>17</sup> NT Treaty Commission (2022) Final Report page. 23



onshore shale gas produced in the NT. Recommendation 9.8 was designed to achieve this outcome:

*That the NT and Australian governments seek 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*<sup>18</sup>.

The Inquiry made recommendation 9.8 within the context of the Australian Government's "Safeguard Mechanism Policy"<sup>19</sup> and the signing of the Paris Agreement on climate change in 2015,<sup>20</sup> with a pledge to cut emissions by 26-28% below 2005 levels by 2030.

The Inquiry explained that recommendation 9.8: "reflects widespread and strongly held concerns that were articulated to the Panel regarding the impacts of increased GHG emissions" and the inadequacy of (then) government policies to reduce emissions. This context is important because it helps make sense of the recommendation.

Recommendation 9.8 was one of many recommendations responding to the community's distrust in government - in this case, government's resolve to mitigate GHG emitted from both production and consumption of shale gas produced in the NT. The recommendation requires doing something additional to existing policies<sup>21</sup> that would enable the public to see how particular reductions in production of GHG and/or the sequestration of atmospheric carbon would be attributed to "offset" GHG emitted from the production and consumption of shale gas produced in the NT.

The Inquiry noted that this could be achieved by establishing a means of attributing specific reductions in GHG (e.g. from "early retirement of a coal-burning power plant") to offset GHG emitted from the Beetaloo Sub-basin. The Inquiry anticipated that new policies and initiatives would be needed and existing policies strengthened. The phrase "seek to ensure that..." reflected the Panel's

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<sup>18</sup> Inquiry's [Final Report](#) - page 239.

<sup>19</sup> For example, the (then) Commonwealth's Safeguard Mechanism policy only applied to those emissions from identified large businesses who were encouraged not to exceed their historical emissions levels in practice, the policy provided little incentive to reduce emissions and major amendments are proposed in the *Safeguard Mechanism (Crediting) Amendment Bill* now before Federal Parliament.

<sup>20</sup> The Paris Agreement, came into force on 4 November 2016 - two months after the NT Government announced the scientific inquiry into hydraulic fracturing.

<sup>21</sup> At that time, most GHG emissions in Australia fell outside the Australian Government's Safeguard Mechanism policy.

understanding that this would be “a challenging task” that would require collaboration between the Northern Territory and Australian governments.

Despite the Commonwealth agreeing to “work with the Territory to support its implementation of recommendation 9.8 using available technology and policies”<sup>22</sup>, there has been no progress on the crux of this recommendation, that is: to develop a system that would allow the public to see how a specific reduction in GHG elsewhere in the Australian economy is directly attributed to offset GHG emitted in Australia from production and consumption of shale gas produced in the NT.

Unless new policies come into effect, along the lines envisioned in recommendation 9.8, the only recognised mechanism for directly attributing an “offset” to an emission of GHG is through the Australian Carbon Credit Unit<sup>23</sup> (ACCU) Scheme, which allows emitters to purchase ACCUs to offset continuing emissions.

#### 4.2 Risks to Aboriginal People and their Culture

The Inquiry noted that: “the resilience of a community can also be a large determinant of the acceptability of any onshore shale gas development”<sup>24</sup>.

The Inquiry accepted submissions from the CLC and the NLC that drew attention to the “marginalised nature of many Aboriginal people in the NT, indicating that some Aboriginal communities are likely to be far from resilient, and therefore, potentially more at risk than other communities in different jurisdictions.”<sup>25</sup>

The Inquiry identified several risks under the broad risk category – “risks to Aboriginal people and their culture”. A central element in reducing these risks is Recommendation 11.8:

*“that a comprehensive assessment of the cultural impacts of any onshore shale gas industry must be completed prior to the grant of any production approvals.*

*The cultural assessment must: engage traditional Aboriginal owners, native title*

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<sup>22</sup> From: the “10-year energy and emissions bilateral agreement between Northern Territory & Commonwealth Governments” (2022).

<sup>23</sup> Under this policy one ACCU can offset one tonne of GHG emitted. ACCUs are currently trading at around \$30 each.

<sup>24</sup> Inquiry’s [Final Report](#) page 325.

<sup>25</sup> Inquiry’s [Final Report](#) page 325 and see also CLC submission 1151; NLC submission 647.

*holders and the affected Aboriginal communities, and be conducted in accordance with world-leading practice.”*

This recommendation was designed to address the critical issue raised by the land councils, Aboriginal Areas Protection Authority and others, that the statutory protections under the *Aboriginal Land Rights (Northern Territory) Act 1976*, *Native Title Act 1993*, and *Northern Territory Aboriginal Sacred Sites Act (1989)* do not give traditional Aboriginal owners or the affected Aboriginal community a mechanism to develop an understanding of the scale and incremental nature of the onshore gas industry, or how this industry could be incorporated within a framework of traditional land management and maintenance of cultural traditions relating to the land.

Several risks under this broad risk category have not been substantially mitigated. This is, in part, because the enforced delay in starting the Social, Cultural and Economic Study (SCE Study 2022)<sup>26</sup> constrained face-to-face engagement with Aboriginal people in affected communities. This has meant that there has been insufficient time to build the necessary relationships and level of trust necessary to meet the broad objective of the cultural impact assessment proposed in recommendation 11.8.

An important objective of the cultural impact assessment was to give affected Aboriginal people an opportunity to understand the ways the gas industry may affect the maintenance of cultural traditions; how potential harm can be mitigated, and any benefits realised.

The Panel understood that a thorough assessment of cultural impacts could take several years, however, it anticipated that this work would begin immediately and take place concurrently with exploration, in order that:

*“Traditional Owners can give full consideration to the potential cultural impacts of any development when making a decision about whether or not to consent to an exploration proposal.”<sup>27</sup>*

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<sup>26</sup> University of Queensland (2022) “Social, Cultural and Economic (SCE) studies of the Strategic Regional Environment and Baseline Assessment (SREBA) for the Beetaloo Sub-basin”.

<sup>27</sup> Inquiry’s [Final Report](#) page 293.

In the event that the gas industry continues to grow, a critical issue to be addressed by the cultural impact assessment remains: how to create opportunities for involvement consistent with traditional roles and responsibilities?

It was anticipated that this would include establishment of Indigenous Ranger Programs<sup>28</sup>; and ensure access to country to enable intergenerational transmission of cultural knowledge and all other native title rights as well as to monitor the condition of culturally significant areas and environmental health more generally.

The Inquiry expected that work on the cultural impact assessment would commence in 2018. This did not happen because the necessity to limit the spread of Covid-19 both to and within remote communities, ruled out large gatherings and prevented access for two Dry Seasons. This was compounded by delays in commissioning a team to do this work.

Work on the cultural and social assessments for the Beetaloo Sub-basin started in August 2021. Fieldwork, including face-to-face meetings with people in affected communities, started in the 2022 Dry Season. This truncated period of engagement has meant that the objective of the “comprehensive assessment of cultural impacts” proposed in R11.8 could not be met.

The final report of the SCE Study (2022) delivered in December 2022, reported that: “onshore gas development is taking place in a very low trust environment” – a situation which appears not to have changed in the five years since the Inquiry handed down their report.

The SCE Study (2022) recommendations include that:

- *“Trust deficits in industry and government should be addressed to build confidence that the industry will be responsible, and regulations will be fair and effective”.*
- *“Aboriginal Ranger groups [be established] to “keep an eye” on the country.*

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<sup>28</sup> The Inquiry’s [Final Report](#) specifically recommended that an Aboriginal Ranger Program be established in the Beetaloo sub-basin – see Recommendation 8.9.

- *“Independent oversight of the industry and its environmental, social and governance performance through a Commissioner or Ombudsperson role.”<sup>29</sup>*

These recommendations respond to the same risks and hence are very similar to recommendations made by the Inquiry.

The SCE Study (2022) is not the *“comprehensive assessment of the cultural impacts of any onshore shale gas industry”* recommended by the Inquiry. It has not mitigated, and does not purport to mitigate, risks to Aboriginal people and their culture identified by the Inquiry. However, the SCE confirms that these risks are substantially unaltered since the Inquiry’s Final Report and so remain at an unacceptable level.

The “ongoing risk management” approach outlined in the Final Assessment Report (2023) is a response to the recommendation in the SCE Study (2022) that the work with affected Aboriginal communities that began in 2022 be continued. This continuing work could form part of a “regional or area-based assessment” carried out in accordance with the Inquiry’s Recommendation 14.22. This is discussed in more detail in section 5.1 (below).

#### 4.3 Risks generated by distrust in government and the onshore gas industry

The oil and gas industry is well established and highly profitable, and has developed systems to influence the social and political environment in its favour in order that decision-makers favour their interests above other considerations.

This phenomenon, well documented wherever the industry operates, is referred to as “regulatory capture”<sup>30</sup> and is one of the most complex and difficult of the risks identified by the Inquiry for governments to manage.

The Inquiry found that the widespread distrust in government to regulate the gas industry was founded on the perception of “regulatory capture”. Further, the Inquiry considered that regulatory capture was a risk that must be mitigated. The

<sup>29</sup> University of Queensland (2022) “Social, Cultural and Economic (SCE) studies of the Strategic Regional Environment and Baseline Assessment (SREBA) for the Beetaloo Sub-basin” page 61.

<sup>30</sup> Most recently, the Social, Cultural and Economic Study (SCE) for the Beetaloo sub-basin (2022) recommends: “Perceptions of ‘regulatory capture’ should be addressed”.

Inquiry's recommendations for mitigating this risk are designed to underpin a system that ensures decision-makers are not in the thrall of the gas industry, that allow the public to know what is going on, and allow them to challenge decisions they believe to be wrong.

The Inquiry identified several risks arising from the nature and character of the gas industry, and the recommendations relating to these risks mirror the nature of the industry:

- The risk that the regulatory body becomes inappropriately aligned with industry and becomes reluctant to regulate against the interest of any onshore unconventional shale gas industry, which in turn may undermine confidence in both the regulatory body and the Government.
- The risk that the Government is perceived to be subject to undue influence by the gas industry, thereby leading to a loss of public confidence in the Government and the democratic process. The likelihood of this risk manifesting is heightened by the short-term nature of the political cycle relative to the long-term consequences of any onshore unconventional shale gas industry.
- The risk that the cost of any remediation and/or rehabilitation of environmental damage caused by hydraulic fracturing and its associated activities is not passed on, either in whole or in part, to the gas producer that caused the harm, but is instead transferred to the public.
- The risk that gas industry entities who lack integrity, or who are otherwise unfit to operate in an environment based on compliance and accountability, may seek to obtain licenses to operate in the NT.

The Inquiry's all-encompassing recommendation that the "recommendations must be taken as a complete package" is pertinent to the design of the regulatory system to mitigate these risks to acceptable levels. The Final Implementation Report (2023) outlines how recommendations relating to these risks have been implemented noting that:

*“The Inquiry made 58 separate recommendations in relation to issues and risks generated by distrust in government and its ability to regulate the onshore petroleum industry”.<sup>31</sup>*

The implementation of these recommendations establishes a system whereby:

- the decision-making process is transparent
- the regulator is independent
- both the regulator and the industry are accountable
- laws make it clear to the gas industry what behaviour is acceptable and what is not
- the system enforces these laws, and
- the system counters the pressure the gas industry will bring to bear on governments to change the rules in favour of the industry.

Two reforms are central to bring the above into effect:

- transfer of responsibility for environmental regulation of the onshore petroleum industry to the Minister for the Environment, Parks and Water Security.
- enabling members of the community to hold both the government and industry to account.

To underline the importance of the first point, the Inquiry put it this way:

*“While those responsibilities reside in the one agency, there will exist the perception that decisions have not been made independently and that the entity has been subject to regulatory capture...It is the Panel’s view that this concern is justified and that the regulatory regime in the NT must be reformed to ensure that any onshore shale gas industry develops in accordance with community expectation”.<sup>32</sup>*

The Final Implementation Report (2023), documents how this transfer of ministerial responsibility for regulating the environmental impacts and risks associated with any onshore shale gas industry<sup>33</sup>, is supported by several

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<sup>31</sup> Final Implementation Report (2023) page 13.

<sup>32</sup> Inquiry’s [Final Report](#) page 437.

<sup>33</sup> Inquiry’s [Final Report](#) recommendation 14.34.

legislative changes including a new role for Environment Protection Agency - to provide advice to the Minister to inform the Minister's consideration of all Environmental Management Plans for all onshore-gas projects.

The second critical part of the new system, to counter "regulatory capture", is to enable members of the community to hold both the government and industry to account.

The Final Implementation Report (2023), documents how the Inquiry's recommendation that "open standing" be given to members of the public (i.e. third parties), to seek "judicial" review has been implemented and the recommendation that "merits review" be available to any person whose interests are affected by an administrative decision<sup>34</sup> has been implemented, albeit with more restrictive criteria<sup>35</sup>. To have "standing", persons who are indirectly affected by a decision must also have made a "genuine and valid" submission to the process leading to the Minister's decision. This means they must have identified themselves as an interested party before the decision they are challenging was made.

In addition to making these review processes available to persons whose interests are directly or indirectly affected, the opportunity for the members of the community to hold both the government and industry to account is reinforced by implementation of the Inquiry's other recommendations designed to counter "regulatory capture". This includes empowering members of the community to take effective action in the event of potential or actual breaches of legislation governing any onshore shale gas industry, and requiring public disclosure by government of critical information relating to decision making.

Changes that have been put into effect include:

- Civil enforcement proceedings may now be instituted in the Supreme Court to enforce potential or actual non-compliance with any legislation governing any onshore shale gas industry.

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<sup>34</sup> In keeping with findings of the Commonwealth Administrative Review Council.

<sup>35</sup> The way recommendation 14.24 has been implemented gives a statutory right (i.e. "standing") to persons "directly affected" by the administrative decision and also to the following third parties: Aboriginal Land Councils; Registered Native Title Prescribed Body Corporate and registered claimants under Native Title Act and persons who have made a genuine and valid objection during any assessment or approval process.



- The onus of proof has been reversed for plaintiffs relying on statutory defences to pollution and environmental harm offences for all onshore shale gas activities.
- Where litigation is brought genuinely in the public interest, costs rules have now been amended to allow NT courts to not make an order for the payment of costs against an unsuccessful public interest litigant.
- A mechanism has been established (including protection for whistle-blowers) to facilitate anonymous reporting and to investigate reported non-compliance within the onshore shale gas industry.
- Before land is released for any onshore shale gas exploration, the Minister must notify the public and allow any person to lodge an objection to the proposed grant. All objections received by the Minister must be published online and the Minister must, in determining whether to grant or refuse the application, consider any objection received.
- All draft Environmental Management Plans for hydraulic fracturing must be published in print and online and made available for public comment prior to Ministerial approval. The Minister must consider comments received during the public consultation period when assessing a draft EMP.
- All notices and reports of environmental incidents, including reports about reportable incidents under the Petroleum Environment Regulations, must be published immediately upon notification in print and online.
- All data informing the strategic regional environmental and baseline assessment (SREBA) will be held in a central repository and made accessible to the public.

## **5 Conclusion**

The community has experienced some of the effects of climate change and expects governments to act to reduce its main cause, the release of GHG into the atmosphere. This expectation has grown in the five years since the Inquiry's recommendations were accepted. The Inquiry found that the amount of GHG predicted to be emitted from the production and consumption of shale gas produced in the NT presents an unacceptable risk - unless mitigated. This issue has become a central issue of public concern because the Northern Territory and

Australian governments have not yet been able to ensure no net increase in the life-cycle GHG emissions emitted in Australia from any onshore shale gas produced in the NT.

The Inquiry considered that the lack of resilience of Aboriginal communities, in areas where the onshore gas industry proposes to expand, to be “a large determinant of the acceptability of any onshore shale gas development”<sup>36</sup>. The Inquiry recommended that to reduce risks to Aboriginal people and their culture a comprehensive assessment of the cultural impacts of any onshore shale gas industry be undertaken in order that, among other things:

*“Traditional Owners can give full consideration to the potential cultural impacts of any development when making a decision about whether or not to consent to an exploration proposal.”<sup>37</sup>*

The SCE Study (2022) is not the “comprehensive assessment of cultural impacts” recommended by the Inquiry and does not purport to mitigate risks to Aboriginal people and their culture identified by the Inquiry. However, the SCE Study (2022) confirms that these risks are substantially unaltered since the Inquiry’s Final Report and so remain at an unacceptable level.

The fundamental reforms required to implement the Inquiry’s recommendations have included major changes to legislation governing environmental protection, management of natural resources and, specifically, regulation of the petroleum industry. Importantly these changes to laws and regulatory standards give effect to the Inquiry’s recommendations that make it clear to the gas industry what behaviour is acceptable and what is not. The importance of maintaining the capability within government, to effectively regulate the gas industry, is outlined further in section 5.2 below.

The interdisciplinary “environmental baseline assessment” (SREBA) which now forms the most comprehensive body of knowledge assembled for any area of the Territory will inform critical decisions about the future of the onshore gas industry

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<sup>36</sup> Inquiry’s [Final Report](#) page 325.

<sup>37</sup> Inquiry’s [Final Report](#) page 293

and will shape policy on how the costs and benefits of any onshore gas industry in the Territory are distributed.

The SREBA will be the basis for an “area-based assessment” and will “provide the additional scientific knowledge and baseline information required before a final risk assessment can be made”.

### 5.1 Area-based assessment for the Beetaloo Sub-basin

The Inquiry recommended:

*“That prior to the granting of any further production approvals, the Government considers developing and implementing regional or area-based assessment for the regulation of any onshore shale gas industry in the NT.”<sup>38</sup>*

Further the Inquiry found that international experience showed that the only way to adequately manage the cumulative effects of any onshore shale gas development is at a regional scale using:

*“...area-based analysis in order to manage the environmental and cultural impacts of oil and gas development.”<sup>39</sup>*

The Inquiry anticipated the SREBA would “provide the additional scientific knowledge and baseline information required before a final risk assessment can be made”.

The Inquiry recommended that:

- The 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 recommended by the Panel.<sup>40</sup>

Under existing NT legislation there are two frameworks that could underpin an area-based assessment, as envisioned by the Inquiry. The NT Environment Protection Authority has a function to provide ‘strategic advice’ to the Minister,

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<sup>38</sup> Inquiry’s Final Report recommendation 14.22

<sup>39</sup> Inquiry’s Final Report – this is discussed in detail in Section 14.8.2

<sup>40</sup> Inquiry’s Final Report recommendation 15.3

which could encompass an area-based assessment. Since the Inquiry handed down its Final Report, the new Environment Protection Act (2019) includes provisions for a “strategic environmental assessment”. This provision is being used to assess the proposed industrial precinct on Middle Arm Peninsula.

As outlined in section 4.2, the SCE Study (2022) confirms that risks to Aboriginal people and their culture are substantially unaltered since the Inquiry’s Final Report and so remain at an unacceptable level.

The SCE Study (2022) supports the continuation of work with people in affected Aboriginal communities on the cultural impact assessment. Until the cultural impact assessment is completed, the Inquiry’s work, although inadequate, remains the most comprehensive assessment of the concerns of people in these communities about the prospect of the onshore gas industry on their country.

A regional assessment for the Beetaloo Sub-basin would be able to draw heavily on the knowledge already obtained through the SREBA and focus on areas specified for ongoing work, particularly completion of the cultural impact assessment required to inform critical decisions about the future of the onshore gas industry. Most of the additional information required for a regional assessment can only be obtained through direct engagement with traditional owners and other affected Aboriginal people. This will require trust to be re-established.

## 5.2 The importance of continuing to improve and maintain the capabilities developed during implementation

*“The completion of the implementation stage for the Inquiry’s recommendations also marks the beginning of ongoing risk management of the onshore petroleum industry as part of everyday activity and regulation”<sup>41</sup>*

The process of implementing the Inquiry’s recommendations has required some of the most fundamental reforms since Self-Government; spanning ministerial and public service accountability underpinned by major changes to the legislation governing environmental protection and the extractive resources industry.

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<sup>41</sup> The Final Implementation Report (2023) section titled: “Completion of Implementation is Not the End”.

This could not have been achieved without the dedication of staff across all the Agencies involved. The Implementation Plan could not have been realised without their skill and corporate knowledge. Consequently, the new systems that have been implemented rely on retaining corporate knowledge.

Reforms of even greater magnitude will be essential as governments and industry respond to the imperative to reduce GHG emissions to zero over the next 27 years.

A strategic review of the process of implementation, aimed at gathering insights and greater understanding of the critical issues arising from the process, would give the best chance of retaining capabilities developed through this project and improving the way major inter-agency projects are undertaken in the future.

The necessity for work on the social, cultural and economic part of the SREBA to be conducted by an independent group, outside the public service, revealed a capability gap in the NT public service. The critical work required to implement the Inquiry's recommendation for a comprehensive assessment of cultural impacts did not fit naturally with any NT Government Agency. There is no line-Agency with either the responsibility, and hence, the capability to field a team with the skills and experience needed to engage and build relationships with Aboriginal people in remote communities for the purpose of talking meaningfully with them about possible futures within a framework of traditional land management and maintenance of cultural traditions.

To ensure that the gas industry continues to operate in accordance with acceptable standards requires that the Government maintains both the capability and systems to enforce them. Fundamental to this will be a system to monitor and review how well laws are being complied with, and how well they are being enforced. This system will provide critical information for periodic reassessment of risks generated by the gas industry.

This will be a major task for leaders from the highest levels of government down. It requires an understanding that the gas industry will relentlessly exert its influence to change laws that increase their operating costs and, more generally, to shape the social and political environment in its favour.

Over the past five years I have received full cooperation and support from senior officers from across the accountable agencies. This report also reflects representations to me from traditional owners, land councils, non-government organisations, and the broader community who have an ongoing interest in this work.

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

10th March 2023