



Environmental Defenders Office

28 February 2020

SREBA Consultation
c/Mr Alaric Fisher
Department of Environment and Natural Resources (DENR)
PO Box 496, Palmerston, NT 0831
By email: sreba@nt.gov.au

Dear Mr Fisher

Submission on SREBA Framework Consultation Draft

The Environmental Defenders Office (**EDO**) welcomes the opportunity to make this submission on the “SREBA Framework Consultation Draft” (**draft Framework**).

EDO is a community legal centre dedicated to protecting the environment. We regularly advise and represent clients on a range of environmental matters including those relating to fracking, petroleum and mining operations. We have engaged closely in the *Scientific Inquiry into Hydraulic Fracturing in the Northern Territory* (**Fracking Inquiry**) and the subsequent implementation of its recommendations by the Northern Territory Government (**NTG**), including through our participation on the NTG’s Community and Business Reference Group.

Given EDO’s expertise and role as a community legal centre, this submission is framed by our concern about the relationship of the draft Framework (and future SREBAs) with the regulatory framework for the onshore gas industry and hydraulic fracturing (**fracking**).

Our primary interest is to ensure that any SREBA is scientifically rigorous and fit for purpose to develop, and administer, robust environmental policy decision-making, and regulation of any unconventional shale gas activities in the Northern Territory (**NT**). As such, in this submission we give particular focus to matters relating to governance, accountability, transparency and independence. We are also highly concerned, given the strong public interest involved, in seeing the Fracking Inquiry’s recommendations implemented in full, and in a way that is appropriate and consistent with the intent of the Inquiry.

a. Expert analysis of guidance notes

We have sought advice from a number of independent experts in relation to specific guidance notes in order to inform our submission and to provide objective analysis of the draft SREBA Framework for the use of the NT Government.

Attached to this submission are the following reports, providing opinions on whether various individual components (guidance notes) contained in the draft Framework are appropriate and fit for purpose:

- Associate Professor Matthew Currell, RMIT – section 3, guidance note for studies of water quality and quantity (**Appendix A**);

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- Dr Golam Kibria, RMIT – section 4, guidance note for studies of aquatic ecosystems (**Appendix B**);
- Dr Renata Bali, Ecosense Consulting – section 5, guidance note for studies of terrestrial ecosystems (**Appendix C**);
- Dr Neil Perry, Western Sydney University – section 8, guidance note for social, cultural and economic studies (**Appendix D**).

b. Is the draft Framework appropriate and fit for purpose?

EDO has taken a broad perspective of the draft Framework, by considering the introductory components together with the various guidance notes, including the expert advice received and set out in the Appendices.

Our views are framed by the Fracking Inquiry’s intended purpose for the SREBA (based on the numerous recommendations with some relationship to the SREBA) and the role it will play in underpinning future environmental decision-making and regulation of a fracking industry.

Overarching purpose and coherence

At the outset, we have some concerns about the overall coherence of the draft Framework, which seems to lack a clear articulation of the rationale underpinning a SREBA and what is required as an output. In our view, and based on the Fracking Inquiry’s Final Report, at its core the SREBA is comprised of two key elements.

First, it must be a scientific baseline study that provides for appropriate studies to fill in the many data and knowledge gaps that currently exist in the NT and sets appropriate baselines against which the impacts (including cumulative) of fracking activities can be measured (**Baseline Study component**) (this component is largely the subject of our submission). Second, it should comprise a social impact assessment, that considers the various impacts, including cumulative, of a gas industry, consistent with those specific recommendations of the Final Report (12.1, 12.6, 12.7) (**Social Impact component**).

There needs to be a clearer articulation of this purpose in part 1 of the draft Framework. The lack of clarity appears to have impacted upon the drafting of various guidance notes and the coherence of the document as a whole.

We are also concerned that the draft Framework doesn’t address how the various studies conducted for a SREBA will be synthesised and integrated into a coherent study or report. In our view, whether an individual SREBA will be fit for purpose will significantly depend on this synthesis, given many of the guidance note subject areas are highly inter-related. For example, studies on water, aquatic ecosystems and terrestrial ecosystems are clearly closely related, as are environmental health, water, and social, cultural and economic studies.

Without proper integration of the various component studies, which would need to commence at the stage of designing the scope of works (e.g. to ensure the definition of boundaries and timeframes for conducting studies are aligned where appropriate), it is difficult to be confident that the information gathered would be appropriate for use in assessing the impacts, including cumulative, of an industry such as fracking.

In our view, if a coherent process is not established to deliver the necessary integration, there is a significant risk that any SREBA will not be fit for purpose and will not provide the necessary information required to underpin future government decision-making and industry regulation. We consider that the governance arrangements for designing and executing a SREBA will be an important way to respond to this risk, as discussed further below.

Interaction with legal and regulatory framework

As noted above, we are highly concerned to ensure that the draft Framework, and any SREBA prepared in accordance with it, is fit for purpose in the context of future government decision-making and industry regulation.

In our view, the Baseline Study component of a SREBA in particular will be critical for establishing fundamental environmental baseline data and information that will support and enable, amongst other things:

- an appraisal or reappraisal of important regulatory mechanisms to manage key risks, including the identification of ‘no go zones’ (reserved blocks) under the *Petroleum Act*, and water licences and water allocation plans under the *Water Act 1992*;
- the assessment of site specific and cumulative impacts of fracking activities through legislative assessment processes, and landscape scale planning for any industry, particularly under the forthcoming *Environment Protection Act 2019*, and the *Environment Protection and Biodiversity Conservation Act 1999* (Cth); and
- ongoing monitoring and long-term regulatory compliance action, including under the *Environment Protection Act 2019*, the *Water Act 1992* and the *Petroleum Act 1984* and *Petroleum (Environment) Regulations 2016*.

While these matters are referred to in the draft Framework (although somewhat inconsistently), there are no mechanisms or processes proposed to ensure that the data retrieved by the SREBA will be utilised for the above purposes. The ‘potential application’ of the SREBA at Table 1 (p17-19) is excessively vague and, in our view, insufficient.

In order to ensure accountability around this critical feedback loop between any SREBA and relevant policy and regulatory decision-making, we consider that the NT Government must:

- establish a clear process to fully translate findings from a SREBA into no go zones (reserved blocks), including reviewing and revising existing and proposed reserved blocks, and identifying and reserving new reserved blocks. This should be entrenched in a statutory, Ministerial decision-making process in the *Petroleum Act 1984*, or in separate legislation (consistent with the approach proposed in EDO’s submission on the then draft Petroleum Reserved Block Policy dated 25 June 2019);
- establish mandatory minimum data standards for environmental impact assessment requirements under the new *Environment Protection Act 2019* and the *Petroleum Act* and *Petroleum (Environment) Regulations 2016* that would capture the data obtained through SREBAs, to ensure that it is utilised as appropriate for all fracking assessment and approval processes (noting that the SREBA wouldn’t replace the need for data collection for specific EIAs and approvals);
- establish a process to review, and where required update and amend, previously granted water licenses and Water Allocation Plans under the *Water Act 1992* to ensure all licences and allocations that are granted within a SREBA area are within genuinely sustainable limits.

While there are general references to the relevant legislative frameworks and the potential application of the outputs of a SREBA, our opinion is that the above matters have not been satisfactorily addressed either in the draft Framework, or elsewhere by the NTG. This, in our view, is a serious risk to the faithful implementation of many of the Fracking Inquiry’s recommendations.

We also consider that the draft Framework should make explicit that the NTG should not accept production licence or production approval *applications* (rather than just the grant of an approval)

until a SREBA is finished. As currently drafted, the current approach would enable proponents to make their applications for approval prior to the completion of a SREBA (and therefore not wait for the use and application of the data and information it produces). This would mean the NTG could simply be ready to approve the applications once the SREBA is technically finalised, without requiring the consideration of the SREBA outputs. This would be unacceptable and undermine the purpose of the SREBA. It would also undermine the consent processes for native title holders under the *Native Title Act 1993 (Cth)*, who may be forced to negotiate with proponents in relation to production approvals prior to having up the benefit of the up to date information identified through the SREBA.

Transparency, accountability and governance issues

The draft Framework, in our view, contains insufficient details to provide adequate assurance that any final SREBA product will be fit for purpose. Instead, it appears that the level of detail that would enable this assessment to be properly made will be contained in a 'scope of works' for an individual SREBA.

On our review, the draft Framework is not explicit in providing that any scope of works will be subject to a transparent and public consultation process. While the draft Framework identifies that the scope of works would have a stakeholder engagement strategy, this is not the same thing as upfront transparency over, and consultation on, the scope of the study itself.

Without this critical transparency, the public cannot be expected to trust that the process will be approached with rigour and free from bias or undue influence from industry or other government agencies with a potential conflict of interest in the outcome.

Such concerns are further exacerbated by other language in the draft Framework, for example the 'scientifically robust' principle (p25) which provides that the SREBA will 'utilise science-based methodologies to ensure the studies are *as objective and as free from bias as possible*' – a straightforward commitment of 'objective and free from bias' would be more appropriate.

Providing transparency at the design stage for each specific SREBA will build legitimacy in the process, and build trust on the part of the community.

Additionally, given the critical role the data identified by a SREBA will play, it is surprising that more detail is not provided about the 'data management system' that is proposed to ensure the data is freely available to the public, is not subject to inappropriate and unnecessary confidentiality requirements, and is accessible and user-friendly.

We therefore strongly submit that:

- there must be a clear commitment for public consultation on the scope of works for each SREBA (similar to the draft terms of reference for an EIS, which are publicly exhibited); and
- that further transparency must be provided about the proposed data management system, including its public accessibility.

The governance arrangements (section 2.2) are also of concern. The draft Framework sets out a very vague framework for the governance of a SREBA, which would see the design and development of a SREBA largely directed from within the NTG (coordinated by DENR) with potential roles for advisory committees and reference groups. It is not clear whether DENR has the resourcing and technical expertise to oversee such projects. If not, it must be provided with appropriate funding to ensure that it does.

In our view, the proposed governance arrangements need to be reconfigured, providing a leading role for independent expertise. For example, an expert panel or steering committee should be convened for each SREBA to guide its design and implementation. The failure to have independent

guidance is likely, in our view, to undermine the actual and/or perceived rigour and objectivity of the SREBA process. Ensuring proper expertise and independence via governance arrangements (such as through an expert steering committee) would also respond to the concerns raised previously relating to risks associated with failing to properly synthesise the various elements of a SREBA.

Finally, we are concerned about the statements made regarding initiation of SREBAs for other basins in the NT (section 2.1). We understand that fracking activities are intended for other basins in the NT, beyond the Beetaloo sub-basin. In our view, the commentary in section 2.1 is not satisfactory. We consider there should be clear criteria, based on the recognition of the risks to all areas from fracking and the similar lack of data across the NT, setting out the circumstances or trigger points for when a SREBA will be required in a new region, and provide for a transparent decision-making process to guide this.

Scientific rigour and independence

Based on our review of the draft Framework, and the expert reports included in the Appendices, it appears to us that there are variable levels of detail and scientific rigour exhibited in the guidance notes. As noted previously, this raises concerns for us about the potential lack of cohesion that may result in the development of a SREBA, if care is not taken to ensure that the various studies prepared under each guidance note are not equally rigorous and properly integrated. In some cases, the lack of detail has also meant that it is difficult for experts to fully assess whether the draft Framework is appropriate and fit for purpose (see for example the report at Appendix C).

There are also a number of indications in some of the guidance notes that demonstrate an overemphasis on a ‘pragmatic’ approach over robust science, as well as statements that may not, to our knowledge, be representative of current scientific understanding.

For example, guidance note 5 (studies of terrestrial ecosystems) appears to over-emphasise (inappropriately, on the advice from Dr Renata Bali, Appendix C) studies indicating that there are positive effects for biodiversity by habitat fragmentation (at p80). Guidance note 6 (greenhouse gas studies) also makes generalised statements, such as ‘fugitive emissions generally represent a small proportion of emissions from the Australian gas industry’s total emissions’ – when this appears to be unsubstantiated, and moreover precisely an area where there is a lack of data that the SREBA is intended to contribute to overcoming¹. These examples raise red flags for us regarding the objectivity of the draft Framework.

We are also concerned by the indication in the draft Framework that timeframes required for various studies and for the SREBA generally (see section 2.1) are being contracted to be ‘pragmatic’. This is highly concerning given the serious uncertainties that the Fracking Inquiry highlighted, and the resulting key role that the SREBA was identified as playing in response. It appears to prefer “reasonable certainty to industry and investors” (p21) over ensuring the risks of fracking are appropriately identified and assessed through the studies forming the SREBA, which are intended to provide the proper evidence base from which government can make decisions and develop appropriate policy and regulatory responses.

¹ See:

<http://climatecollege.unimelb.edu.au/files/site1/docs/6032/20161023%20Review%20of%20Methane%20Emissions.pdf> and recent research in Nature regarding atmospheric methane increases:

<https://www.nature.com/articles/s41586-020-1991-8>, also discussed here:

<https://www.nationalgeographic.com/science/2020/02/super-potent-methane-in-atmosphere-oil-gas-drilling-ice-cores/>

Finally, there appears to be an over-emphasis on the use of NT organisations to carry out the work, potentially at the expense of expertise. This is reflected in the identified ‘other contributors’ (2.2, governance) and ‘inclusion of local organisations’ (SREBA development principles, p25). While of course it would be welcome for NT and local organisations and experts to play a role in the SREBA, this should only be through a strong merit-based procurement process that first and foremost prioritises relevant expertise, skills and experience.

Concluding comments

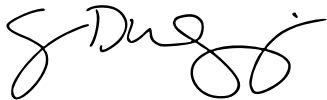
Given the various matters raised in this submission, we are concerned that any SREBA developed in accordance with the draft Framework may not be appropriate to adequately fulfil its purpose.

In our view, the failure to properly deliver SREBA(s) would clearly and seriously undermine the ability for the NT Government to make evidence-based policy decisions about the unresolved risks associated with an onshore gas industry and fracking in the NT, as well as undermine the proper and effective implementation of the regulatory framework. We therefore recommend the draft Framework is significantly revised taking into account our comments.

We would welcome the opportunity to discuss our comments with the Department at any time.

Yours sincerely,

Environmental Defenders Office

A handwritten signature in black ink, appearing to read 'G Duggin', with a stylized flourish at the end.

Gillian Duggin

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