Water Legislation Amendment Bill 2018 Economic Policy Scrutiny Committee: ALEC and ECNT Submission

The Arid Lands Environment Centre (ALEC) is central Australia's peak environmental organisation that has been advocating for the protection of nature and ecologically sustainable development of the arid lands since 1980. ALEC is actively involved in water governance in the NT through representation on Water Allocation Committees (Alice Springs and Wester Davenport Water Allocation Committees), policy contributions through formal submissions and community engagement on sustainable and equitable water use.

The Environment Centre NT (ECNT) is the peak community sector environment organisation for the Top End of the Northern Territory, Australia raising awareness amongst community, government, business and industry about environmental issues and assisting people to reduce their environmental impact and supporting community members to participate in decision making processes and action.

ALEC and ECNT have been advocating for the removal of section 7 exemptions for many years. While it is encouraging to finally see this draft bill, we cannot support the Bill in its entirety as it does not ensure the sustainable and equitable use of water by Petroleum and Mining activities.

While the explanatory statement briefly explains each change to the Act, it fails to contextualise the amendments in terms of the progression of environmental governance in the NT. There is no guidance on how these reforms will be coordinated between the Departments who share interests and responsibilities over water.

There is considerable ambiguity and uncertainty in the drafting of the amendments. This uncertainty introduces considerable risk into the responsible management of water and does not guarantee the full implementation of the recommendations of the Fracking Final Report nor consistency with the stated objectives of the policy reform.

Key issues with this Amendment include:

1. The Water Act will continue to permit mining and petroleum activities to pollute waters on a mining tenement. Operations will therefore not be sufficiently liable for pollution, which is inconsistent with the recommendations of the Final Report into Hydraulic Fracturing that were accepted and committed to by the Government.
2. Inconsistent application of the regulations to fracking activities compared to other petroleum and mining activities. This amendment will split regulation of the industry in two, despite all mining and petroleum activities posing significant risk to water resources.
3. The definition of hydraulic fracturing should be broadened: well stimulation is utilised in gas activities in non-shale source rocks and condensate and oil may be recovered during fracking.
4. There are multiple uncertainties about the subsequent implication of water regulation once the amendments are operational. This includes uncertainty over transitional provisions and the regulation of mining applications currently progressing through assessment.

5. Lack of objects: how is the Minister's decision regulated in the absence of guidance or an outlined purpose. The Bill preserves a high level of discretionary decision making.

Removal of Section 7 exemptions

Removal of the petroleum and mining exemptions under section 7(1) and (3) is supported. However, maintaining the exemption in subsection (2) is not supported.

Mining and petroleum activities should not be permitted to pollute waters and cause environmental harm. This is inconsistent with the intent of the amendments. By retaining this exemption Mining and Petroleum activities will continue to receive exceptional treatment as compared to other water users.

Fundamental to this reform is the exclusion from complete liability under the Water Act: the ongoing ability of petroleum and mining activities to pollute water is a major deficiency and will continue to undermine public confidence in water use by industry in the Northern Territory. Maintaining this exemption could permit industrial activity to negatively impact other interests and rights in water.

The amendment is inconsistent with the Government's commitment to subject these industries to full accountability under the Water Act. Continuing to permit these industries to pollute water on a mining area and cause environmental harm by disposing of waste down a bore brings significant inconsistency in the standard of protection expected with this amendment.

The definition of *mining area* must be clarified. This ambiguity in the Act goes to a fundamental issue of the Acts' intended operation. This is uncertainty needs to be clarified as a matter of urgency. There should be a clear process whereby an assessment is undertaken by the Minister as to whether waste from an activity is able to migrate, either by surface or aquifer migration, beyond the boundaries of a mining tenement.

The Bill is lacking in necessary provisions: it should be revised to ensure:

- **Water extraction licences for industry are publicly available.**
- **That no allocation for industry is allowed unless there is allocation within a water allocation plan or there is substantial evidence to justify that the water use will not interfere with cultural, environmental and other users.**
- **There is a complete prohibition on Mining and Petroleum activities to pollute waters.**

Transitional arrangements

The Bill must clarify the operation of the Act for the Mines currently progressing through assessment and the commencement of the transitional timeline. According to section 113, if a Mining or Petroleum activity applies for a management plan before the end of the transition period the former act will apply.

It is not clear whether this will be for the entire life of that project and water use will never be regulated under the amended Act. This must be clarified by including a mandatory provision that all mining and petroleum activities must be regulated under the Water Act after one year of operating following the completion of the transitional period.

Without this clarification there is a risk that mining projects currently progressing through assessment will never be regulated under the updated act therefore posing an unacceptable risk to water resources.

Another issue with this provision is that as production mining and petroleum management plans are not publicly available, there will be no public oversight and transparency of water use by those activities. This again goes against the intent of the reforms to properly regulate these industries.

The current transitional arrangements mean that during the transition period, water issues for mining will be assessed and regulated by DPIR but water issues for fracking will be regulated by DENR. The distinction between the regulation of these activities has not been justified and is environmentally inappropriate.

Mining and conventional petroleum poses equal risks to water and should be subject to the same regulation as fracking. Maintaining this distinction could lead to a situation where there is duplication of water regulation with DENR regulating fracking water use and DPIR regulating mining water use.

Hydraulic Fracturing

The definition of *Hydraulic Fracturing* in the Bill is inaccurate and does not cover the full extent of the activity. It should be amended to include all forms of petroleum and hydrocarbons extracted through well stimulation. The definition should be broadened to read:

"hydraulic fracturing means the process of injecting fluid at high pressure into a hole in the ground to extract petroleum resources and hydrocarbons from subterranean rock"

Mining Management Act amendments

These amendments are supported but again the operation of the provisions are uncertain because of a lack of clear decision-making criteria and clarity on the definition of other rights and interests in water.

Regarding the amendment to section 36 of the *Mining Management Act***,** the Minister should be directed to consider the rights and interest in water listed in 26(5)(a)(iii) as well as *environmental and cultural flows*. Environmental and cultural flows are protected in policy and should be afforded the same degree of legal protection and consideration during an assessment as other interest are.

Environmental flows must take precedence over interests in beneficial uses as outlined in a water allocation plan or other commercial, stock or domestic uses.

There is also uncertainty because of the definition of *vicinity* of the mining activity**.** Vicinity should be defined to protect all potentially impacted water users by an industrial water allocation.

Water Governance

The introduction of water powers to regulate water use as well as modernised penalties and enforcement provisions are supported. These reforms are long overdue in terms of ensuring public confidence in the water governance of the NT.

The penalties however are considered too small, compared to other Australian jurisdictions. They should be increased to ensure they will operate as an effective deterrent to offending under the Act.

The Powers under section 96 should be expanded to allow the Minister to revoke a licence or cease water supply in the event a mining or petroleum operator breaches their water licence. This could be a specific condition of approval directed to the Minister in approving a mining management plan or an environmental management plan.

We support expanded powers to introduce water saving measures such as demand management in an overallocated system. This should include a process to repossess water entitlements if in breach of licence conditions.

Policy Scrutiny

The policy direction of this amendment is unclear. The timeline for expected reforms and the necessary changes appear intermittent and inconsistent when considered in the broader program of environmental regulatory reform. There needs to be more proactive engagement with stakeholders to offer a briefing on how these amendments are situated within broader implementation of the fracking implementation.

Further, if these reforms are intended to regulate water use by Petroleum and Mining it is concerning that there is no clear legislative process for charging for the water used by those industries.

The public briefing insufficiently explained the policy context to the reform in terms of how they would interact with later reforms, implementation of the Fracking reforms or environmental management of mining in general.

These reforms operate in tandem with the *Waste Management Pollution Control Act* (WMPC). It is near impossible to understand the operation of the Act without understanding how wastes that are produced off the mining or petroleum site or tenement will be regulated considering that the exemptions to regulation under the *WMPC* Act remain effective. There has not been enough guidance from the relevant Departments on how the changes will interact with other pieces of legislation that regulate the use and protection of water resources.

While, we support the activity of the economic policy scrutiny committees in reviewing the Bills and their operation, it must be known that the timeframes and process to date does not in our view allow for enough public engagement and oversight.

Conclusion

The intent of these amendments is supported as well as the modernising of penalty and compliance provisions. However, in its current form certain key provisions are uncertain with ambiguous drafting. Mining and Petroleum activities should not be permitted to pollute waters and all extractive industrial activities should be treated consistently. The Bill must clarify water rights and interests to ensure that it provides for the sustainable and equitable use of water resources across the NT.