

The Senate

Oil and gas exploration and production in the Beetaloo Basin

Public Hearing – 28 July 2021

8.35am – 9.05am

1. Intro

Thank you for the opportunity to appear at this hearing.

KH: My name is Kirsty Howey, and I am Co-Director of the Environment Centre of the Northern Territory, the NT's peak environmental body.

TN: My name is Dr Tim Neale, and I am a Senior Research Fellow, ARC Discovery Early Career Research Fellow, and convenor of Deakin University's Science and Society Network.

2. Intro

KH: The development of an onshore unconventional shale gas industry utilising horizontal hydraulic fracturing techniques ("fracking") is perhaps the most polarising environmental issue in the Northern Territory today.

This brief opening statement will focus primarily on the Northern Territory and Federal Government's progress towards implementation of the 135 recommendations of the Scientific Inquiry into Hydraulic Fracturing chaired by Justice Rachel Pepper, which was the condition upon which the Northern Territory Labor Government lifted its moratorium on fracking in early 2018.

Three years after the Pepper Inquiry's recommendations, less than 50% of the Pepper Inquiry's recommendations have been implemented. Our key contention is that there is very little prospect of these recommendations being implemented. If they cannot be implemented, then the industry should not proceed.

3. Concerns re Pepper Inquiry recommendations

We wish to briefly outline 4 key failures or likely failures to implement the Pepper Inquiry, two of which require Federal Government cooperation:

- (a) First, in relation to carbon emissions generated by the Beetaloo, the Pepper Inquiry identified that life cycle emissions from a new onshore gas field would contribute between 4.5 and 6.6% of Australia's total greenhouse gas emissions, an unacceptable risk.

Recommendation 9.8 of the Pepper Inquiry thus recommended that the NT and federal governments "seek to ensure that there is no net increase in greenhouse gas emissions emitted in Australia from any onshore shale gas produced in the NT". Since the Pepper Inquiry, freedom of information documents have been released which suggest that the Commonwealth's own environment department holds the view that emissions from the Beetaloo may be difficult to offset, would impact Australia's ability to meet its Paris Agreement commitments, and could be more than four times larger than the Inquiry's estimate.

In the Northern Territory, climate change is projected to have very extreme impacts which will be felt disproportionately by Indigenous peoples and communities, and will exacerbate existing inequalities in housing, health, infrastructure and employment. The NT's own Environment Minister acknowledged recently that the NT may become uninhabitable for humans if global emissions continue on current trajectories.

Given this dire forecast, it is imperative that people the Northern Territory understand how the requirement to offset emissions from the Beetaloo will be implemented, and indeed whether it is possible. It is very concerning that there is still no publicly disclosed plan to offset life cycle greenhouse gas emissions. In October 2020, Minister Angus Taylor visited the Beetaloo Basin and announced that negotiations were underway for a bilateral emissions reduction agreement with the Northern Territory, although we have not been able to obtain any details of this negotiation, including through freedom of information requests.

The Northern Territory Government has itself committed to net zero emissions by 2050, but an early draft of its proposed "Larger Emitters Policy", aimed at forcing developers with large greenhouse gas emissions to take responsibility for their emissions would not require gas companies in the Beetaloo to offset their emissions.

Given the potentially catastrophic impacts of climate change in the Northern Territory, it is in the public interest for the public to know how the NT Government and Federal Government propose to offset the life cycle emissions of the onshore gas industry in the NT.

- (b) The second recommendation we wish to draw the Inquiry's attention to is the failure of the Commonwealth Government to expand the "water trigger" in the Environment Protection and Biodiversity Conservation Act to shale gas as recommended by the Pepper Inquiry. Despite amendments to the EPBC Act recently being introduced to Parliament by the Federal Government, this recommendation remains unimplemented.
- (c) Third, the Pepper Inquiry recognised the importance of community oversight of the implementation of its recommendations to perform the essential task of holding the government to account. It recommended the establishment of a community and business reference group to perform this task. However, after only 2 years of operation, the reference group was disbanded in December 2020. With over 50% of the Pepper Inquiry recommendations remaining outstanding, there is currently no transparent community and stakeholder mechanism to hold the government and gas industry to account with respect to the implementation of the majority of the recommendations.
- (d) Lastly, we wish to highlight serious deficiencies in the baselines studies which were mandated by the Pepper Inquiry due to the significant knowledge gaps in the evidence base to understand the impacts of fracking. These studies underpin 30 of the 135 recommendations. Firstly, we don't think that these studies can accurately be described as pre-development baseline studies given that exploration – including the drilling of a number of wells - has been continuing unabated. Second, the Pepper Inquiry outlined that the baseline study data acquisition, interpretation and reporting stages be conducted over a 3 to 5 year period. However, due to significant delays, the studies have only recently commenced, and will be completed within an 18 month period only. Finally,

recommendation 9.4 of the Pepper Inquiry recommended that the SREBA be funded by the gas industry. However, now we understand that Territory taxpayers are funding the SREBA on a promise to be reimbursed at a later date if the industry ever reaches production.

We refer to our submission for a more fulsome explanation of these and other failures to implement the Pepper Inquiry recommendations. We reiterate that the fracking industry's social licence – if it indeed exists – is dependent on full implementation of all 135 recommendations. If they cannot be implemented – and we do not believe they can or will be – the industry should not proceed.

4. Fiscal vulnerability of the NT Government

We believe that Federal funding of the gas industry (including through the Instrument the subject of this Inquiry) and the Northern Territory Government, may increase the risk that the Pepper Inquiry recommendations will not be implemented as these arrangements are explicitly intended to accelerate the onshore gas industry's move to production.

We note that the head of legislative power under which the Fracking Instrument is authorised is s122 of the Australian Constitution, which permits the Commonwealth to make laws for territories and override NT laws.

The Northern Territory Government is in an extremely challenging position fiscally and is more dependent on other jurisdictions on federal funding. In combination with the constitutional matter identified previously, this creates a significant power imbalance between the Federal and NT Governments.

It is within this context that the Federal Government's funding injections to industry and the Northern Territory Government must be examined. For example, in relation to the \$50million committed under the Fracking Instrument, it was stated that the program "will support gas operators to speed up exploration and development of the Beetaloo Basin." On 7 July, Minister Pitt announced that Imperial Oil would receive \$21 million to drill 3 new exploration wells under this program. Press releases do not explicitly mention the implementation of the Pepper Inquiry recommendations, nor give any indication of when or how key recommendations for which the Federal Government has responsibility will be implemented. We note that the environmental management plans for Imperial's proposed fracking wells have not been approved, and ECNT (together with the Arid Lands Environment Centre and Protection Country Alliance) have written to the NTEPA asking for it to be called in for assessment under the Environment Protection Act. The announcement of this funding would seem to pre-empt these approvals and raise serious questions about the pressure being placed on the Northern Territory Government to speed up the entrenchment of the industry.

5. Divisible governance and conclusion

TN: We wish to conclude by referring to our recent research conducted into the regulation of hydraulic fracturing in the Northern Territory.

As noted in our submission, we have recently conducted a pilot study examining the Pepper Inquiry and the implementation of its recommendations, a study that included conducting

10 semi-structured interviews with anonymous professionals engaged in various roles in the NT fracking industry and its regulation, including industry consultants, lawyer and government regulators. These professionals were approached on the basis that they each had significant experience in this context and we are very grateful for their participation. We developed this study on the basis of our respective previous projects examining issues of land and resource management in the Northern Territory, recognising, as social scientists, that one only gets a partial view of how decisions are made in any regulatory environment by looking at its regulations and paperwork in isolation. In conducting this research, we asked our interviewees to focus on what they saw as the strengths and weaknesses of the current regulatory approaches to fracking in the Northern Territory, and the challenges to sustaining these strengths and amending these weaknesses. Our interviews pointed us to many weaknesses and some strengths. The strengths, where they existed, largely related to regulatory recommendations outlined in the Pepper Inquiry.

Subsequently, the information from this study, including its legal and historical analysis of the development of the NT fracking industry, has been drafted into an article currently under review. The central argument of the article is that the NT fracking industry is subject to “divisible governance,” where its regulation is weakened by its fragmentation across different agencies and processes in ways that ensure that fracking is slowly entrenched. As we have outlined in our submission, the roles of different regulatory agencies and documents are unclear, recommendations from the Pepper Inquiry are variously unmet and compromised, and key documents and agreements are rendered secret or simply unavailable. Offsets are deferred from a pre-development concern to a requirement at some unknown future time. Baseline studies are abbreviated and deferred to a future time after land clearing and exploratory wells have already been drilled. Our research suggests that industry insiders view it as inevitable that the Beetaloo basin will be developed, as industry proponents and supporters use divisible governance to avoid or undermine regulatory rules and thereby sustain ignorance on the part of the public about both the impacts of fracking and its faltering regulation.

Thank you.