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To Whom it May Concern,

## **Draft EMP Content Guideline: Onshore Petroleum Regulated Activities**

The Environment Centre NT (**ECNT**) is the peak community sector environment organisation in the Northern Territory, 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. Thank you for the opportunity to provide a comment on the Draft EMP Content Guideline: Onshore Petroleum Regulated Activities (**Draft Guideline**).

This submission does not seek to provide a comprehensive review of the technical adequacy or otherwise of the Draft Guideline. Our submission focuses on our concerns relating to whether the Draft EMP Guidance (and the approval process for EMPS generally) complies with the *Petroleum Environment Regulations* and the commitments given by the Northern Territory Government to implement all 135 recommendations of the Fracking Inquiry. In particular, ECNT is concerned that:

- (a) the Draft Guideline provides evidence of the Northern Territory Government's failure to comply with Recommendation 14.34 of the Fracking Inquiry (requiring regulatory separation with respect to onshore gas regulation);
- (b) the Draft Guideline is insufficiently prescriptive about the information required from proponents to enable the regulator to properly assess the cumulative impacts of onshore gas exploration in accordance with the requirements of the *Petroleum Environment Regulations* and Recommendation 14.19 of the Fracking Inquiry. Moreover, it appears that the Northern Territory Government has not fully implemented Recommendation 14.19 of the Fracking Inquiry;
- (c) the Draft Guideline does not appear to require the incorporation into EMPS of scientific studies progressively being undertaken with respect to onshore gas by independent third parties. This means that the most up-to-date research (that may materially change the risk profile of gas exploration) may not be being incorporated by proponents in their risk assessment, or by the regulator.

ECNT considers each of these concerns in turn below.

**(a) Failure to comply with Recommendation 14.34: regulatory separation**

The issue of regulatory capture was a core concern of the Fracking Inquiry's, with the Inquiry asserting that an independent, transparent and well-resourced regulator was the cornerstone of its recommendations. The Panel noted the "widely and strongly held view in the community that DPIR [now the Department of Industry, Tourism and Trade, or DITT] is not independent of industry" (p 430). In particular, the Inquiry noted the perception of the community that it was not appropriate for a government department with responsibility for promotion of the gas industry, also to be responsible for its environmental regulation. Accordingly, the Fracking Inquiry recommended that all regulatory responsibility for fracking be transferred from DITT to the Environment Minister and the Department of Parks, Environment and Water Security (or DPEWS, for day to day regulation). In particular, the Fracking Inquiry states in its final report:

...[t]o ensure that environmental decisions are being made independently from the promotion of any onshore gas industry, the Panel proposes that the regulation of the industry be the responsibility of an entity that does not also have responsibility for promoting that industry. (p 430, see also recommendation 14.34)

ECNT is concerned that DITT appears to have retained some regulatory responsibility for fracking. In particular, the Draft Guideline relevantly states that "the Code [of Practice for Petroleum Activities in the Northern Territory] is jointly administered by DEPWS and the Minister for the Environment and the Department of Industry, Tourism and Trade and the Minister for Resources" (p 9).

Specifically, ECNT understands from publicly available information that DITT appears to have retained approval power over well operation management plans (WOMPs) which are required by the Code. WOMPs are a core document which govern key environmental issues such as well integrity and as such should clearly be approved by you or DEPWS. While EMPs are publicly available and the public is able to comment on them, the public has no access to WOMPs, undermining another key commitment of the Northern Territory Government's to transparency in government decision-making with respect to fracking.

Finally, there is no legal basis for any approval power for WOMPs residing with either DITT or the Minister for Resources, as regulatory responsibility for Code under the *Petroleum (Environment) Regulations 2016* clearly rests with the Environment Minister, and DEPWS.

This is a fundamental breach of the spirit and intent of the Fracking Inquiry's report and its final recommendations. To comply with the Fracking Inquiry recommendations, it is imperative that regulatory responsibility be wholly moved from DITT to DEPWS as a matter of urgency, including with respect to approval of WOMPs and administration of the Code.

**(b) Cumulative impact assessment and "exploration creep"**

The Fracking Inquiry heard from various stakeholders about their concern about "exploration creep" with respect to the onshore gas industry, that is, that a large number of exploration wells might be constructed via EMP approvals granted prior to the Strategic Regional Environmental Baseline Assessment (SREBA), and the implementation of many of the Inquiry's recommendations. To mitigate against this risk, the Fracking Inquiry recommended safeguards to ensure that the:

"cumulative impacts of any onshore shale gas activities that occur during the exploration phase of development are assessed, taken into account and appropriately mitigated."

Together with the requirement that the principles of ESD be enshrined in the *Petroleum Act* (Recommendation 14.11), and the recommendation for area-based regulation (Recommendation 14.22), the Fracking Inquiry recommended amendment to the description of the level of cumulative impact assessment required in cl 3(2)(b) as follows (Recommendation 14.19):

“That prior to granting any further exploration approvals, cl 3(2)(b) of Sch 1 of the Petroleum Environment Regulations be amended to read as follows: “3(2)(b) [delete ‘as far as practicable’] any cumulative effects of those impacts and risks when considered both together and in conjunction with other events, activities or industries, including any other petroleum activities and extractive industries, that have occurred or that may occur in or near the location of the activity or in or near the region, area or play where the regulated activity is located.”

ECNT notes with concern that there are clear differences between cl 3(2)(b) of the Petroleum Environment Regulations as currently in force, and what was recommended by the Fracking Inquiry. Accordingly, it appears that clause 14.19 has not been fully implemented. Further, ECNT notes that Recommendation 14.22 remains unimplemented, with no indication of when or whether this will occur.

ECNT submits that, given that mitigating the effects of “exploration creep” in the absence of baseline studies was a central concern of the Fracking Inquiry, the Draft Guideline provides insufficient detail about what is required to enable cumulative impact assessment.

Cumulative impact assessment is dealt with very briefly (at pages 30 and 31 of the Draft Guidance) and contains a grammatical error (an incomplete sentence under the heading 4.6.5). Vague and brief dot points are given for “typical impacts which may have a cumulative effect”. There is no detail given about how cumulative impact assessment is to be undertaken by either proponents or the regulator, giving rise to a real risk that it will not be undertaken in accordance with the spirit and intent of the Fracking Inquiry, or the regulatory framework. ECNT submits that this may give rise to errors in approvals for EMPs that may affect their legal validity, and make them subject to legal challenge.

ECNT submits that the Draft Guideline should be amended to include prescription about the following matters as a bare minimum:

- (a) the geographical extent (ie spatial parameters or boundaries) of the area or region to be included or considered as part of a cumulative impact assessment;
- (b) the temporal boundaries or scales for any cumulative impact assessment, which include “past temporal boundaries” (which take into account past cumulative impacts from a defined point in time) and “future temporal boundaries” (which set the time frame for assessing activities that will in the future cumulative affect a valued environment);
- (c) the kinds of other activities that should be taken into account in such an assessment, including the impacts of other gas exploration activities and land uses in the region such as pastoral and agriculture.

ECNT refers to Canter and Kamath’s questionnaire checklist for assessment of cumulative impacts which underscores the importance of setting clear spatial and temporal boundaries, before analysing how past,

present or future activities may affect environmental values/objectives.<sup>1</sup> Ross suggests four steps to minimise ecosystem impacts by utilising cumulative impact assessment.<sup>2</sup> The Australian Government’s bioregional assessment methodology for assessments of coal seam gas and coal mining developments on water resources may also be of relevance.<sup>3</sup>

It is imperative that the Draft Guideline be amended to incorporate meaningful cumulative impact assessment as this was a core concern of the Fracking Inquiry, its recommendations, and the Northern Territory’s commitment to implement them. Moreover, it is an explicit requirement of the *Petroleum (Environment) Regulations*.

### **(c) Progressive incorporation of scientific studies into EMPs and their approval**

The Fracking Inquiry identified a number of risks that were not able to be adequately assessed by the Pepper Inquiry due to the paucity of data. To provide some key examples of gaps in scientific knowledge:

- in relation to surface/groundwater characteristics and aquatic and terrestrial biodiversity, the Fracking Inquiry said the significant knowledge gap impeded “the ability to properly assess the risks of any shale gas development (especially cumulative risk over large areas)” (p 394);
- “an assessment of the possibility that groundwater biodiversity (stygo fauna and GDEs) may be affected by over extraction or contamination of groundwater can only be done after the recommended SREBA is completed” (p 166);
- “sustainable extraction limits should be set on the basis of the outputs from the regional numerical groundwater model developed as part of the SREBA to manage poorly understood groundwater systems” (p 137).

The Fracking Inquiry recommended that exploration could proceed while the SREBA was being completed, notwithstanding the risk of “exploration creep” occurring. In addition to the SREBA, there are a number of baseline and other scientific studies which have been, or are being, undertaken by independent experts, such as the Commonwealth’s Geological and Bioregional Assessment Program with respect to the Northern Territory’s onshore gas industry; and studies undertaken as part of GISERA’s research program with respect to the Northern Territory’s onshore gas industry.

It is imperative that EMPS progressively incorporate the latest and most up to date scientific research (including those research programs mentioned above), particularly as this research may materially change the risk profile of exploration activities. The Draft Guideline should contain a requirement to incorporate the most up to date scientific research into EMPs, and their assessment by the regulator. As currently drafted, ECNT is concerned that the Draft Guideline only appears to require the incorporation of proponents’ own baseline and other scientific studies.

If you have any queries in relation to this submission, please contact Kirsty Howey at [kirsty.howey@ecnt.org](mailto:kirsty.howey@ecnt.org).

<sup>1</sup> Canter, L. W., & Kamath, J. (1995). Questionnaire checklist for cumulative impacts. *Environmental Impact Assessment Review*, 15, 311–339. [https://doi.org/10.1016/0195-9255\(95\)00010-C](https://doi.org/10.1016/0195-9255(95)00010-C).

<sup>2</sup> Ross, W. A. (1998). Cumulative effects assessment: Learning from Canadian case studies. *Impact Assessment and Project Appraisal*, 16, 267–276. <https://doi.org/10.1080/14615517.1998.10600137>.

<sup>3</sup> <https://www.bioregionalassessments.gov.au/methods/bioregional-assessment-methodology>.

Yours faithfully,



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