

19 January 2018

The Hon Justice Rachel Pepper
Chair
Scientific Inquiry into Hydraulic Fracturing in the Northern Territory
c/- GPO Box 4396
Darwin NT 0801

Dear Justice Pepper,

Draft Final Report: Scientific Inquiry into Hydraulic Fracturing in the Northern Territory

The Australian Industry Group (Ai Group), Business Council of Australia and Jemena welcome the opportunity to make a submission to the inquiry you are chairing on behalf of the Northern Territory Government into hydraulic fracturing of onshore unconventional gas resources in the Northern Territory.

Summary

Natural gas is a critical resource for the Northern Territory and the national economy. We believe that there are substantial potential economic and broader community benefits from gas exploration and supply for the Northern Territory and the wider national economy. These need to be given due weighting in an evidence- and science-based decision-making process alongside the potential impacts upon resident communities, other industries, and the environment.

We are confident that a balanced regulatory regime for mineral exploration and appraisal in the Northern Territory can protect the community and the environment while enabling further investment in this sector and in vital infrastructure (e.g. pipelines), which will connect gas fields in the Northern Territory to east coast markets. Regulations and regulatory practices are important and need to be carefully designed and regularly evaluated to ensure they deliver net benefits to the community.

We support the Northern Territory Government's decision to commission this Inquiry, providing all stakeholders with a forum to address these issues. However, we caution that there needs to be workability, reasonable timeframes and effective decision making that industry can work with throughout the implementation process.

Our organisations

Collectively we represent businesses of all sizes in the NT and across Australia, with a strong interest in growing the Northern Territory and Australia's shared prosperity.

The Australian Industry Group is a peak employer organisation representing traditional, innovative and emerging industry sectors. Ai Group are a truly national organisation which has been supporting businesses across Australia for more than 140 years. Australian Industry Group is genuinely representative of Australian industry. Together with partner organisations Ai Group represents the interests of more than 60,000 businesses employing more than 1 million staff. Members are small and large businesses in sectors including manufacturing, construction, engineering, transport & logistics, labour hire, mining services, the defence industry, civil airlines and ICT.

The Business Council of Australia gathers chief executives from Australia's leading companies to help develop and promote solutions to the nation's most pressing economic and social policy challenges. For more than 30 years, the Business Council has promoted public policies that have contributed to Australia's strong record of economic growth and social harmony.

Jemena owns and operates a diverse \$10.5 billion portfolio of energy and water transportation assets. This includes gas and electricity distribution and gas transmission assets throughout eastern and northern Australia, where the organisation directly supplies over 1.6 million residential, commercial and industrial customers. Jemena are currently constructing the 622 kilometre Northern Gas Pipeline from Tennant Creek in the Northern Territory to Mount Isa in Queensland.

Upstream Gas Sector

Natural gas is the third major fuel source for the Australian economy, after oil and coal. It is used widely across the economy, for electricity generation, manufacturing and domestic use. In electricity generation, gas is playing a more crucial role as old coal retires and variable renewable energy grows. In industry, gas is not just an efficient source of heat and power, but also a key feedstock for the manufacturing of plastics, fertiliser, many household products and basic chemicals that underpin a range of industries.

There has been considerable disquiet in industry over reports in 2017 by the Australian Energy Market Operator (AEMO) and others suggesting that aggregate supply to the domestic market in eastern and south-eastern Australia will not be sufficient to meet the total annual energy requirements of domestic gas users in these regions over the next two years.¹ Fuel scarcity and the extreme price rises it produces would damage a swathe of industries that contribute to Australia's prosperity.

The Federal Government and the gas industry have taken steps that will hopefully avert this risk in the near term. However, industrial gas users and others are deeply concerned that further supply shortfalls will open up beyond 2020. AEMO, the Australian Competition and Consumer Commission (ACCC) and other observers believe that one way of alleviating the risk of gas shortfalls is by reforming state and territory government policies and allowing further gas exploration and development.

Gas exploration is by its very nature a high-risk activity due to the high sunk costs and the uncertain probability of success. Gas explorers face significant challenges to investing in this sector due to the substantial capital costs and long project execution timeframes. Further, there can be significant lead times between exploration and development for commercial use. In recent years the feasibility of exploration has also been impeded by the low price of oil.

Energy Policy

The Federal Government has instituted a range of measures to alleviate pressures in the east coast gas market. Two key inputs to the reform process were the ACCC's inquiry into the east coast gas market² and the AEMC's Eastern Australian Wholesale Gas Market and Pipelines Framework Review.³ The ACCC inquiries and the AEMC review both provide sufficient support for the cumulative positive impact of further gas exploration on the Northern Territory economy and the wider national economy.

The ACCC inquiry and AEMC review recommended ways to promote gas market competition and encourage supply. The recommendations included reforms to spot market design, better quality information to market participants, and easier access to gas pipelines. The ACCC report states that moratoria and regulatory design are obstructing the development of additional supplies of gas in New South Wales and Victoria.⁴

In this context, the ACCC also highlights how regulatory uncertainty is impeding the development of the gas sector in the Northern Territory.⁵ It has added to the investment risk in gas exploration and production. If this trend continues it could impede the development of this sector nationally and threaten Australia's energy security.

¹ Australian Energy Market Operator, *Update to Gas Statement of Opportunities*, Sept 2017

² Australian Competition & Consumer Commission, *Inquiry into the East Coast Gas Market*, April 2016

³ Australian Energy Market Commission, *East Coast Wholesale Gas Markets and Pipelines Frameworks Review*, 23 May 2016

⁴ Australian Competition & Consumer Commission, - *Inquiry into the East Coast Gas Market*, April 2016, p 54

⁵ *ibid*

The ACCC inquiry recommends that state and territory governments develop a case by case approach to addressing the risks posed to communities by investment in gas exploration, rather than relying on ‘blanket moratoria’.⁶ The Northern Territory, with large potential gas resources, is a major prospect for export and local gas-intensive industry development. It also represents a major new potential source of supply for the east coast market in the long term.⁷ However, the current restrictions on exploration will foreclose these opportunities completely unless they are replaced with a more nuanced regulatory framework.

The ACCC’s most recent gas market inquiry states that security of future supply in the east coast gas market also requires a major increase in exploration and appraisal activity, which has been stifled due to moratoria and regulatory restrictions in Victoria, NSW and Tasmania.⁸ We are engaged with all jurisdictions to encourage reformed and more workable regulation of gas exploration and development. The inquiry believes that the Northern Territory holds future potential sources of supply,⁹ and that with expected augmentation to pipeline capacity, this gas can be readily supplied to the east coast gas market.¹⁰

Economic Impact – Northern Territory

Despite the conservative assumptions attached to ACIL Allen’s economic impact assessment (EIA), there are strong grounds to believe that by establishing a robust regulatory and compliance regime for gas exploration, the Northern Territory Government will lay the foundations for immediate and long-term benefits to the Northern Territory economy and to the broader NT community.

The EIA alludes to the multiplier effect of upstream gas development, in terms of the potential further development of downstream sectors and industries. Separate input-output analysis by the National Institute of Economic and Industry Research (NIEIR) for Ai Group and others in 2012 identified that each petajoule of gas used by domestic Australian industry produced \$255 million in economic output across the broader economy.¹¹ These benefits include higher employment and incomes with associated rises in living standards. It is important to note the small environmental footprint of the shale gas sector. For example, under ACIL Allen’s ‘Shale Gale’ scenario only 475.9Km² of land would be affected. This amounts to a mere 0.03% of the Northern Territory’s land mass. Further, the evidence gathered by the current Inquiry suggests that risks can be managed effectively and that the shale gas industry and its supply chain is expected to generate net benefits for other sectors.

We believe that a balanced regulatory regime for mineral exploration and appraisal in the Northern Territory will eventually lead to the development of an economically viable shale gas industry and encourage further investment in other downstream industries. It will also justify further investment in gas pipelines, which will connect gas fields in the Northern Territory to east coast markets. A shale gas industry can also create long-term jobs, not just cyclical jobs that occur during the construction phase of major projects.

Regulatory Framework

We are broadly supportive of the NT Government adopting an improved, robust and scientifically-based regulatory framework that protects community values in shale gas development. We note that the Productivity Commission (PC) has conducted inquiries into the regulatory frameworks governing the minerals exploration¹² and the upstream petroleum (oil & gas) sectors¹³, to determine if there was evidence of unnecessary regulatory burden for these sectors, and if so, to make recommendations on how to reduce or eliminate these burdens. We believe the Productivity Commission’s findings and recommendations can help guide the Inquiry and the Government in developing the regulatory system the NT needs.

6 Ibid

7 Ibid, p 59

8 Australian Competition & Consumer Commission, *Gas Inquiry 2017-2020*, December 2017, p 74

9 ibid

10 Ibid

11 NIEIR, *Large scale export of East Coast Australia natural gas: unintended consequences*, October 2012, ii

12 Productivity Commission, *Minerals and Energy Resource Exploration- Inquiry Report*, Sept 2013

13 Productivity Commission, *Review of the regulatory burden on the upstream petroleum (oil & gas) sector*, April 2009

The upstream petroleum sector inquiry's key findings indicated that governments' role in managing and enforcing the regulatory framework for this sector was complex and needed to be better defined, together with the totality of resource management policy. More generally, the regulatory framework had:

-) Difficult, complex and time-consuming approval processes;
-) Lacked clear and accountable processes and timelines;
-) Multiple, overlapping and duplicative regulatory responsibilities;
-) Overlapping local government laws, regulations and approvals;
-) Unnecessary burdens in reviewing retention leases;
-) Lack of consistency in carbon capture and storage requirements;
-) Delays in updating legislation; and
-) Delays in processing applications for access to land subject to native title.

The inquiry made a series of recommendations, notably that State and Territory governments should:

-) Clearly articulate the objectives of intervention in approving the method and rate of petroleum extraction and periodically assess the benefits and costs to ensure such intervention is justified, and that if so, the costs of intervention are the minimum necessary to achieve the governments' policy objectives;
-) Ensure approval processes are best practice and clearly defined;
-) Set statutory timelines for individual regulatory decisions;
-) Disclose reasons for regulators requesting additional information, and measurement and public disclosure of their performance against these targets;
-) Provide clear guidelines where feasible on information requirements to assist proponents in efficiently providing the necessary information to allow timely regulatory decisions; and
-) Ensure reporting requirements are clear, justified, and avoid duplication and overlap with other mandatory reporting requirement.

The more recent PC inquiry, focusing on the minerals exploration sector, further examined the complexity and timeframes of government approvals processes for exploration. The inquiry addressed the issues of the lack of transparent and consultative processes when adding or changing regulation, the poor communication of some regulators and the limited use of evidence-based decision-making and proportionate risk management in specific regulatory frameworks. It also assessed the impact of non-financial barriers on the international competitiveness and economic performance of the sector. The PC inquiry recommended transparent, collaborative and consultative regulatory frameworks. Further, that these regulatory frameworks and any substantial changes to them needed to be based on effective consultation with stakeholders and underpinned by robust and comprehensive socio-economic and environmental impact analysis.

The PC inquiry's key recommendations included the need for regulatory requirements relating to exploration to be proportionate to the impacts and risks associated with the nature, scale and location of the proposed activities. Further, they recommended that decisions on environmental approvals needed to be evidence-based; particularly where there was uncertainty surrounding the environmental impacts of exploration activities. The PC inquiry noted that a transparent regulatory system was essential to demonstrate to all stakeholders that their interests were being considered in a fair and objective manner. However, the regulatory framework, while being transparent, also needed to provide clarity and certainty regarding regulatory outcomes. The PC inquiry noted that any uncertainty about the scientific evidence could not be used to justify a lack of decisive action. The PC inquiry felt that to ensure efficient decision making, the lead regulatory agency in a jurisdiction needed to collaborate with other agencies responsible for regulatory assessments and approvals (such as environment and heritage agencies) and provide clarity and guidance to exploration proposals.

The PC inquiry stressed the critical importance of timely regulatory decision making. Delays due to duplication of assessment processes and a lack of clear guidance on the criteria being used to assess exploration projects could result in explorers losing an entire exploration season (e.g. the exploration window in Northern Australia was limited due to seasonal conditions), and/or lose access to costly exploration equipment. More specifically, the inquiry stated that in many instances, the first year of a licence period could be exhausted by the need to gain the necessary regulatory approvals. This effectively limited the time left for actual exploration activity.

The PC inquiry's findings indicated that a regulator's conduct and assessment processes could have an even greater impact on the cost of doing business than the regulations themselves. Delays associated with approvals processes could impose significant costs on explorers and cause considerable public disquiet. The PC inquiry was provided with case studies which established the adverse financial and economic impact of the lengthy timeframes to process exploration licence or renewal applications. The PC inquiry recommended that timeliness needed to be measured across all government approval processes rather than just for a key regulator. Further, they recommended that efficiency targets needed to be set and made publicly available, in order to promote transparency and identify regulatory bottlenecks. The PC inquiry also recommended the introduction of online approval systems, with the potential to reduce inefficiencies and cut red tape. In this context, the PC inquiry cited how the introduction of online lodgement in Western Australia had reduced approval times by almost 25 per cent. Online tracking of applications facilitated the reporting of regulatory decision-making timeframes and kept explorers informed of the progress of their applications.

Additionally, while the regulatory framework should account for the NT's circumstances, consideration needs to be given to harmonising the different Australian jurisdiction's regulatory regimes for onshore gas exploration and development. Inconsistency between various state and territory regimes creates additional regulatory complexity and cost for potential investors, as well as for local communities to understand the approval and development process for onshore gas projects. Of particular importance is harmonising to neighbouring Australian jurisdictions that share state borders, for example, South Australia and Queensland.

Conclusion

The substantial resources of shale gas in the NT constitute an enormous opportunity for local and national economic development and security. This opportunity should be pursued responsibly. The Inquiry has laid out a pathway for regulatory reform that would minimise the risks of gas development. This framework should take advantage of best regulatory practice to maximise benefits. On behalf of businesses of all sizes in the Territory and the rest of Australia, we hope that the NT Government will act expeditiously on the Inquiry's work to implement reforms that will enable the lengthy development process for shale gas to commence soon. Should the Inquiry be interested in further discussing the matters raised in this letter, please contact Ai Group's adviser Ali Rahman (02 9466 5443, Ali.Rahman@aigroup.com.au).

Yours sincerely,



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