

**RESPONSE TO RECOMMENDATIONS OF THE LEGISLATIVE COUNCIL
STANDING COMMITTEE ON ENVIRONMENT AND PUBLIC AFFAIRS REPORT
NO. 42 IMPLICATIONS FOR WESTERN AUSTRALIA OF HYDRAULIC
FRACTURING FOR UNCONVENTIONAL GAS**

Recommendation 1

The Committee recommends that the Government amend section 153(3) of the Petroleum and Geothermal Energy Resources Act 1967 to increase the maximum fines permitted in regulations made under the Act to a more appropriate level.

Supported.

The Department of Mines and Petroleum (DMP) will prepare proposed amendments for consideration by Government and Parliament.

Recommendation 2

The Committee recommends that regulation 83 of the Petroleum and Geothermal Energy Resources (Resource Management and Administration) Regulations 2015 be amended, in particular the deletion of regulations 83(4) and 83(5).

Supported in principle.

A review will be initiated with a view to amending regulation 83 of the Petroleum and Geothermal Energy Resources (Resource Management and Administration) Regulations 2015. DMP will review regulations 83 and 84 to ensure consistency with Government's objectives on openness and transparency. This will give the community confidence in the development and management of petroleum projects in Western Australia by providing access to relevant information from project proponents.

Recommendation 3

The Committee recommends that the Memorandum of Understanding between the Department of Mines and Petroleum and the Environmental Protection Agency be amended to require the Department of Mines and Petroleum to refer all proposals under section 38 of the Environmental Protection Act 1986 to the Environmental Protection Agency.

Noted.

A revised Memorandum of Understanding (MoU) between the Office of the Environmental Protection Authority (OEPA) and the Department of Mines and Petroleum (DMP) has been prepared and is expected to be signed by the end of February 2016.

The MoU includes a trigger that requires DMP to undertake pre-referral consultation with the OEPA on all hydraulic fracturing proposals. All proposals that are determined to be significant proposals as defined in the *Environmental Protection Act 1986*, Environmental Impact Assessment (Part IV Divisions 1 and 2) Administrative Procedures 2012 and Environmental Assessment Guideline 9: Application of a Significance Framework in the Environmental Impact Assessment Process will be referred to the EPA. All applications for production licences will be referred to the EPA.

Recommendation 4

The Committee recommends that the Department of Mines and Petroleum develop a mechanism to consult with the Water Corporation (or, in the case of regional areas, with the relevant water provider) in relation to the regulation of hydraulic fracturing activities.

Supported.

The Department of Water rather than the Department of Mines and Petroleum will lead the development of an appropriate consultation mechanism.

Recommendation 5

The Committee recommends that the Government establish a statutory body similar to the Queensland GasFields Commission to act as an independent arbiter for land owners and resource companies in land access negotiations involving onshore shale gas.

Noted.

Mechanisms for negotiating access agreements with landholders have developed significantly since the Committee report. The Government will continue to improve these mechanisms, including the use of independent mediation, with input from the working group resulting from recommendation 6. The introduction of a statutory body may be considered in the future on the recommendation of the working group.

Recommendation 6

The Committee recommends that the Government establish a working group, including land owner representatives and community leaders, to draft legislation for a statutory framework for land access agreements between land owners and resource companies. The framework should include provisions for an agreement template, compensation for land owners and the enforcement of mandatory access conditions using Queensland's Land Access Code as a guide.

Supported in part.

The Government notes a new model agreement for access to agricultural land, developed by the petroleum industry and farmer groups through extensive consultation that was announced on 30 October 2015. The agreement was developed by a joint committee chaired by former WA Deputy Premier and Nationals Leader, Hon Hendy Cowan. It has been endorsed by the Australian Petroleum Production and Exploration Association (APPEA), WA Farmers, Pastoralists and Graziers Association of WA and Vegetables WA.

DMP will establish a working group to develop recommendations for any further changes required. The need for a statutory framework may be considered in the future on recommendation of the working group.

Recommendation 7

The Committee recommends that the Government ban the use of benzene, toluene, ethylbenzene and xylene during any hydraulic fracturing operations undertaken in Western Australia.

Supported in part.

The Government will prohibit the deliberate addition of BTEX compounds to hydraulic fracture stimulation fluids.

DMP applies a risk based assessment (risk to be "As Low As Reasonably Practicable" - the ALARP principle) for all chemicals used in relation to their impact on surface and groundwater and also in regards to personnel exposure. As part of the process DMP seeks advice from the Department of Water and the Department of Health.

It should be noted that BTEX is generally present naturally in petroleum formations. BTEX is also a natural component in petrol and diesel. As such, it is impossible to eliminate them from petroleum operations entirely and they are managed as for any other industrial activity.

Recommendation 8

The Committee recommends that the Department of Mines and Petroleum's policy of public disclosure of chemicals used in any hydraulic fracturing activity be formalised in subsidiary legislation.

Supported.

DMP will draft amendments to the *Petroleum and Geothermal Energy Resources (Environment) Regulations 2012* for consideration by Government to ensure public disclosure of chemicals used in hydraulic fracture stimulation activity.

In the interim, DMP will continue to use its policy of full chemical disclosure in the publically available summary Environmental Plan to ensure transparency regarding all chemicals.

The EPA's Environmental Protection Bulletin 22 *Hydraulic Fracturing for onshore natural gas from shale and tight rocks* also currently requires proponents to provide information on the chemicals that they will use during implementation of the proposal.

Recommendation 9

The Committee recommends that resource companies in Western Australia be encouraged to explore the recycling of wastewater during hydraulic fracturing operations, where practicable.

Supported.

Agencies will continue to encourage industry to reuse wastewater in accordance with existing policies.

Recommendation 10

The Committee recommends that baseline monitoring of aquifers and the subsequent publication of this data be a mandatory condition of all approvals for hydraulic fracturing operations in Western Australia.

Supported.

DMP will apply such a condition on all relevant hydraulic fracturing projects that are approved.

DMP and Department of Water have released a comprehensive guideline for public comment on groundwater monitoring in the onshore petroleum industry, which covers hydraulic fracture stimulation.

DMP is also working on a whole-of-government approach to the release of water and environmental data under the State Environmental Data Library (SEDL) initiative.

This recommendation is consistent with the Environmental Protection Authority's (EPA) Environmental Protection Bulletin 22 *Hydraulic Fracturing for onshore natural gas from shale and tight rocks*, which specifies the information required to support environmental impact assessment of proposals involving hydraulic fracturing. This includes the need for baseline groundwater information and information in historically data deficient areas, including the Canning Basin.

Proposals approved for implementation by the Minister for Environment under Part IV of the *Environmental Protection Act 1986* include a condition that requires all data that is collected to be made publically available.

Recommendation 11

The Committee recommends that a fund similar to the Mining Rehabilitation Fund under the Mining Rehabilitation Fund Act 2012 be established for activities governed by the Petroleum and Geothermal Energy Act 1967.

Supported in principle.

The Government accepts the need for an appropriate funding arrangement. DMP has undertaken some preliminary work and will continue to assess the feasibility of options including establishing a Petroleum Rehabilitation Fund or extending the Mining Rehabilitation Fund to petroleum related activities (or assess other models) in consultation with industry and community stakeholders.

Recommendation 12

The Committee recommends that any future consideration of hydraulic fracturing for unconventional gas in Western Australia be based on established facts, ascertained through baseline data and monitoring, with a view to strengthening the industry's social licence to operate.

Supported.