



7 July 2021

To

Senate Committee on Environment and Communications References
Inquiry on Oil and Gas Exploration and Production in the Beetaloo Basin

By Email

ec.sen@aph.gov.au

To whom it may concern,

Submission to the Senate Inquiry into Oil and Gas Exploration and Production in the Beetaloo Basin

Thank you for the opportunity to provide a submission to the Senate Committee on Environment and Communications References' Inquiry into Oil and Gas Exploration and Production in the Beetaloo Basin (**Senate Inquiry**).

This joint submission is made by the Environment Centre of the Northern Territory (**ECNT**), and Dr Timothy Neale of Deakin University.

ECNT is the peak community sector environment organisation in the Northern Territory, raising awareness amongst community, government, business and industry about environmental issues and assisting people to reduce their environmental impact and supporting community members to participate in decision making processes and action. ECNT has a close relationship with the subject matter of the Inquiry, primarily via its close engagement with the Scientific Inquiry into Hydraulic Fracturing in the Northern Territory chaired by Justice Rachel Pepper (**Pepper Inquiry**) and history of making policy and law reform submissions on the implementation of the Pepper Inquiry recommendations, and submissions (including objections) in relation to individual onshore gas exploration proposals. ECNT conducts this work as a peak body in the Northern Territory, in the public interest.

Dr Timothy Neale is a Senior Research Fellow, ARC Discovery Early Career Research Fellow, and convenor of Deakin University's Science and Society Network. Together with Dr Kirsty Howey (Co-Director of ECNT, and Associate Research Fellow at Deakin University), he has recently conducted a research project entitled "Environmental risk in the Northern Territory: challenges and opportunity for regulation", which explores the social, political and technical challenges for robust regulation of the onshore hydraulic fracturing industry in the Northern Territory.

1. Context

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.

Due to the concerns held by NT residents about the impacts of fracking, including many Traditional Owners and residents of Indigenous communities, the NT Labor Government imposed a moratorium on fracking upon its election in 2016, and convened the Pepper Inquiry to investigate its impacts. The Pepper Inquiry released its final report in March 2018. The Pepper Inquiry found that if *all* of its 135 recommendations to mitigate the risks of fracking were implemented, “not only should the risks associated with the onshore shale gas industry be minimised to an acceptable level, in some instances, they can be avoided altogether”.¹ In April 2018, the moratorium was lifted by the NT Labor Government on the basis that every recommendation would be wholly implemented.

Nonetheless, as stated by the Pepper Inquiry, the “overwhelming consensus” of a significant majority of those participating in the Inquiry was that the industry “is not safe, is not trusted and is not wanted”.² Many residents of the NT remain opposed to the development of an onshore fracking industry due to its local environmental impacts, and growing awareness of its catastrophic climate risks (see further below).

Any claimed social licence for fracking in the Northern Territory is thus fragile and, lacking further independent research, likely poorly founded. In particular, the implementation of *all* of the Pepper Inquiry recommendations is crucial for both the gas industry’s social licence to operate, and the Northern Territory and Federal Governments’ social licence to regulate.

2. Executive Summary

This submission focuses primarily on the Northern Territory and Federal Government’s progress towards implementation of the Pepper Inquiry recommendations since the moratorium was lifted, including the impact that Commonwealth funding of the gas industry may have on this process via arrangements such as the *Industry Research and Development (Beetaloo Cooperative Drilling Program) Instrument 2021 (Fracking Instrument)*. Currently, only 50% of the Pepper Inquiry recommendations have been implemented, with increasing pressure by industry, the NT Government, and the Federal Government to move to production as quickly as possible and by the end of 2022.

We submit that:

- (a) many of the key recommendations of the Pepper Inquiry are unlikely to be implemented, or cannot be implemented, before onshore gas production is likely to commence, including those recommendations which require Federal Government cooperation. Relatedly, there is a troubling lack of transparency as to how some Pepper Inquiry recommendations will be implemented;
- (b) Federal Government funding of both the gas industry (including through the Fracking Instrument) and the Northern Territory Government (for gas-related infrastructure) may increase the risk that the Pepper Inquiry recommendations will not be implemented in full;
- (c) any arrangements between the Federal Government and both the gas industry and the Northern Territory Government require close scrutiny by this Senate Inquiry, including by ensuring the production and examination of the following:
 - a. documents relating to the preparation of the Fracking Instrument;

¹ The Scientific Inquiry into Hydraulic Fracturing in the Northern Territory (2018), Final Report, p 6.

² The Scientific Inquiry into Hydraulic Fracturing in the Northern Territory (2018), Final Report, p 6.



- b. documents relating to the draft emissions reduction agreement between the Federal Government and the Northern Territory Government referred to in this press release from Minister Taylor on 16 October 2020:
<https://www.minister.industry.gov.au/ministers/taylor/media-releases/beetaloo-basin-key-element-gas-fired-recovery>;
- c. documents relating to the memorandum of understanding dated 15 November 2018 between the Australian and Northern Territory governments that will “help realise existing offshore gas reserves and the potential of the Beetaloo Sub-Basin as a new world-class gas province” - the relevant press release was previously available at:
<https://www.minister.industry.gov.au/ministers/canavan/media-releases/harnessing-potential-northern-territorys-gas-industry>;
- d. any correspondence between the Federal Government and the Northern Territory Government regarding funding for the gas industry in the Northern Territory, including with respect to proposed gas infrastructure in the Beetaloo Basin, Darwin Harbour, or any offshore gasfields;
- e. any correspondence between the Federal Government and the gas industry regarding funding for the gas industry in the Northern Territory, including with respect to proposed gas infrastructure in the Beetaloo Basin, Darwin Harbour, or any offshore gas fields.

We note that, while the Federal Government is providing funding through the Fracking Instrument directly to gas companies to stimulate further gas exploration in the Beetaloo, the Federal Government has not indicated how those of the Pepper Inquiry recommendations for which it is responsible will be implemented.

If the Pepper Inquiry recommendations are not implemented, this will undermine any remaining public and stakeholder confidence that fracking will be conducted safely and in a manner which protects the environment and meets community expectations. This would irreparably damage both the gas industry’s social licence to operate and the Northern Territory and Federal Governments’ social licence to regulate.

3. Failure to implement key Pepper Inquiry recommendations

We note that ECNT, together with the Arid Lands Environment Centre, wrote to NT Minister Eva Lawler on 27 May 2021 raising some of the following concerns that key recommendations of the Pepper Inquiry will not be implemented. ECNT has not yet received a response to this letter.

(a) Offsetting of life cycle greenhouse gas emissions and the impacts of climate change in the Northern Territory

Climate change is projected to have significant impacts in the NT as early as 2030, and extreme impacts by 2070, including more severe cyclones, increased droughts, changed fire regimes, more erratic rainfall and extreme temperatures. By 2090, the NT’s capital, Darwin, will likely experience more than 300 days per year of temperatures over 35 degrees Celsius,³ creating an extreme heat stress hazard. The NT’s experience of climate change impacts is already startling. Its three principal ecosystems, the savannas and coastal mangroves of the tropics in the “Top End”, and the arid zone interior of Central

³ Webb, Leanne. and Hennessy, K.J. 2015. *Climate change in Australia: projections for selected Australian cities*. Australia: CSIRO and Bureau of Meteorology.

Australia, have been classified by some scientists as “collapsing”.⁴ Climate change will exacerbate existing entrenched inequalities in housing, health, infrastructure and employment, with impacts felt disproportionately by Indigenous people and lands in northern Australia.⁵ The NT’s own Environment Minister, Eva Lawler, acknowledged recently that the territory may become uninhabitable for humans if global emissions continue on current trajectories.⁶

The Pepper Inquiry identified that life cycle greenhouse gas emissions from a new onshore gas field across a range of production scenarios would contribute between 4.5 and 6.6% of Australia’s total greenhouse gas emissions. This risk was deemed “unacceptable”. To mitigate this risk the Pepper Inquiry 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” (Recommendation 9.8).⁷ The Inquiry did not provide answers about how this could be achieved, but accepted that it would not be possible to achieve this locally, suggesting initiatives in other parts of Australia such as the development of carbon capture and storage technologies and increased deployment of renewable energy.

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 estimation.⁸

It is very concerning that there is still no publicly-disclosed plan to offset life cycle greenhouse gas emissions as required by Recommendation 9.8. An NT Government website indicates that implementation of this recommendation is “25% complete”, with discussions with the Commonwealth Government “ongoing” and a “Gas Industry Social and Environmental Research Alliance (GISERA) project investigating options” for offsetting these emissions.⁹ 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 the Minister’s media release did not indicate whether this agreement was to be the instrument by which Beetaloo emissions were to be offset.¹⁰ Repeated attempts made by Kirsty Howey under freedom of information legislation to obtain documentation relating to these negotiations (including drafts of the agreement) have been refused, for reasons including that disclosure was deemed too onerous and not in the public interest due to its potential damage to Commonwealth-state relations.

We note that the NT Government has itself committed to net zero carbon emissions by 2050. In early 2021, the NT Government released (for targeted consultation only) a draft “Large Emitters Policy”¹¹ aimed at forcing developers with large greenhouse gas emissions to take responsibility for their emissions. However, despite the draft policy being mentioned on the progress webpage for Recommendation 9.8 of the Pepper Inquiry, it is our view that the draft policy (if it remains as is) would not require gas companies to offset their emissions and no fracking activities would fall within its

⁴ Bergstrom, Dana M., Barbara C. Wienecke, John van den Hoff, Lesley Hughes, David B. Lindenmayer, Tracy D. Ainsworth, Christopher M. Baker, et al. 2021. “Combating ecosystem collapse from the tropics to the Antarctic.” *Global change biology* 27(9):1692-1703.

⁵ Green, Donna, Sue Jackson, and Joe Morrison. 2009. *Risks from climate change to indigenous communities in the tropical north of Australia*. Department of Climate Change, Commonwealth of Australia.

⁶ Roberts, Greg. September 19, 2019. “NT targets zero emissions without costings”. *The Canberra Times* (online). <https://www.canberratimes.com.au/story/6396279/nt-targets-zero-emission-without-costings/>

⁷ The Scientific Inquiry into Hydraulic Fracturing in the Northern Territory (2018), Final Report, p239.

⁸ <https://www.abc.net.au/news/2020-02-29/beetaloo-basin-gas-field-could-jeopardise-paris-targets/12002164>

⁹ <https://hydraulicfracturing.nt.gov.au/action-items/9.8>

¹⁰ <https://www.minister.industry.gov.au/ministers/taylor/media-releases/beetaloo-basin-key-element-gas-fired-recovery>

¹¹ Full title “Greenhouse Gas Emissions Management for New and Expanding Large Emitters Policy”.



purview (see ECNT's submission on the draft policy **attached** as Attachment 2).¹² The weakness of this (as-yet-still-draft) policy casts into serious doubt the ability of the Northern Territory to reach its non-binding target of net zero carbon emissions by 2050.

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. This issue requires scrutiny by the Senate Inquiry. We recommend that any negotiations to date about offsetting these emissions (including through the emissions reduction agreement) be disclosed as part of this Senate Inquiry.

In particular, it is important for the Senate Inquiry to investigate whether the NT Government and Federal Government are planning to sidestep the requirement to offset lifecycle emissions from onshore gas through encouraging the development of petrochemical manufacturing capacity at Middle Arm Peninsula in Darwin Harbour that could use fracked gas as a feedstock. It is likely that using gas to create plastics and other petrochemical products would merely delay the release of greenhouse gases rather than stop them altogether¹³ – plastics need to be viewed as “solid climate change”.¹⁴ The NT Government is the prime proponent of the petrochemical plans for Middle Arm Peninsula – the project is being master-minded by the NT Government-owned Land Development Corporation¹⁵ and the idea of developing manufacturing capacity using onshore and offshore gas as a feedstock has been promoted by the Territory Economic Reconstruction Commission (co-chaired by industrialist Andrew Liveris)¹⁶ – but similar to fracking the Beetaloo, Commonwealth funding for this project could make this project proceed when it otherwise would not.

(b) Failure to expand the “water trigger” in the Environment Protection and Biodiversity Conservation Act 1999 to shale gas

Water-related risks were the central concern raised by the community and in submissions to the Pepper Inquiry.¹⁷ Groundwater in particular is critically important to the Northern Territory, with 90% of water for human purposes (including drinking water) drawn from aquifers, a much higher proportion than any other Australian jurisdiction. Any impact on potable water, whether in terms of quality (via contamination) or quantity (via extraction and drawdown) was, during the Pepper Inquiry, universally seen as unacceptable. If anything, these concerns have been amplified since the Pepper Inquiry. In 2018-19 and 2019-20 the Northern Territory suffered through two of its hottest and driest wet seasons on record, with aquifers running close to dry in some areas. A number of remote Indigenous communities have experienced water contamination, or water supply, problems with increasing frequency in recent years. These impacts are likely to be exacerbated as temperatures rise and rainfall patterns become more erratic. The Pepper Inquiry noted, in this context, that evapotranspiration (water use by vegetation) will increase by 2050 as a consequence of climate change, although the magnitude of the change is unclear. It also noted that “the implications of climate change for groundwater processes and recharge rates are ... unclear at this stage”.¹⁸ Onshore gas exploration and production involves the extraction of large quantities of groundwater from already stressed,

¹²https://www.ecnt.org.au/climate_policy#:~:text=The%20Large%20Emitters%20Policy%20requires,the%20new%20Environment%20Protection%20Act

¹³ See the Plastic and Climate report from the Centre for International Environmental Law: <https://www.ciel.org/wp-content/uploads/2019/05/Plastic-and-Climate-FINAL-2019.pdf>

¹⁴ <https://theconversation.com/fossil-fuel-industry-sees-the-future-in-hard-to-recycle-plastic-123631>

¹⁵ <https://landdevcorp.com.au/project/middle-arm-industrial-precinct/>

¹⁶ See for instance pp 15, 46 and 57 of the Territory Economic Reconstruction Commission's Final Report.

¹⁷ The Scientific Inquiry into Hydraulic Fracturing in the Northern Territory (2018), Final Report, p102.

¹⁸ The Scientific Inquiry into Hydraulic Fracturing in the Northern Territory (2018), Final Report, p103.



interconnected systems, which are likely to come under more pressure with the impacts of climate change.

A core recommendation of the Pepper Inquiry (Recommendation 7.3) to mitigate against the risk to water resources posed by fracking (apart from the SREBA discussed below) was to amend the water trigger in the *Environment Protection and Biodiversity Conservation Act 1999* to include shale gas, requiring fracking proponents to obtain an approval under that Act if their proposed activities would have a significant impact on a water resource.¹⁹ This amendment would ensure appropriate assessment of cumulative impacts of fracking on water resources. Yet this key recommendation remains unimplemented, despite amendments to the *Environment Protection and Biodiversity Conservation Act 1999* being recently introduced to Parliament by the Federal Government. We note that the recommendations in the Pepper Inquiry cannot be fully implemented, and risks posed by fracking acceptably mitigated, unless this amendment is made.

(c) Diminished community and stakeholder engagement, input and scrutiny

Due to sustained advocacy and engagement by many stakeholders, including environmental organisations, the Pepper Inquiry recognised the importance of community and stakeholder oversight of the implementation of its recommendations, including to perform the essential task of “hold[ing] the Government to account in relation to the implementation of the [Pepper Inquiry’s] recommendations”.²⁰ To ensure appropriate community and stakeholder oversight, the Pepper Inquiry recommended that a community and business reference group be established “to provide feedback to Government on the development of an implementation framework, and its subsequent execution” (Recommendation 16.4). The function of this group was to “assist in establishing trust and confidence in the Government and in the gas industry and facilitate in obtaining a [social licence to operate]”.²¹

The *Onshore Shale Gas Community Business Reference Group (CBRG)*, established in 2018 to perform these vital functions, was disbanded in December 2020. As at today’s date (according to the Northern Territory Government’s website), only 46% of the Pepper Inquiry recommendations have been fully implemented.²² This means that there is 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.

The last quarterly report from the Independent Officer tasked with providing independent oversight of the implementation of the Pepper Inquiry recommendations was provided over six months ago, and was only 4 pages in length. It is **attached** (labelled Attachment 3).²³

A “Beetaloo Regional Reference Group” has been established to oversee the strategic regional environmental baseline assessment (**SREBA**), but unlike the CBRG (whose membership included the Arid Lands Environment Centre and the Environmental Defenders Office) contains no peak Northern Territory environmental organisations, who were the key impetus behind many of the recommendations of the Pepper Inquiry. Moreover, this new group does not appear to have oversight of the implementation of the Pepper Inquiry recommendations as a whole, but only of the SREBA.

This is a serious erosion of the commitment made to implement Recommendation 16.4 of the Pepper Inquiry. The removal of this important oversight body is already adversely impacting the industry’s social licence to operate and the Northern Territory Government’s social licence to regulate.

¹⁹ See s24D of the EPBC Act for the current wording relating to coal seam gas development and large coal mining development.

²⁰ The Scientific Inquiry into Hydraulic Fracturing in the Northern Territory (2018), Final Report, p458.

²¹ The Scientific Inquiry into Hydraulic Fracturing in the Northern Territory (2018), Final Report, p458.

²² <https://hydraulicfracturing.nt.gov.au/home>

²³ https://hydraulicfracturing.nt.gov.au/__data/assets/pdf_file/0006/956049/dr-ritchie-update-oct-2020.pdf



(d) Failure to achieve regulatory separation of the onshore gas industry

The issue of regulatory capture was a core concern of the Pepper Inquiry, with the Inquiry asserting that an independent, transparent and well-resourced regulator was the cornerstone of its recommendations. The Panel noted the “widely and strongly held view in the community that DPIR [now the Department of Industry, Tourism and Trade, or DITT] is not independent of industry”.²⁴ In particular, the Inquiry noted the perception of the community that it was not appropriate for a government department with responsibility for promotion of the gas industry, also to be responsible for its environmental regulation. Accordingly, the Pepper Inquiry recommended that all regulatory responsibility for fracking be transferred from DITT to the NT Environment Minister and the Department of Parks, Environment and Water Security (or DEPWS) for day-to-day regulation. In particular, the Pepper Inquiry states in its final report:

...[t]o ensure that environmental decisions are being made independently from the promotion of any onshore gas industry, the Panel proposes that the regulation of the industry be the responsibility of an entity that does not also have responsibility for promoting that industry.²⁵

However, DITT appears to have retained some significant regulatory responsibility for fracking. For example, we note that the “Draft EMP Content Guideline” recently put out for consultation states that “the Code [of Practice for Petroleum Activities in the Northern Territory] is jointly administered by DEPWS and the Minister for the Environment and the Department of Industry, Tourism and Trade and the Minister for Resources” (emphasis added).²⁶ Specifically, DITT appears to have retained approval power over well operation management plans (**WOMPs**) which are required by the Code. WOMPS are a core document which govern key environmental issues such as well integrity and as such should clearly be approved by the NT Minister for the Environment or DEPWS. While environmental management plans (**EMPs**) are publicly available and the public is able to comment on them, the public has no access to WOMPS, undermining another key commitment of the Northern Territory Government to transparency in government decision-making with respect to fracking.

This is a fundamental breach of the spirit and intent of the Pepper Inquiry’s report and its final recommendations.

(e) Compromised Strategic Regional Environmental Baseline Assessment (SREBA)

A strategic, integrated, and transparently-governed strategic and regional environmental baseline assessment (**SREBA**) is a central plank of the Pepper Inquiry’s proposal to remedy the public’s concerns about the onshore gas industry, and to understand and mitigate its impacts. The SREBA directly underpins 30 of the 135 recommendations made by the Pepper Inquiry to reduce the risks associated with the industry to an acceptable level, for the industry to gain a social licence to operate, and the Northern Territory Government to obtain a social licence to regulate.²⁷

We believe that the SREBA cannot accurately be described as a “pre-development baseline” study. Prior to the Pepper Inquiry (up until the moratorium was declared by the Labor Government in 2016), exploration permits had been granted across a significant proportion of the NT, with a number of wells drilled (and in some cases fractured) in the Beetaloo Sub-basin, and over half a billion dollars invested

²⁴ The Scientific Inquiry into Hydraulic Fracturing in the Northern Territory (2018), Final Report, p430.

²⁵ The Scientific Inquiry into Hydraulic Fracturing in the Northern Territory (2018), Final Report, p 430 - see also recommendation 14.34.

²⁶ Draft EMP Content Guideline for Onshore Petroleum Regulated Activities, p9: <https://haveyoursay.nt.gov.au/draft-emp-onshore-petroleum/widgets/337774/documents>.

²⁷ The Scientific Inquiry into Hydraulic Fracturing in the Northern Territory (2018), Final Report - Recommendations 7.5, 7.8a, 7.16, 7.19, 7.20, 8.1, 8.6, 9.1, 9.2, 9.6, 9.7, 11.8, 12.1, 12.2, 12.3, 12.4, 12.5, 12.6, 12.7, 12.8, 12.11, 12.12, 12.13, 12.16, 12.17, 12.20, 14.22, 15.1, 15.2, 15.3.



in exploration since 2010.²⁸ Since the moratorium was lifted in April 2018, approximately 20 environmental management plans (EMPs) permitting exploration activities in the McArthur Basin and Beetaloo Sub-Basin have been approved. Many of these explicitly permit drilling and/or hydraulic fracturing. These activities are occurring without the baseline environmental and social data identified by the Pepper Inquiry as lacking, and in the absence of any public environmental impact assessment conducted under Northern Territory or Commonwealth environmental assessment legislation. Thus, the onshore gas industry is already entrenched, and indeed is currently engaging in activities with the potential for environmental and social harm. This has the potential to undermine the SREBA, including by “shifting” the baseline in material ways so that the true impacts of the industry remain obscure. In our view, in order to minimise this risk, all exploration activities should cease until the SREBA is completed.

The Pepper Inquiry outlined that the SREBA data acquisition, interpretation and reporting stages be conducted over a 3 to 5 year period.²⁹ The Draft SREBA Framework (2019) put out for public consultation suggested that the SREBA would be conducted over a three year period. However, we now understand that the SREBA will be completed over a period of 18 months only, concluding in December 2022. Moreover, there has been no public consultation since February 2020 about this decision nor about the SREBA as a whole, including regarding the content of the scopes of works that will underpin the studies. The decision to truncate the timeframe for the SREBA is unacceptable and will seriously diminish the legitimacy of both the SREBA and the regulatory regime.

Relatedly, Recommendation 9.4 of the Pepper Inquiry requires that the SREBA be funded by the gas industry. However we understand that the Northern Territory Government (and thus Territory taxpayers) is paying for the SREBA, on a promise that the gas industry will “reimburse” this amount if and when the onshore gas industry ever reaches the production stage. We believe that the integrity and rigour of the SREBA may be adversely affected by the desire of the Northern Territory Government to recoup these costs as quickly as possible. Alternatively, there is a real possibility that this money will never be recouped (if the gas industry never reaches production), meaning that the public will unacceptably be burdened with this significant cost.

The SREBA is essential for public confidence in the gas industry and the Northern Territory Government, and the ability of government and the wider public to monitor and mitigate its impacts. The consequences of poor or contestable baseline studies are serious, as has been highlighted time and time again by researchers, activists and community members. Kinchy writes how, in the Marcellus Shale region of the USA, industry actors have strategically deployed “contentious” baselines to deflect accusations that their activities are causing environmental impacts, and avoid accountability for these impacts.³⁰

We are of the view that a SREBA conducted over the course of 18 months, instead of the recommended 3-5 years, will not satisfy the requirements set out by the Pepper Inquiry, or the expectations of the Northern Territory public. Further, we recommend that an independent steering committee be established to oversee the SREBA, and that the Northern Territory Government seek to ensure that the SREBA is funded up-front by the gas industry, as per the Pepper Inquiry recommendations.

²⁸ The Scientific Inquiry into Hydraulic Fracturing in the Northern Territory (2018), Final Report, p 93.

²⁹ The Scientific Inquiry into Hydraulic Fracturing in the Northern Territory (2018), Final Report, p451.

³⁰ A. Kinchy, “Contentious baselining: The politics of pre-drilling environmental measures in shale gas territory”, *Nature and Space*, 2019.



4. Federal government funding may increase the risk of Pepper Inquiry recommendations not being implemented.

We believe that Federal Government funding of the gas industry (including through the Fracking Instrument) and the Northern Territory Government (including through other arrangements, such as Commonwealth investment in gas-related infrastructure in the Northern Territory), may increase the risk that the Pepper Inquiry recommendations will not be implemented in full as these funding arrangements are explicitly intended to accelerate the onshore gas industry's move to production.

We note, in this regard, 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 Australian territories and to override Northern Territory laws. This is the same head of constitutional power that enabled the 2007 Federal Intervention into the Northern Territory Indigenous communities. It is possible that the Fracking Instrument could only be enacted in the Northern Territory (or other territories of the Commonwealth) due to its subordinate status as a territory rather than a state.

Relatedly, the Northern Territory Government is in an extremely challenging position fiscally and is more dependent than other jurisdictions in Australia on Commonwealth funding. The Northern Territory's structural deficit is due in part to unprecedented reductions in the NT's largest revenue source (GST) in 2018. The Northern Territory Government's deficit was \$2.45 billion as at November 2020, and is projected to increase to \$16 billion by 2029-30.³¹ In combination with the constitutional matter raised in the preceding paragraph, this creates a significant power imbalance between the Federal and Northern Territory Governments, and reduces the autonomy and leverage the Northern Territory might have in comparison with other jurisdictions in Australia.

In addition (and possibly as a consequence of the Northern Territory's fiscal position), cuts have been made to the key agencies tasked with regulating the fracking industry in the latest Northern Territory budget, and specifically from the Northern Territory Environment Protection Authority and the Environment Management and Policy agency within the Department of the Environment, Parks and Water Security. The Productivity Commission's recent report on regulation in the resources sector has described the under-funding of resources regulators by governments as a major risk, both to the environment and industry. The shale gas industry is unique in its regulatory complexity, and it is possible that these budget cuts may impede the regulator's ability to appropriately manage the impacts of fracking.

It is within this context that recent and proposed Federal Government funding injections both to industry and the Northern Territory Government, designed specifically to accelerate gas exploration and development of the Beetaloo Basin and associated infrastructure, must be examined. We note:

- In relation to the \$50 million committed under the Fracking Instrument, Minister Pitt and Senator McMahon stated that the program "will support gas operators to speed up exploration and development of the Beetaloo Basin": <https://www.minister.industry.gov.au/ministers/pitt/media-releases/new-grants-unlock-beetaloo-basin-potential>
- In relation to the \$217 million "Gas Industry Roads Upgrades Program", Minister Pitt, Deputy Prime Minister Michael McCormack, Minister Scott Buchholz, Senator McMahon and Northern Territory Minister Eva Lawler stated that the "Coalition Government is taking further steps to fast track the economic benefits of the Beetaloo Basin": <https://www.minister.industry.gov.au/ministers/pitt/media-releases/roads-investment-open-major-gas-project-northern-territory>

³¹ <https://www.abc.net.au/news/2020-11-10/nt-budget-2020-michael-gunner-delivers-budget/12866616>



- In relation to the Beetaloo Basin Strategic Basin Plan, Minister Angus Taylor and Minister Pitt said that this plan included the “\$8.4 million already committed by the Federal Government to accelerate the development of the Beetaloo”:
<https://www.minister.industry.gov.au/ministers/taylor/media-releases/beetaloo-basin-key-element-gas-fired-recovery>.
- Also in relation to the Beetaloo Cooperative Drilling Program (to be funded through the Fracking Instrument), Minister Keith Pitt reiterated in his press release today announcing that Imperial Oil and Gas will receive \$21 million to drill three new exploration wells that the aim of this program is “to help accelerate development of gas projects in the Northern Territory...”:
<https://www.minister.industry.gov.au/ministers/pitt/media-releases/grants-help-speed-beetaloo-drilling-program>.

None of these press releases explicitly mentions the implementation of the Pepper Inquiry recommendations, nor gives any indication of when or how key recommendations for which the Federal Government has responsibility will be implemented (including the shale gas trigger and the offsetting of life cycle greenhouse gas emissions discussed above). Furthermore, Minister Pitt’s announcement today pre-empts the decision of the NT Minister for Environment and Natural Resources in relation to the EMP that Imperial Oil and Gas has submitted for approval, as well as pre-empting the decision of the Northern Territory Environment Protection Authority as to whether this EMP should be called in for assessment under the *Environment Protection Act 2019 (NT)*. The letter from ECNT, Arid Lands Environment Centre, and Protect Country Alliance to the NTEPA asking for the EMP to be called in (dated 18 June 2021) and the reply from the NT Department of Environment, Parks and Water Security (dated 25 June 2021) are **attached** (labelled respectively as Attachments 4 and 5)

We reiterate that no details have been released about the emissions reduction agreement currently being negotiated between the Federal Government and the Northern Territory Government, including what funding may flow to the Northern Territory Government or directly to gas companies. Nor has the memorandum of understanding between the Australian and Northern Territory Governments dated 15 November 2018 to “harness the potential of the Northern Territory’s gas industry” been released publicly. It is clearly in the public interest that these details should be released, and details of the nature of the relationship between the Commonwealth and the Northern Territory Governments should be disclosed.

We are particularly concerned that the emissions reductions agreement under negotiation could include funding for gas-related projects, as has occurred in other jurisdictions. We recommend that the Senate Inquiry investigate whether the Federal Government is planning to provide any funding to support offshore gas projects serviced from the Northern Territory, such as the Barossa field, or gas-based manufacturing infrastructure such as the petrochemical manufacturing precinct at Middle Arm Peninsula. In the context of the commitment under article 2(1)(a) of the Paris Agreement to pursue efforts to keep global warming to 1.5°C above pre-industrial levels and the modelling from the International Energy Agency this year that found that there can be no new fossil fuel projects if we are to reach net-zero emissions by 2050 and keep to the 1.5°C degree limit,³² no public funding should be going towards gas extraction and the gas-based industrial projects that provide the continued justification for further gas extraction.

5. Fracking regulation’s fundamental flaw: divisible governance

████████████████████ Dr Howey and Dr Neale have recently completed an article that is currently under peer review. This article is based on their legal and historical analysis of the development of the NT fracking industry, including detailed analysis of the Pepper Inquiry and the

³² <https://www.iea.org/reports/net-zero-by-2050>



implementation of its recommendations. The article also draws upon interviews with 10 anonymous professionals with significant experience in various roles in the NT fracking industry and its regulation, including industry consultants, lawyer and government regulators.

[REDACTED]
[REDACTED]
[REDACTED] As we have shown in this 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 the development of the Beetaloo Basin as inevitable, 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.

6. Conclusion

The Northern Territory is already a hub for the gas industry, with its connections to a number of offshore gas fields. We are very concerned that the NT and Federal Governments are seeking to entrench the gas industry further through support for drilling in the Beetaloo, and potentially through support for gas-based manufacturing infrastructure in Middle Arm in Darwin Harbour that could process both onshore and offshore gas. Once built, that manufacturing infrastructure would serve as justification for the continued exploitation of existing and new gas fields, just as the existence of the Santos-operated Darwin LNG plant is justifying the development of the highly-polluting Barossa field³³ to replace supply from the Bayu-Undan field that is near the end of its productive life. We are also concerned that petrochemical developments at Middle Arm could limit the space available there for other possibilities, potentially pushing renewable energy projects like SunCable to a greenfields site, with the attendant environmental destruction involved in clearing and developing a new site.

The entrenchment of the gas industry in the Northern Territory through fracking and gas-based manufacturing would increase the Northern Territory's and Australia's emissions at a time when it is imperative that emissions fall rapidly. It is difficult to see how it would be possible for Australia to meet its emissions reductions commitments under the Paris Agreement if these projects were to go ahead. There is increasing recognition of the drastic changes needed to address the climate crisis – even the conservative International Energy Agency has recommended that there be no new fossil fuel projects if we are to keep to the 1.5°C target under the Paris Agreement.³⁴

It is utterly baffling that the Federal Government and NT Governments are choosing to give hand outs to an industry whose social license is rapidly diminishing, if not gone altogether, in light of the climate crisis. It is not for lack of alternatives. ECNT partnered with Beyond Zero Emissions in 2019 to produce a research report – The 10 GW Vision³⁵ – which sets out how the Northern Territory could become a renewable energy superpower. If the Federal Government wanted to support a sustainable economic future for the

³³ Robert, John. March 2021. *Should Santos' Proposed Barossa Gas 'Backfill' for the Darwin LNG Facility Proceed to Development? Barossa Has More CO2 Than Any Gas Currently Made Into LNG, Making Market Access Difficult*. Institute for Energy Economics and Financial Analysis. http://ieefa.org/wp-content/uploads/2021/03/Should-Santos-Proposed-Barossa-Gas-Backfill-for-the-Darwin-LNG-Facility-Proceed-to-Development_March-2021.pdf

³⁴ <https://www.iea.org/reports/net-zero-by-2050>

³⁵ <https://www.ecnt.org.au/10gwvision>



Territory, and Australia, its \$50 million would be much better spent on initiatives like the feasibility study recommended by the Territory Economic Reconstruction Commission in its first report:³⁶

To help understand the economics and opportunities of the renewable sector, the Commission recommends the Territory and Australian governments jointly undertake a study into an electricity highway based on high voltage direct current (HVDC) transmission links between Darwin and Alice Springs. The scope of this study should consider the potential for a design that enables multiple projects that both supply and make use of renewable electricity up and down the spine of the Northern Territory, potentially supporting the creation of renewable energy zones. The study should also assess the potential for a link from the Territory to the National Electricity Grid to facilitate the connection of large-scale renewables generation that would supply east coast power demand.

As we have argued in this submission, [REDACTED], it is very problematic that the entities who are responsible for regulating the fracking industry are the same entities who are choosing to facilitate and to fund the development of this environmentally catastrophic industry: the Federal Government gave an unfortunately excellent example of this problem today when Minister Pitt announced funding for Imperial Oil and Gas through the Fracking Instrument without any mention of how the remaining recommendations of the Pepper Inquiry are to be met nor any acknowledgement that Imperial Oil's plans have not yet received the requisite environmental scrutiny from the Northern Territory Government.

We submit that the role of all levels and arms of government in Australia should be to safeguard Australia's environment for current and future generations, in line with its international commitments, most particularly under the Paris Agreement. We recommend that the Senate Inquiry scrutinise very closely the actions of the various state entities involved in this industry and choose to stop public investment that exacerbates the climate crisis (a prime example being the Fracking Instrument) and instead encourage investment in a sustainable future.

Yours faithfully,

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³⁶ Territory Economic Reconstruction Commission – First Report, p6.
https://ntrebound.nt.gov.au/__data/assets/pdf_file/0007/908314/terc-first-report.pdf

