



Environmental Defenders Office

18 January 2022

Carmel Flint
Lock the Gate Alliance

By email ONLY to: carmelflint@tpg.com.au

Dear Carmel,

Summary of Implementation of Pepper Report Recommendations

This letter provides an overview of the Northern Territory (NT) Government's implementation to date of recommendations made by the Scientific Inquiry into Hydraulic Fracturing (**Pepper Inquiry**).

I Lack of progress on implementation

The Pepper Inquiry made 135 recommendations, which must be implemented before any further hydraulic fracturing takes place in the NT. The NT Government has split the recommendations into 138 'implementation actions'. As at 27 October 2021, it is our view that **only 38 of these implementation actions have been fully implemented** by the NT Government, per the attached table provided by Earthjustice.

Of the 138 implementation actions:

- a) 74 have **not** been implemented, according to the NT Government's own reporting;
- b) 64 have been marked as completed by the NT Government.

However, of these implementation actions:

- i. 15 have **not** been properly implemented; and
- ii. 11 have been partially completed or have issues with implementation.

II Critical recommendations not implemented

Concerningly, three of the most crucial recommendations made by the Pepper Inquiry have not been implemented according to the NT Government's own reporting.

9.8 Emissions Offsets: Neither the NT Government nor the Australian Government have implemented requirements nor taken steps to ensure that there is no net increase in the life cycle greenhouse gas (**GHG**) emissions emitted in Australia from any onshore shale gas produced in the NT. Recommendation 9.8 is critical to ensure the Australian Government upholds its commitments under the Paris Agreement to reduce GHG emissions to 26-28% below 2005 levels by 2030. GHG emissions from any new onshore shale gas fields in the NT present an unacceptable risk to climate change that must be mitigated.

14.24 Merits Appeal Rights: The NT Government has failed to enact merits review rights of third parties to appeal decisions regarding Environmental Management Plans (**EMPs**) for fracking

activities prior to any production activities commencing. It is important that this recommendation is implemented to allow the community to raise concerns regarding the objective merits of hydraulic fracking projects in the NT (weighing the benefits against the potential impacts and risks) before an independent and impartial decision-maker.

15.1 SREBA: The NT Government has failed to implement the requirement that a strategic regional environmental and baseline assessment (**SREBA**) be undertaken prior to the granting of any production approvals. Carrying out such assessments will be a starting point for ensuring that satisfactory environmental outcomes are achieved by addressing the potential for cumulative impacts across broad regions prior to any production approvals being granted.

III Issues with implementation

Earthjustice, a non-profit public interest environmental law organisation based in the United States, has provided the EDO with a review of the 64 recommendations which the NT Government claims to have implemented in full. In Earthjustice's view, 15 recommendations have not been properly implemented. 11 recommendations appear to be partially complete or have minor issues with implementation. 36 recommendations are stated to have been adequately addressed.

A brief overview of Earthjustice's analysis is provided below:

Recommendations **5.3**, **7.18**, and **9.5** relate specifically to the Code of Practice developed by the NT Government.¹

5.3 Code of Practice; 7.18 Mitigation of the Impacts of Onshore Shale Gas Infrastructure; 9.5 Publication of Monitoring in Real Time:

Earthjustice believes the Code of Practice is inadequate for several reasons, including:

- c) **5.3** does not contain a requirement that there be four verified well barriers (this is the minimum Category 9 standard).
- d) **5.3** does not contain a requirement that the results of well integrity testing programs and remedial actions be published as soon as they are available.
- e) **5.3** includes several well integrity 'requirements' identified as 'preferred' when they should be identified as 'mandatory' (in keeping with the spirit of the Inquiry's recommendations).
- f) **7.18** does not include a basin-wide planning study that assesses and plans for landscape scale development to avoid unforeseen consequences of piecemeal infrastructure additions.
- g) **9.5** does not explicitly require the results to be made available "in real time" and are insufficient to address the recommendation that all monitoring results be made publicly available.

7.9 Reinjection of Wastewater: Amendments to the *Water Act 1992* (NT) (**Water Act**) do not adequately address the recommendation for the following reasons:

- a) It is unclear whether or not the *Water Act* bans injection of waste into conventional reservoirs (as per the Inquiry's recommendation).
- b) The *Water Act* should contain a more direct ban on reinjection of all wastewater (treated and untreated) into aquifers and conventional reservoirs.

¹ Northern Territory Government, 'The Code of Practice: Onshore Petroleum Activities in the Northern Territory' (Report, 31 May 2019)
<https://depws.nt.gov.au/__data/assets/pdf_file/0011/705890/code-of-practice-onshore-petroleum-activity-nt.pdf> ('Code of Practice').

- c) The *Water Act* does not require full scientific investigation to determine that all risks are mitigated.

7.10 Reporting on Hydraulic Fracturing Fluids: This recommendation has largely been implemented, with some omissions. Namely, the NT Government has not implemented the part of the recommendation stating that information about flowback and produced water must be reported and publicly disclosed online as soon as it becomes available.

9.6 Emissions Detection and Management: The processes gas companies must undertake if emission concentration limits are exceeded were identified to be overly lenient.

11.3 Protection of Sub-Surface Features of Sacred Sites: It was determined by the Aboriginal Areas Protection Authority that no amendments were required. Therefore, the recommendation has been intentionally omitted from implementation. It is not clear how the concerns from recommendation 11.3 will be addressed if it is not implemented.

11.4 Native Title Holders: Earthjustice identified that providing notification to native title holders as required under the *Petroleum Act 1984* (NSW) would not necessarily ensure native title claimants have a clear understanding of the potential future exploration activity.

14.6 Statutory Land Access Agreement: The *Petroleum Regulations 2020* (NT) which detail the requirements of statutory land access agreements did not adequately address this recommendation due to the omission of pastoral leases and the failure to state that a breach of the access agreement is a breach of the explorations or production approval.

14.26 Compliance and Monitoring Strategy: The government's Compliance and Monitoring Strategy does not achieve certainty and transparency because the strategy has few specifics beyond promising a monitoring program from the Department of Energy and Natural Resources in the future.

14.34 Clear Separation of Responsibility: Decisions over Well Operations Management Plans (**WOMP**) continue to reside with the Department of Industry, Tourism and Trade (**DITT**). The DITT's control over WOMPs means the NT Government has not implemented the recommendation appropriately. The approval process should be entirely the responsibility of the Department of Environment, Parks and Water Security (**DEPWS**), who are responsible for approving EMPs.

Yours sincerely

Environmental Defenders Office



Sarah Shin

Solicitor - Safe Climate (Gas & Corporate Law)

Ph: +61 8 8981 5883

E: sarah.shin@edo.org.au