LOCK THE GATE ALLIANCE

AUSTRALIANS WORKING TOGETHER TO PROTECT OUR LAND, WATER, AND FUTURE

The Hon. Natasha Fyles
Chief Minister

By email: chief.minister@nt.gov.au and minister.fyles@nt.gov.au

18 November 2022

Re: Petroleum Legislation Amendment Bill

We are a group of community and environmental organisations active in the NT writing to raise several very serious concerns regarding the Petroleum Legislation Amendment Bill 2022 ('the Bill').

Materials accompanying the Bill upon its introduction to Parliament, including the Explanatory Memorandum and Minister Manison's Second Reading Speech, state that the Bill is designed to implement various recommendations made in the Final Report of the Scientific Inquiry into Hydraulic Fracturing in the Northern Territory ('the Pepper Inquiry').

However, while the Bill as currently drafted does contain some provisions relevant to Pepper Inquiry recommendations, it fails to fully implement a number of the listed recommendations and actually achieves the opposite effect of several others.

In particular, the Bill directly contradicts Pepper Inquiry concerns about 'exploration creep' by allowing the gas industry to use and/or sell methane obtained during 'appraisal' activities without needing to secure a production licence and without undertaking the negotiations with Traditional Owners and pastoralists required prior to such licences. Importantly, this proposal will also severely undermine the effectiveness of the only policy so far released by the NT Government to manage the climate impact of the onshore gas industry.

Our concerns are set out in further detail in the attachment to this letter. In summary, they relate to:

- The Bill's facilitation of **production by stealth** through provisions allowing the **potentially unlimited recovery of appraisal gas**, and the foreseeable adverse consequences of these provisions for the management of environmental impacts and greenhouse gas emissions from appraisal infrastructure and activities.
- The **broad secrecy provisions restricting the public release of critical environmental information**, including well completion reports and Well Operations Management Plans.
- The **failure to implement protections against adverse costs orders for civil enforcement provisions**, in contradiction to Pepper Inquiry recommendation 14.25.
- The apparent **exclusion of certain EMP approval decisions from third party merits review**, as well as production licence decisions, and the **failure to ensure NTCAT will have appropriate environmental and Native Title expertise** to hear review proceedings.

The anticipated declaration of Water Allocation Plans for the Beetaloo region by the end of the year will likely allow the gas industry to secure water required for fracking. Crucially, this means that if the beneficial use provisions in this Bill are passed, it will essentially be 'open season' for the gas industry to start producing large volumes of gas - without any production licences or negotiation processes, and without the additional protection provided by the water trigger under the *Environment Protection and Biodiversity Conservation Act* (not yet amended, as promised, to cover shale gas).

We understand that the Bill will be debated in Parliament imminently. We urge you to ensure that the Bill is amended to address these issues or that voting is withheld until these and other concerns are properly addressed.

In its present form, the Bill does not achieve the intended purpose of key Pepper Inquiry recommendations, and claims to the contrary are misleading to Territorians. Unless amended, this Bill will not lead to the effective and transparent regulation of the onshore gas industry.

Yours sincerely,

Dr Samantha Phelan, **Protect Big Rivers**

Terry Morgan, **Protect Country Alliance**

Kirsty Howey, Executive Director, **Environment Centre NT**

Karrina Nolan, Executive Director, **Original Power**

Hannah Ekin, Fracking Campaign Coordinator, **Arid Lands Environment Centre**

Carmel Flint, National Coordinator, **Lock the Gate Alliance**

PROTECT BIG RIVERS

PROTECT COUNTRY ALLIANCE

LOCK THE GATE

ORIGINAL POWER

Arid Lands Environment Centre

Environment Centre NT

protecting nature | living sustainably | creating a climate for change

Detailed concerns and queries in relation to the Petroleum Amendment Legislation Bill

➔ Unlimited recovery of appraisal gas

No limit on duration of approval or volume of gas. The Minister for Mining and Industry (as the Minister responsible for administering the *Petroleum Act 1984*) holds complete discretion to grant approval to a company to use or sell appraisal gas. There is no requirement in the Bill for the Minister to stipulate a maximum duration of the approval or volume of gas able to be used in this way, nor is there any upper limit on duration or volume in the Bill itself. The maximum term of an exploration permit under the *Petroleum Act 1984* (NT) ('the Act') is 5 years, and it can be renewed up to two times. A retention licence can continue indefinitely.

Potential to avoid production licence obligations. In these circumstances, it is plausible that a company could be approved to use/sell significant volumes of appraisal gas while holding a permit or retention licence for a substantial period - avoiding the regulatory and environmental obligations attaching to a production licence, including negotiation of production access agreements with landholders and Traditional Owners.

The Pepper Inquiry specifically flagged the potential for 'exploration creep', whereby 'the risks attendant with production could be realised if exploration is sufficiently intensive'.[1] Whether or not this was the intention of the NT Government in drafting the Bill, the provisions allowing the 'beneficial use' of appraisal gas - without any conditions on the Minister's decision to approve beneficial use, upper limit on the duration of the approval or volume of gas able to be used in this way - create a situation in which gas companies could avoid the regulatory requirements of a production licence indefinitely: exactly the situation the Pepper Inquiry warned against.

Unclear regulation of appraisal infrastructure. The definition of 'appraisal production infrastructure' is broad and vague, and there is no requirement for such infrastructure to be specifically assessed or approved. It is not clear what 'semi-permanent' means in this context, and it could reasonably be interpreted to include temporary workers' accommodation or equipment such as drilling rigs set up for a multi-year (but not 'permanent') work program. Such infrastructure can have significant environmental, health and social impacts and should be subject to close regulation.

Shift from 'scope 1' to 'scope 3' emissions and adverse consequences for the Large Emitters Policy. The Large Emitters Policy applies to onshore gas operations when the totality of an interest-holders' scope 1 greenhouse gas emissions exceed 100,000t CO_2-e in any one financial year. If a gas company is approved to recover petroleum on an appraisal basis under proposed section 57AAA(2) and proceeds to sell that gas, the bulk of GHG emissions from that operation would be classified as 'scope 3' (downstream) emissions rather than 'scope 1'. This would then exclude the program from the application of the Large Emitters Policy and, among other things, the obligation to prepare a Greenhouse Gas Abatement Plan, despite the fact that the emissions may still occur in the NT and thus contribute to the Territory's emissions inventory.

This could significantly undermine the effectiveness of the Large Emitters Policy in managing the climate impact of onshore gas and, in turn, the NT Government's ability to fulfil its commitment to avoid any net increase in lifecycle emissions from a new gas industry in the Territory.

[1] Final Report, p 414.

➔ Secrecy around critical environmental information

Well completion report confidential. The well completion report is a vital document for the monitoring of safety and environmental impacts in gas industry activities. We are highly concerned that the Bill mandates that well completion reports must remain confidential for a significant period following submission of the report (the likely period being 2 years), and does not require, but merely enables, the Minister to release the report at the end of this period. Well completion data is critical for the early identification of environmental issues such as leaks of methane and/or chemicals or irregular losses of drilling fluids or chemicals into aquifers.

Transparency around critical environmental data was a key concern raised by the NT community over the course of the Pepper Inquiry, and heavily informed the recommendations the Inquiry ultimately made. Well completion reports are a major source of such data, and should be available to the public in full as soon as possible post well completion, not kept secret for several years.

Potential for WOMPs to remain secret for long periods or indefinitely. The Well Operations Management Plan ('WOMP') sets out how the interest-holder will manage risks to well integrity over the course of its work programme. Standard practice by gas companies so far has been to leave considerable detail regarding well integrity matters to the WOMP, which is submitted to DITT rather than DEPWS, and is not exhibited publicly, rather than including this information in the (public) EMP.

New section 62A defines when, if ever, the Minister is permitted to release different classes of information. Section 62A presumably applies to WOMPs, as there are no other specific provisions regarding their release. WOMPs are unlikely to be considered 'basic' or 'interpretive' information (publishable after 2 or 4 years respectively), and instead could fall under the category of 'information outlining or comprising technical advice' or be prescribed in future. In the former scenario, the WOMP would never be publishable, and in the latter, the Minister could only release it after 5 years.

Broad prohibitions on release of information generally. The Bill forbids the Minister from releasing several broad categories of information, including information 'the disclosure of which would, or could reasonably be expected to, adversely affect the lawful business, commercial or financial affairs of a person', annual reports and 'technical advice'. New section 62A(7)(e) provides for the prescription of categories of prohibited information in future.

We are concerned that these provisions are excessively broad and vague, and could foreseeably shield from public scrutiny information which should properly be available. For example, data gathered during aquifer monitoring or biodiversity surveying, information indicating the effectiveness (or otherwise) of rehabilitation works, information about problems encountered in the course of gas extraction activities that have the potential to cause environmental harm but do not meet the threshold for 'reportable incidents' - all of this information should be within the public realm to ensure the accountability, safety and transparency of gas industry operations, but it could also be reasonably expected to adversely affect the 'commercial or financial affairs of a person'.

There is no valid reason for these provisions to be cast so broadly, and as drafted they fly directly in the face of the acknowledged need for transparency and accountability in gas industry regulation.

➔ No protection against costs orders in civil enforcement proceedings

Failure to protect against adverse costs orders. The Pepper Inquiry recommended that NT courts should be allowed 'to not make an order for the payment of costs against an unsuccessful public

interest litigant'. This recommendation is listed amongst those allegedly implemented through the Bill, and was mentioned by Minister Manison in her Second Reading Speech.

However, the Bill in fact achieves the opposite outcome from that intended by the Inquiry. Under new section 117ABJ, in a civil enforcement application made by any interested person other than the Minister or CEO, the Supreme Court may order the applicant to pay the costs of the respondent. Far from protecting genuinely concerned members of the community from the adverse outcomes of public interest litigation, the Bill expressly enables the Court to award costs against such applicants - in fact, it is only the Minister or the Department CEO who is protected by the provisions.

Claims that this Bill implements rec. 14.25 of the Pepper Inquiry appear to be simply untrue.

➔ Potentially unworkable merits review provisions

Unclear provisions around reviewability of EMP approval decisions. The relevant Pepper Inquiry recommendation states that third party merits review should be made available in relation to 'decisions under the *Petroleum Act* and Petroleum Environment Regulations including, but not limited to, decisions made in relation to the granting of all EMPs'.[2] Minister Manison has claimed that 'all decisions made to approve or refuse an EMP' will be subject to review.[3]

This is not reflected in the actual terms of the Bill. New Schedule 2 to the Petroleum (Environment) Regulations 2016 in fact provides that only the interest-holder who submitted the EMP for approval is able to seek merits review of a 'decision of the Minister to approve an EMP subject to conditions' (standing is broader for decisions to approve EMPs without conditions).

In practice, conditions are almost always applied to EMPs. If this drafting is retained, it is unclear how any third party would ever be able to seek merits review of an EMP approval decision, clearly undermining the intent of the Pepper Inquiry recommendation. **We seek clarity on how these provisions are supposed to work as a matter of urgency.**

[2] Final Report, rec 14.24, p 421.
[3] NT Parliament Daily Hansard (Draft) - Wednesday 12 October 2022 - Meeting No 59, p 14.