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23 Feb 2018

Hon. Justice R. Pepper
Chair
Hydraulic Fracturing Inquiry
GPO Box 4396
Darwin NT 0801

Dear Justice Pepper

The following attachment is NARMCO's third submission to the Scientific Inquiry into Hydraulic Fracturing in the NT.

Should you or any panel member have any queries regarding this submission I can be contacted by email at [REDACTED] or by phone at [REDACTED]

Regards

A handwritten signature in blue ink, appearing to read "Teresa Cummings", is placed on a light yellow rectangular background.

Teresa Cummings
Corporate Manager
NARMCO

2nd Submission to the Scientific Inquiry into Hydraulic Fracturing in the NT.

In response to the Draft final report, the following view are offered.

Recommendation 14.7

That the Government consider implementing a mandatory minimum compensation scheme payable to Pastoral Lessees for all onshore shale gas production on their Pastoral Lease. Compensation should be by reference to the number of wells drilled on the Pastoral Lease and the area of land cleared and rendered unavailable to the Pastoral Lessee.

In terms of Recommendations 14.7 it is reasonable to be compensated at a fair commercial rate for direct impact on a Pastoral operation.

In terms of expediting Land Access Agreements, there is merit in having a minimum and maximum range of compensation parameters for the infrastructure and operational impacts. Both Pastoralist and Gas Companies can commence their negotiations within these parameters. Having thresholds reduces incidences of either party having extreme, potentially untenable positions at the commencement of Land Access negotiations.

For Pastoralists who are not skilled or knowledgeable in compensation negotiations it gives them some guidance and protection against a more skilled gas company. Should a Pastoralist attempt to gouge a gas company either for unreasonable personal gain or to delay developments, then the upper threshold would limit their capacity to do either.

Recommendation 14.8

That the Government consider whether a royalty payment scheme should be implemented to compensate Pastoral Lessees for all new petroleum fields brought into production.

It is not acceptable that Pastoralist be compensated by a Royalty of any form. There are a number of reasons why this would be a bad policy decision and would create detrimental, unintended consequences.

The reasons include but not limited to:

- 1.** Pastoralist lease the land, they don't own it.
- 2.** They sign a lease knowing that the Territory retains the rights to minerals.
- 3.** Land Access Agreements are intended to compensate for minimal impact. No justification to compensate additionally with royalties.
- 4.** Precedent set for Pastoralist to demand compensated for all other activities that can legally occur within their lease.
- 5.** NT Govt and its citizens need the royalty revenue far more critically than any pastoralist, including the 26% of international owners and the large % of National companies who own pastoral leases in the NT.

1 Pastoralists lease the land they don't own it.

It is not commonly understood across the NT that NT Pastoralists don't own the land. Rather Pastoralists lease the land, which ultimately belongs to the Crown, and in doing so they pay a rental payment to the NT Govt for this land. Many people are surprised when they learn the land is leased and ultimately owned by the Crown. In general discussion we have been having with people who are unaware the land is lease, once people begin to

understand the land is leased, they form firm views that Pastoralist should not gain a royalty from land they only lease.

There are 224 pastoral leases. The NT Govt only collects \$5m per annum from these leases. That's an average of \$22k per year per lease. Pastoralist do not incur a significant or huge rental impost for their leases. In terms of operational expenditure, the lease payment amount to a minor expense.

There is no justification for trying to create a parity with Aboriginal Land Trusts or freehold land. The land tenures are significantly different as are the benefits of each tenure.

2 Pastoralists sign a lease fully aware that the Territory retains the rights to minerals.

When Pastoralists enter into Pastoral Lease agreement, they are very aware that they have no legal tenure to the minerals or timber resources.

The NT Pastoral Land Act section 38 clause (b) and (n) spells this out. *38 Conditions of pastoral leases 38 (b) states that a reservation of all minerals in or on the leased land will remain with the Territory. And similarly 38 (k) states that it is a condition that there is a reservation of all timber.*

So when a Pastoralists obtains a pastoral lease, they know up front that those resources are not theirs.

We are not aware of any legal basis for giving a Pastoral leaseholder a gas royalty entitlement. Nor am I aware of any reasons to justify this recommendation, that is in the interest of Territorians, or the Crown.

Despite Pastoralists have requested or demanded they get a gas royalty, there is no justification for recommending a royalty be given, particularly when Land Use Agreements are in place.

3 Land Access Agreements allow adequate compensate for disturbance.

Land Access Agreement, negotiated between a Gas company and a Pastoralist, provides the Pastoralist with an opportunity to be adequately compensated for direct operational and capital impacts. The compensation should be related on

As mentioned in the Recommendation 14.7, there is merit in providing some parameters around the upper and lower thresholds of compensation so as to create some equity around the compensation and to reduce the likelihood of a Pastoralist being undercompensated. A compensation formula should provide for less compensation to be paid where disturbance is occurring in areas of un/under developed land.

The gas footprint is very minimal overall. Typically the footprint is 2km² pads in exploration, which occurs over a short period and 200m² pad in production. For many pastoral properties the areas around each watering point that is degraded to the point that it is no longer grass producing, can cover an area larger than a well pad in production.

In the draft final report there is mention that in a gale sized development scenario will use .03% of Pastoral Land. That is minor impact and does not warrant a royalty payment in addition to Land Access Agreements to compensate.

NTCA has indicated that approx. 45-50% of Pastoral Land in the Barkly region is undeveloped. Similar levels apply across the NT. So there is plenty of room for both industries to co-exist without Pastoralists needing a royalty payment for disruption.

4 Precedent set for Pastoralist to demand compensated for all other activities that can legally occur within the Pastoral Lease.

When Pastoralists enter into Pastoral Lease agreement, they are very aware that a number of groups of people can access a Pastoral Lease. The NT Pastoral Land Act spells this out. The Act indicates that

- the Minister and or his appointees have 38(a) *a reservation of a right of entry and inspection;*
- Native Title holders have a right of access as subsection 38(n) *is a reservation in favour of the Aboriginal inhabitants of the Territory;*
- Section 79 indicates that the general public has a right of Access to waterways that are (a) *perennial natural water (including the sea) on or surrounded by pastoral land;* or (b) *land within the prescribed distance of those waters.*
- Section 81 indicates that the general public has a right of access to features of public interest that have been Gazetted by the Minister.
- Section 84 indicates that the general public or businesses, having been licenced by the Minister, may enter the nominated pastoral lease and to take from the land:
 - (a) *live or dead naturally grown timber or wood;*
 - (b) *stone, shell, sand, gravel, clay, or earth, not being or supposed to be metalliferous;*
 - (c) *salt;*
 - (d) *seaweed;*
 - (e) *bark; or*
 - (f) *any other substance or article, reserved to, or otherwise the property of, the Territory.*
- In addition people and businesses approved for mining activity and timber harvesting have access to the land.

To recommend a royalty entitlement to Pastoralists who only lease their land, will have far reaching negative implications well into the future.

If Pastoralists were to be given an entitlement to receive a gas royalty, it creates a precedent for Pastoralists to develop the belief that they must be compensated for all other activities that can legally occur within their lease, eg timber harvesting, extractive gravels. Similarly Pastoralists could demand a royalty or significant compensation from the general public or Native Title holders who have a right to access a Pastoral Lease for specific purposes.

Some of the businesses that can legally access a Pastoral Lease are quite small operations; Indigenous people collecting timber for didgeridoo making, small sand quarriers, gem fossickers and the like. Any royalty impost could make these operations unviable.

Investment funds for hard ore mining can be difficult to secure. Even more so for green field developments. If a pastoral lease royalty were also imposed on mining companies in addition to royalty paid to the NT Govt, it would have real potential to make projects unviable and create another barrier to investment attraction.

5 NT Govt and its citizens need the royalty revenue far more critically than any Pastoralists.

As is widely known, the NT economy does not produce sufficient revenue to fund the basic needs of Territorians. The NT has a high portion of Indigenous people who are considered disadvantaged and in need of considerable additional financial support. Our public infrastructure is under developed. Many indicators of a flourishing, sustainable society have yet to be realised in the NT. More recent reductions in GST revenue has exacerbated this situation.

As an ultimate Welfare State it is critical that the NT receive every dollar of royalty revenue it can from an onshore Natural Gas industry.

Of the 224 pastoral leases, approx 26% of Pastoral Lease holders are international companies. An estimated 40-50% are national companies or family holdings based interstate. So the minority of leases appear to be NT owned and operated.

We should not be encouraging nor enabling this critically needed revenue to be gifted to already wealthy international and national companies, and wealthy interstate families, who own an NT Pastoral Lease.

Recommendation 14.9

That any person may lodge an objection to the proposed grant of an exploration permit. That the Minister must, in determining whether to grant or refuse the application, take into account the objections received, and that all objections received by the Minister be published

Whilst it may be an ideal that non related parties be allowed to lodge an objection, there is evidence of very negative consequences in other states when lobby groups, particularly those who appear to be anti development or only allowing their version of a 'green' industry to proceed, make it their mission to legally stall projects with an express goal of driving away investors and potential investors so the project is not able proceed.

The NT is under developed in all of its industries and infrastructure. It is difficult to attract industry and infrastructure investment to the NT. Successive Governments have lead NT Investment attraction programs over many years with poor to mixed results. The NT Govt will never have the funds needed to fund the much needed developments.

Any non related third party objections that create an real or perceived barrier to developing the NT, must be avoided if the NT is to have realistic prospects of attracting and retaining investment in major projects and industry developments.

Recommendation 15.1

That a strategic regional environmental and baseline assessment (SREBA) be undertaken prior to the grant of any production licence for onshore shale gas.

There is merit in this recommendation. It is recognised that there is a lack of indepth baseline environmental data, particularly in remote and regional NT. This in part is due to the lack of widespread industry activity in remote and regional NT. It is also in part because existing industries and Aboriginal Land Trusts, (as the largest land holder in remote and regional NT), have limited access to the necessary expertise and lack the funds to commit to such research.

During the recent Katherine community consultation and presentations there were requests that the baseline studies be mandated to occur prior to any exploration being undertaken.

Whilst this may appear to be a commendable suggestion, the ideal does need to be tempered against the potential impact on other industries. Any impost on the Onshore Natural Gas Industry has realistic prospects of being applied to all other industries.

As I mentioned in a previous presentation, almost all, if not all the industries in the NT are developing industries, not fully matured industries.

Doing business in remote areas of the NT, with its under developed infrastructure and under developed industries, incurs additional costs not experienced in interstate urban settings. If there is a requirement to undertake protracted and expensive research before any new development can effectively commence this would have a significant detrimental impact on all industry development.

As mentioned in the previous section above, investment attraction to the NT can be a challenge. Any recommendation that adds another layer of time delay and cost impost on a new development, particularly before its proponents have had an opportunity to undertake exploratory activities to clarify if the development is profitable, should be avoided.

The NT Pastoral Industry is not required to undertake baseline environmental data research prior to undertaking new developments or major changes in the use of the land. The industry in more recent years has been given the opportunity, through legislative changes, to establish non pastoral activities on their Pastoral Leases. The uptake has been slow. Most developments require external investments either by financial institutions or private investment. It is not difficult to imagine that a requirement to undertake extensive baseline research prior to any trial crops or trial animal production occurs would further hinder investment and development of non pastoral activity.

The NT Govt has just released a sizable Tourism Development investment stimulus package. Any impost to conduct indepth baseline studies over long periods of time, prior to any development occurring, could seriously undermine the effectiveness of such a stimulus package.

Almost every industry could foreshadow barriers to proceeding with developments if there is a recommendation that baseline environmental research must occur prior to any exploration or trial project can commence.

If the recommendation is supported in the Final report, it should be limited to the production phase of gas development, not pre-exploration phase.

Indigenous Economic Development

In my recent presentation to the Panel in Katherine in Feb 2018, I discussed our experiences with the gas companies engaging local and Indigenous businesses and gave my views on the favourable prospects of this occurring in the future.

I mentioned that there is a remote Indigenous business that has an ongoing contract with a major gas company, providing well site surveillance and other services whilst the moratorium is in place. This contract has provided year round income, including much needed income in the Wet Season. This business has very sound prospects of obtaining more work should the moratorium be lifted.

In our line of work we engage continuously with Indigenous business owners and key staff. We are aware of a number of Indigenous businesses who are very keen for the moratorium to be lifted and the industry to proceed. These businesses all have aspirations of being engaged in the industry.

Whilst we are aware of Indigenous people at a community level being opposed to fracking, we are not aware of any Indigenous business that is opposed to the development of an onshore hydraulic fractured gas industry.

Like many non Indigenous businesses, these Indigenous businesses who are supportive of an onshore Natural Gas industry, typically lack the time to get involved in any lobbying efforts as they are busy inside their businesses. They also recognise that many local Indigenous people are being actively and constantly manipulated by the anti fracking movement. In discussions we have had about this, they recognise it would take them a lot of time and effort to re-educate people and these are two factors that are in short supply when you run your own business.

End.