

## SUMMARY ON IMPLEMENTATION OF THE PEPPER INQUIRY RECOMMENDATIONS

The NT Government and the gas industry want to push through with full-scale fracking production in the NT's Beetaloo Basin early this year, despite its failure to meet its own deadline for implementing critical measures to address environmental, climate, cultural and other risks.<sup>1</sup> Several key recommendations remain very difficult for the Government to implement, and others which they claim are implemented are not actually complete in accordance with the recommendations.

Following a territory-wide moratorium on unconventional shale gas developments, the Scientific Inquiry into Hydraulic Fracturing in the NT (Pepper Inquiry) was established to assess the risks of fracking. The [final report](#) of the Pepper Inquiry was released on 27 March 2018. It provided the Government with 138 recommendations to mitigate the risks of fracking in the NT, concluding that *"provided that all of the recommendations made in this Report are adopted and implemented in their entirety, not only should the risks associated with an onshore shale gas industry be minimised to an acceptable level, in some instances, they can be avoided altogether."* The NT Government [accepted](#) the Inquiry findings and lifted the moratorium, on the basis that it would implement all recommendations by the end of 2022.<sup>2</sup>

Fracking should not commence in the Beetaloo until 100% of recommendations are implemented, to mitigate the risks that the Pepper Inquiry identified. As of 28 April 2023, 104<sup>3</sup> recommendations are marked as completed; of these, several have not been properly implemented, and the remaining **25% are listed as incomplete** on the Government's website. The most concerning implementation failures are summarised below.

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### 1. PROTECTING NT WATER

Water-related risks were the central concern raised in submissions received by the Pepper Inquiry and in community consultations,<sup>4</sup> yet the government failed to implement key recommendations to protect NT water from fracking activities.

**The Government still needs to finalise a Water Allocation Plan that ensures water is sustainably extracted in the Beetaloo (7.7).** The Pepper Inquiry found that Water Allocation Plans restricting water use should be developed for the northern Beetaloo Sub-basin, and that water extraction in the southern Sub-basin should be prohibited until groundwater resources and recharge rates are quantified. The Government has not implemented these steps. There is no finalised Water Allocation Plan in place for Beetaloo. The controversial Georgina Wiso Plan remains in draft form and has been the subject of extensive criticism by water experts, including concerns that the draft Plan does not meet the Pepper Inquiry's requirements for sustainable extraction of groundwater.<sup>5</sup> Fracking should not be allowed in the northern Beetaloo Sub-basin until an

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<sup>1</sup> Max Rowley, *Beetaloo gas fracking could start soon, despite NT government delay in implementing Pepper inquiry recommendations*, ABC NEWS (22 Jan. 2023), <https://www.abc.net.au/news/2023-01-23/beetaloo-gas-fracking-start-despite-nt-govt-missed-deadline/101862808>.

<sup>2</sup> The government has repeatedly stated its intention to complete implementation of all recommendations "by end December 2022"; see, e.g., Northern Territory Government (2023) *Onshore Gas in the NT: Action Items*, <https://hydraulicfracturing.nt.gov.au/action-items#>.

<sup>3</sup> This number includes recommendations that have been broken into sub-parts. The NT government identified 138 implementation actions for the 135 Pepper Report recommendations. All numbers in parentheses refer to implementation actions.

<sup>4</sup> Scientific Inquiry into Hydraulic Fracturing in the Northern Territory (2018) *Final Report of the Scientific Inquiry into Hydraulic Fracturing in the Northern Territory* ('Pepper Report') at 102.

<sup>5</sup> Matthew Currell and Christopher Ndehedehe (2022) *The Cambrian Limestone Aquifer, Northern Territory: Review of the Hydrogeology and Management Rules to Ensure Protection of Groundwater Dependent Values*, [https://www.ecnt.org.au/currell\\_report](https://www.ecnt.org.au/currell_report); Samantha Jonscher, *Northern Territory government under mounting pressure over*

appropriate Plan is in place which defines sustainable management of groundwater extraction, and the groundwater model is complete and has been subject to independent peer review. The groundwater model is in the process of being updated with current field data and is not expected to be completed until 2024.<sup>6</sup>

**There is no federal “water trigger” law that applies to onshore gas development (7.3).** The Pepper Inquiry concluded that there should be a “water trigger” in the key federal environmental statute—the *Environment Protection and Biodiversity Conservation Act 1999*—which applies to onshore gas activities and requires the federal Environment Minister’s approval for those activities with a significant impact on water resources. No such water trigger has been enacted, yet this recommendation is marked as “complete”.

**The Government has failed to put in place the necessary facilities and procedures for treating and disposing of wastewater from fracking (5.5b).** The Pepper Inquiry called for a wastewater management framework as a prerequisite for fracking exploration approvals. Contrary to its recommendation, the Government has approved permits for exploration activities which produce wastewater before setting up a wastewater management framework that minimises environmental risks.

## 2. MITIGATING CLIMATE CHANGE

**The NT and Commonwealth Governments should ensure there is no net increase in greenhouse gases in Australia before allowing fracking to proceed (9.8).** This means that the life cycle GHG emissions from any onshore shale gas produced in the NT “must be fully offset.”<sup>7</sup> This requires the NT government to obtain the Federal government’s support. An NT Government official estimated that it would require up to 117 million tonnes a year in carbon offsets, or the equivalent of 22% of Australia’s current annual emissions.<sup>8</sup> As of 2 March 2023, this recommendation is only marked as 50% complete. The Government notes that its response will “evolve” based on findings of an industry-funded Gas Industry Social and Environmental Research Alliance (GISERA) investigation into abatement options for achieving net zero life cycle emissions from onshore petroleum production in the Territory. The [final report](#) was published on 10 February 2023 *after* fracking approvals have been granted and presents four scenarios and different options for offsetting GHG emissions, without committing to a specific pathway. In addition, the report has been widely criticised by experts as “wildly unrealistic”<sup>9</sup>.

**The Government failed to implement critical recommendations related to transparent and effective management of methane emissions, in compliance with best practice standards.** Fugitive methane emissions from fracking is a major climate concern; methane is over 80 times more potent than CO<sub>2</sub> as a greenhouse gas. The Pepper Inquiry recommended implementation of the US EPA New Source Performance Standards (9.1) and publication of monitoring results (9.5).<sup>10</sup> Instead of adopting these measures, the Government noted that compliance with those US EPA Performance Standards and publication of methane monitoring results are “preferred” rather than mandatory. The Pepper Inquiry also called for notification of the regulator when

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water plans for area the size of Cambodia, ABC News (27 Nov. 2022), <https://www.abc.net.au/news/2022-11-28/nt-water-policy-georgina-wiso-water-allocation-plan-criticism/101698186>; Jano Gibson, *University academics send joint letter to NT Chief Minister about ‘poor’ water planning regime*, ABC News (24 Nov. 2022), <https://www.abc.net.au/news/2022-11-25/university-academics-warn-of-poor-nt-water-planning/101692608>.

<sup>6</sup> Northern Territory Government, Department of Environment, Parks and Water Security (2022) *Draft Georgina Wiso Background Report 2022-2030* at 17, <https://haveyoursay.nt.gov.au/81019/widgets/389172/documents/245854>.

<sup>7</sup> Pepper Report at 239.

<sup>8</sup> Jane Bardon, *How the Beetaloo Gas Field Could Jeopardise Australia’s Emissions Target*, ABC News (28 Feb. 2020) <https://www.abc.net.au/news/2020-02-29/beetaloo-basin-gas-field-could-jeopardise-paris-targets/12002164>.

<sup>9</sup> Jacqueline Breen, Jack Hislop and Samantha Dick, *CSIRO under fire over ‘nonsense’ report on fracking offsets for Beetaloo Basin greenhouse gas emissions*, ABC News (16 Feb 2023) <https://www.abc.net.au/news/2023-02-16/nt-csiro-under-fire-for-beetaloo-basin-offsets-report/101979988>.

<sup>10</sup> *Code of Practice: Onshore Petroleum Activities in the Northern Territory 2019* (NT), section D.5.1 and D.4.2.3.

methane concentration limits are exceeded (9.6). However, the Government's Code of Practice permits gas companies to avoid reporting leaks to the Environment Minister if they are repaired within 30 days (regardless of whether they exceed safe limits), or they are given 30 days to document and repair any leaks and need not make the record of their leaks publicly available.<sup>11</sup>

### 3. PROTECTING ABORIGINAL & CULTURAL RIGHTS

**A comprehensive assessment of likely cultural impacts of fracking has not been completed (11.8).** Before production is approved, the Pepper Inquiry required an industry-funded cultural assessment in consultation with Traditional Owners, affected Aboriginal communities and other stakeholders. This recommendation is still marked as only 75% complete. Even if the SREBA cultural impact studies are argued to have met this recommendation (which is questionable), significant sections of country in the Beetaloo area which are subject to fracking exploration and potential production are not within the area of the SREBA cultural impact studies.

**The Government has failed to treat Aboriginal people fairly in the fracking approval process.** Despite marking key recommendations on engagement with Aboriginal stakeholders as "complete", in practice, the Government is not in full compliance. For example:

- **Aboriginal people are not receiving "reliable, accessible, trusted and accurate" information about the scale of impacts (11.6).** The Pepper Inquiry recommended that the gas industry fund an "independent" third-party program to communicate reliable information about fracking to all affected Aboriginal people. However, the Government continues to rely on CSIRO's GISERA, which is partially funded by gas companies, to develop fact sheets on fracking for Aboriginal communities which have been criticised for inaccuracy and partiality.<sup>12</sup>
- **Interpreters are not always present (11.5).** Contrary to the recommendation, the Government's policy does not explicitly require interpreters to be present at all consultations where there are non-English speaking Aboriginal people.<sup>13</sup> In practice, Aboriginal native title holders from the Beetaloo report that interpreters are not present in NLC led consultation and other agreement making meetings.
- **Petroleum exploration agreements (PEAs) between Traditional Owners and exploration companies have not been made public (11.7).** Contrary to the Pepper recommendation, the Government decided not to make any part of the PEAs publicly available, instead deferring to the Land Councils' and gas industry's desire for confidentiality.<sup>14</sup> This prevents public scrutiny of whether a fair deal has been struck.
- **The Government intentionally chose not to implement the recommendation on protecting Aboriginal interests in sacred sites (11.3).** Although the Pepper Inquiry required amendment of the Sacred Sites Act to explicitly and clearly protect subsurface features of sacred sites, the Government determined no amendment was necessary and marked the action "complete", without identifying any alternative way to comprehensively protect these features.<sup>15</sup>

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<sup>11</sup> *Code of Practice: Onshore Petroleum Activities in the Northern Territory 2019* (NT), section D.5.6.

<sup>12</sup> Graham Readfearn, *Facts Take a Backseat in CSIRO Fracking Fact Sheets Partly Funded by the Gas Industry*, THE GUARDIAN (12 Oct. 2022), <https://www.theguardian.com/environment/2022/oct/13/facts-take-a-backseat-in-csiro-fracking-fact-sheets-partly-funded-by-the-gas-industry>; *CSIRO Accused of Failing to Disclose GISERA Gas Industry Links in Fracking Information Sheets*, ABC News (23 Oct. 2022), <https://www.abc.net.au/news/2022-10-24/csiro-accused-of-sending-misinformation/101556858>.

<sup>13</sup> Northern Territory Government (2022) *Principles when using Aboriginal Interpreters*, <https://hydraulicfracturing.nt.gov.au/resources/principles-when-using-aboriginal-interpreters>.

<sup>14</sup> Land Councils and the Australian Petroleum and Production Exploration Association (APPEA), with whom the Government consulted on Recommendation 11.7, "considered" making PEAs publicly available, but "advised they do not support implementation of this request." As a result, PEAs "involving potential hydraulic fracturing will remain confidential." Northern Territory Government (2023) *Action item 11.7*, <https://hydraulicfracturing.nt.gov.au/action-items/11.7>.

<sup>15</sup> Northern Territory Government (2023) *Action item 11.3*, <https://hydraulicfracturing.nt.gov.au/action-items/11.3>.

#### 4. PUBLIC PARTICIPATION & TRANSPARENCY

**The Government failed to ensure that all draft Environmental Management Plans—the main planning documents that identify environmental impacts and provide measures for managing them—will be published and available for public comment (14.15).** Instead, it created exemptions for modified plans submitted after the Environment Minister considers the original plan and additional information submitted at the Minister’s request.<sup>16</sup> The publication requirement also excludes “commercially confidential” information and other information the Minister deems “reasonable,” without providing any guidance on what kinds of information would qualify as “commercially confidential” or “reasonable.”<sup>17</sup> These exceptions prevent public scrutiny.

**The Government has prioritised industry interests by failing to provide community rights to object to gas projects (14.24).** The Pepper Report recommended wide third-party standing rights to enable members of the community to challenge decisions using merits review, but the law changes that have been implemented to meet this recommendation have fallen far short. In a letter to the Chief Minister, Dr. David Ritchie, who is responsible for ‘Independent Oversight of Implementation of the Fracking Inquiry Recommendations’, confirmed that this recommendation has not been implemented in accordance with the Inquiry. He states that *‘the recently introduced amendments to the Petroleum Act and Petroleum (Environment) Regulations reflect Cabinet’s decision to substantially reduce the number of parties the Inquiry recommended be granted presumptive standing to challenge decisions using merits review’*.<sup>18</sup>

The Pepper Report also requires that “merits review be available in relation to decisions under the Petroleum Act and Petroleum Environment Regulations including, but not limited to, decisions made in relation to the granting of all EMPs.”<sup>19</sup> However, despite marking this recommendation as “complete”, the Government has excluded several key decisions from merits review in amending the *Petroleum Act 1984* (NT). For example, even though the applicant can challenge a *refusal* to grant or renew certain authorisations, the list of reviewable decisions in the amended legislation notably omits the Minister’s decision to *grant* a production licence, or *approve* a revised well operations management plan, a field management plan, or petroleum surface infrastructure plan.<sup>20</sup>

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<sup>16</sup> *Petroleum (Environment) Regulations 2016* (NT), s 8A(3).

<sup>17</sup> *Petroleum (Environment) Regulations 2016* (NT), s 8A(5).

<sup>18</sup> Dr. David Ritchie, Independent Oversight of Fracking Inquiry Recommendations, [Letter to the Chief Minister](#), 11<sup>th</sup> November 2022.

<sup>19</sup> Pepper Report at 421.

<sup>20</sup> *Petroleum Legislation Amendment Act 2022* (NT), s 87, Schedule 3 on “Reviewable decisions and interested persons”.