

SUBMISSION NO. 6
Environment Protection
Biodiversity Conservation



THE HON KON VATSKALIS MLA
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The Hon Dick Adams MP
Committee Chair
Standing Committee on Agriculture,
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PO Box 6021
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Dear Minister

Thank you for your letter of offer of 13 October 2011 to provide a submission regarding the Environment Protection and Biodiversity Conservation Amendment (Mining, Petroleum and Water Resources) Bill 2011, and note that this Bill was referred to the Standing Committee on Agriculture, Resources, Fisheries and Forestry which is particularly interested in:

- the environmental regulation of mining operations in the Northern Territory (mining being minerals and hydrocarbons)
- recent policy developments in the Territory
- planned future developments in the Territory
- the practicalities of implementing such a Bill were it to pass into law.

These issues, which also address landholder and community concerns, have been addressed below for your consideration.

1. The environmental regulation of mining operations in the Northern Territory (mining being minerals and hydrocarbons)

Environmental Impact Assessment of Mining and Petroleum Developments

The *Environmental Assessment Act* (EA Act) and Administrative Procedures establish environmental impact assessment requirements and processes in the Northern Territory. The EA Act is administered by the Department of Natural Resources, Environment, The Arts and Sport (NRETAS) on behalf of the Minister for Natural Resources, Environment and Heritage.

The EA Act and Administrative Procedures establish the framework for the assessment of potential or anticipated environmental impacts of development. The object of the EA Act is to ensure that matters with the potential to significantly affect the environment are fully examined and taken into account in decisions.

The Administrative Procedures require a responsible Minister (the Minister with regulatory authority to approve a specific development proposal, in the case of mining activities, the Minister for Primary Industry, Fisheries and Resources) to notify the Minister for Natural Resources, Environment and Heritage of a proposed action. This notification is considered to determine whether a formal assessment under the EA Act is required, and if so, if assessment should be at the level of Public Environment Report (PER) or Environmental Impact Statement (EIS). The scale and complexity of a proposed development and the significance of potential impacts will determine the level of assessment. Assessment at both the PER and EIS levels provide for public comment on a proposal.

In addition to assessing the potential impacts, the assessment process also evaluates the effectiveness of the proposed safeguards to mitigate these impacts and recommends actions to ensure the construction and operational phases of a project can be managed in an environmentally sound manner.

To facilitate the assessment of mining and petroleum proposals, NRETAS and the Department of Resources (DoR) have in place a Memorandum of Understanding (MoU) on Environmental Assessment Processes. The MoU establishes guidelines for the referral of mining, energy and geothermal projects to NRETAS for consideration under the EA Act. Under the MoU, all petroleum development proposals and energy or geothermal projects (including exploration) where total disturbance exceeds 10 hectares must be referred to NRETAS. Where such proposals have the potential to significantly impact the environment, they will require assessment.

The environmental impact assessment process concludes with the provision of an assessment report from the Minister for Natural Resources, Environment and Heritage to the responsible Minister. Assessment reports summarise the findings of the assessment and provide recommendations to the responsible Minister regarding approval conditions to which the proposed action should be subject.

Under the *Mining Management Act*, the Minister for Primary Industry, Fisheries and Resources must have regard to the outcomes of any assessment of the mining activities undertaken under the EA Act when exercising a power or performing a function under the Act (e.g. the granting of a mining authorisation). The *Petroleum Act* (PA) does not contain a similar requirement, although it does provide for the Minister to consider any matters s/he considers relevant in granting exploration permit approvals.

The Northern Territory Government and the Australian Government have a bilateral agreement on the management of the environmental assessment of a proposal that requires assessment under both the EA Act and the *Environment Protection and Biodiversity Conservation Act* (EPBC Act). Under the bilateral agreement, the assessment undertaken by the Northern Territory is taken to fulfil the requirements of the EPBC Act for assessment purposes, with the Australian Government Minister retaining approval powers for projects determined to be controlled actions under the EPBC Act. For some projects, assessment is undertaken jointly by both governments.

Mining Regulation

All operational mining activities in the Northern Territory are regulated by DoR under the *Mining Management Act* (MMA). This includes mineral exploration, extraction of sand, gravel and rock, and the mining and processing of minerals.

The MMA requires all activities that involve ground-disturbance to have an Authorisation, in advance. A condition of the Authorisation is that operations are required to submit an annual mining management plan for approval, and a rehabilitation security that covers 100% of the cost for remediation of the site. The mining management plan must identify all potential environmental impacts of the operation and how these are to be mitigated. This includes impacts on surface and ground water. All operations that may potentially contaminate or adversely impact on water resources are required to undertake regular monitoring and reporting. DoR also maintains an Environmental Monitoring Unit that independently tests and check monitors company ground and surface water monitoring activities for sites that may have significant impacts on water resources. In addition, where a mine proposes to release water that contains contaminant from the mining tenement, it is required to obtain a Waste Discharge Licence under the *Water Act*. These licences are administered by NRETAS and operators are required to report regularly on the quantity and quality of water released.

Where significant environmental impact is proposed, such as commencement of a new mining operation or a major expansion, the proposal is submitted for assessment under the EA Act.

Petroleum Regulation

DoR is also responsible for the administration of petroleum activities.

The legislative regime consists of the PA, associated regulations plus the Schedule of Onshore Petroleum Exploration and Production Requirements 2011. The schedule is linked to the grant documents and activity approvals processes under sections 27, 40 and 54 of the PA for Exploration Permits, Retention Licences and Production Licences respectively.

The PA is specific in that for any activity to explore for or produce hydrocarbons, the explorer or producer must be licensed and receive approvals from the Northern Territory Minister (delegated to the Director of Energy in DoR) to conduct any technical work programs in relation to the exploration permit or licence area. All activities must be in accordance with good oil field practices and the approved work program.

Specific to this submission, the Schedule of Onshore Petroleum Exploration and Productions Requirements 2011 addresses water management and monitoring.

The Act has specific requirements (objective based) under Part III "General provisions relating to exploration permits and licences", Division 1 "Rights and Duties of Permittee or Licensee section, (S58) that require all environmental issues likely to be encountered during petroleum activities to be addressed.

2. Recent policy developments in the Northern Territory

Environmental Assessment Act

In 2009 the EA Act was reviewed by the Northern Territory Environment Protection Authority. In response to this review, the Territory Government has committed to reforming the EA Act. While approval to draft amendments to the EA Act is yet to be obtained, the amendments are intended to provide the following:

- integrating environmental assessment into a framework that promotes ecologically sustainable development
- greater clarity around the objectives of environmental assessment
- greater clarity and objectivity around the types of proposals requiring environmental assessment
- capacity for the direction of strategic environmental assessments as an environmental planning tool
- greater transparency around decision making, including requirements on decision makers at all points of the process to publish a public statement of reasons
- entrenching and improving public participation and engagement in the assessment process and "the right to know"
- increased enforceability of environmental assessment requirements and outcomes
- periodic review of the assessment process.

An amendment Bill is expected to be considered in the Northern Territory Legislative Assembly in 2012. Reform of the EA Act is being undertaken in consideration of reforms to the EPBC Act.

Petroleum Act

The Northern Territory is currently undertaking a review of the PA and related regulations to provide confidence that its legislative framework is adequate to ensure emerging technologies are able to be regulated appropriately in light of interstate and international experience. This review is primarily aimed at the regulation of well integrity and appropriate horizontal hydraulic fracturing processes (including the chemical composition of frack fluid) in relation to protection of underground aquifers, and the management of waste water.

The current review into onshore petroleum regulation will also consider the skills base required to adequately assess, approve and regulate onshore activity and to further consider aligning regulations to be consistent with Western Australia.

Mining Management Act Amendments

The *Mining Management Act* has recently been amended by the Territory Government to require mineral mining operations to publicly report their environmental performance annually. This includes impacts on surface water and ground water.

3. Planned future developments in the Northern Territory

Findings from the current review of the PA will be assessed and amendments made to ensure best practice is met.

The Northern Territory is also seeking clarity of tenure for the exploration and development of Territory coal resources – including the gas-from-coal technologies of Coal Seam Methane and Underground Coal Gasification; and a mechanism to resolve potential tenure conflict between coal mining and gas-from-coal production.

4. The practicalities of implementing such a Bill were it to pass into law

The Territory Government submits that there are adequate safeguards in place to identify, monitor and protect water resources from potentially unacceptable impacts from mining and petroleum activities. Current processes of regulatory review and reform being conducted by the Territory Government are expected to identify, and respond appropriately to, any areas where these safeguards can be strengthened.

The proposed Environment Protection and Biodiversity Conservation Amendment (Mining, Petroleum and Water Resources) Bill 2011 would:

- duplicate existing environmental assessment and regulatory processes

- extend approval times for industry and be counterproductive for all stakeholders
- be inconsistent with the Productivity Commission agenda item to reduce the regulatory burden on industry
- under section 3, capture many activities in the Northern Territory that would not be subject to the same provisions in the States. The Territory argues that this would be inequitable and is also unnecessary in view of the comprehensive statutory systems that are already in place and being further enhanced.

It is further noted that the definition of "mining" does not include geothermal activities. As the exploration and final production of geothermal energy is not dissimilar to petroleum exploration and production, it is questionable as to why geothermal has not been considered in the draft Bill. The Territory Government introduced geothermal energy legislation in 2009 which was drafted with consideration to other jurisdictional experiences and feel confident that this legislation combined with the *Water Act*, is contemporary and adequately legislates for all environmental concerns, including water resources.

Yours sincerely

KON VATSKALIS

23 DEC 2011