

**PETROLEUM AND GEOTHERMAL ENERGY RESOURCES (HYDRAULIC FRACTURING)
AMENDMENT REGULATIONS 2019 — DISALLOWANCE**

Motion

Pursuant to standing order 67(3), the following motion by Hon Robin Chapple was moved pro forma on 21 November 2019 —

That the Petroleum and Geothermal Energy Resources (Hydraulic Fracturing) Amendment Regulations 2019 published in the *Government Gazette* on 6 September 2019 and tabled in the Legislative Council on 17 September 2019 under the Petroleum and Geothermal Energy Resources Act 1967, be and are hereby disallowed.

HON ROBIN CHAPPLE (Mining and Pastoral) [3.46 pm]: The fundamental reason that I am moving the disallowance standing in my name comes back to a letter I received from the Walalakoo Aboriginal Corporation. The regulations that are before us enshrine an area of the Dampier Peninsula to be a protected area. Without knowing the interests of the individual parties, I cannot really say whether it is a good or a bad outcome, but, in the main, it is providing a protected area. The letter from the Walalakoo people states —

The *Petroleum and Geothermal Energy Resources (Hydraulic Fracturing) Amendment Regulation 2019* includes a Dampier Peninsula hydraulic fracturing ban area. Premier McGowan said that there would be community consultation on the boundary of the ban area according to his media release.

According to the WA Government’s ‘Implementation Plan’ ... 2019, the government was to: “Undertake discussions with impacted stakeholders to define and map the Dampier Peninsula ban boundary.”

The Implementation Plan defines stakeholders as: “Community, Native Title Representative Bodies, National Native Title Council, Traditional Owners, Industry, Industry Associations, Local Governments and Government Agencies.”

We would like to bring to your attention that, Walalakoo as a Native Title Registered Body, has not been consulted on this matter. We respectfully called for this regulation to be disallowed and that a consultation process be undertaken with us.

We also bring to your attention the fact that the Walalakoo members are opposed to fracking on our Country and that places like the Mardoowarra (Fitzroy River) and our springs and underground water are particularly susceptible to adverse impacts.

We also respectfully request, particularly given the Right of Veto that is to be implemented on production, that the Dampier Peninsula fracking ban be extended to cover the National Heritage Listed Fitzroy River. This ban would negate the requirement for us to interact with fracking companies and reduce the pressure on the limited capacity we have to deal with resource companies in this area.

...

Yours sincerely,

Damien Parriman.

I think he is the manager of the corporation. I point out that the Walalakoo Aboriginal Corporation is a registered corporate body—ICN 8041. Walalakoo means big mob of people together. The corporation contains such luminaries as Johnny Watson, Wayne Bergmann, Harry Watson, Anthony Watson and Anne Poelina. It is a very significant representative body of the West Kimberley.

The basis of the move for the disallowance is to literally go back and allow the native title parties in this area to be part of what was proposed in the implementation plan. A number of statements are made throughout the implementation plan, but the most important point is what the consultation process will involve. The plan states —

A range of consultation methods are anticipated to be used throughout the stakeholder consultation process where required, including:

- conducting workshops and briefings with impacted stakeholders;
- releasing draft proposals for public comment and feedback;
- publishing response to feedback on the dedicated Implementation Plan website; and
- informing stakeholders through the ... website once actions have been completed.

Notwithstanding that an area that is free from fracking has, as far as I can see, been set aside on the Dampier Peninsula, the key issue is that the very matter that was identified in the implementation plan was pointed out in a number of

ministerial press releases, and I will refer to comments attributed to the Minister for Environment, Hon Stephen Dawson, on 15 March 2019. He said —

The opportunity for a national park in the Fitzroy Valley will enable Aboriginal people to establish and operate tourism ventures and other enterprises on country.

I understand that as of Monday, 9 March 2020, the minister had identified that the Fitzroy River national park was on track. That quite clearly fits within the parameters of the implementation plan and could have been included in this regulation had we just held off for a little while.

I do not want to belabour the point, but, as members know, the Greens have a total opposition to fracking—full stop. This is more about the government living up to its agreement to consult with traditional owners. I think honourable members opposite would understand how the Kimberley traditional owners view their country and the value and importance of consultation.

A press release from the Minister for Mines and Petroleum, Hon Bill Johnston, MLA, on 6 September 2019 states —

Additionally, traditional owners and farmers will have the right to say no to oil and gas production from fracking on their land.

This was also raised in the other place when notice of a disallowance motion was given by —

Hon Alannah MacTiernan: Shane Love, I think.

Hon ROBIN CHAPPLE: Thank you. Notice of a disallowance motion was given in the other place not specifically about the issues that I have just addressed, but certainly about the areas. Mr Love said that the disallowance motion was yet to be debated in Parliament, but he intended to gain support to ban fracking in his electorate of Moore and across the entire state. The issue has been raised in both houses. This house has the ability to disallow. I make the point that I do not think the disallowance is, in essence, about what is in the regulations. The key issue for me is that the significant body of elders in the West Kimberley represented by the Walalakoo Aboriginal Corporation, the registered native title body corporate, was not consulted, according to the letter that I have been provided with.

HON TJORN SIBMA (North Metropolitan) [3.54 pm]: I rise on behalf of the Parliamentary Liberal Party to outline that, with all due respect, we oppose this disallowance proceeding any further. While driving in today, I wondered what the point of this was, because it would obviously have the effect of lifting the current moratorium, which I thought would lead, in the honourable member's opinion, to a less desirable outcome. It might be an outcome that I have a fondness for, but I am sure that that is not the intent. Having made the point about the quality and degree of considered consultation with the elders of the West Kimberley, the member has fairly made that point, but I would not imagine that that constituency would like to see the outcome that his disallowance would give rise to. As undesirable as I think the current state of affairs is from an industry perspective, what the member has proposed would be very unwise and very uncertain. For those very pragmatic reasons, I indicate once again that we will oppose the disallowance motion.

HON ALISON XAMON (North Metropolitan) [3.56 pm]: I do not rise to indicate that I will vote to support the disallowance motion, but I want to use this opportunity to make some comments more generally about some of the implications of fracking and to touch on some of the issues that have arisen in the way that this particular set of regulations has been put together. Those members who were in the thirty-eighth Parliament will remember that I was the first member to propose a moratorium on fracking way back in 2010. I raised a number of concerns then, and I am very concerned that they are still relevant now. I talked about the water use, the disposal of returned water, the clearing for the wellhead sites and all the interconnecting infrastructure, the health and environmental risks of failing to effectively contain the gas and the fracked water, and the concerns about the long-term maintenance of closed and abandoned wells and the infrastructure that would remain. However, above and beyond the reasons we have to be concerned about the process of fracking itself, we need to be even more concerned about the future we are choosing by expanding the fossil fuel industry. This is something that I started to elaborate on quite extensively in about 2012. This was at a time when we knew that we needed to decarbonise as rapidly as possible. It has been many years since then. Noting that I initially proposed the fracking moratorium a decade ago, it took until 2012 before we were able to debate that motion in this place and, unsurprisingly, the house did not vote in favour of a moratorium. In fact, as I recall, the Greens were the only ones who voted for the moratorium.

I also would like to note that the Standing Committee on Environment and Public Affairs inquired into the implications for Western Australia of hydraulic fracturing for unconventional gas during the thirty-ninth Parliament and reported in 2015. The recommendations in that report reflect much of the same thinking that was in my original submission into the review of the onshore gas regulations in 2012. That report was debated in the first half of 2016 and I was pleased that the Labor Party went into the 2017 election with a promise to ban fracking in WA. However, I was not very pleased, although not surprised, when it turned around and lifted the ban on all the areas where fracking might successfully release gas; that is, the active petroleum exploration permit areas mostly in the Canning and

North Perth basins, like the petroleum exploration permits in the Peel, Perth and south west areas, can be explored and turned into production only via conventional methods. It is inconsequential really because it does not make any difference.

Part of the justification for lifting the fracking ban came from the scientific inquiry into fracking that was established on 5 September 2017. It reported on 12 September 2018 and went public in November 2018. The time line of the government's fracking implementation plan expects that all the accepted recommendations will be fully implemented by the end of the year. The moratorium over certain areas has been lifted and exploratory fracking applications can once again be made. I have stood here multiple times over the course of effectively the last decade arguing that conventional gas has no merit so we cannot with any integrity commit to a future with a growing LNG industry and a future in which we can successfully fight climate change. We have known for years that we cannot continue to extract and use fossil fuels at the rate that we have been. We know that we need to drastically reduce our use of fossil fuels, but now this government is not only seeking opportunities to increase the size of the conventional gas industry, it is also actively seeking to create a productive unconventional gas industry. We are talking about the exploitation of areas that absolutely do not need to be touched.

At the top level, we know that choosing to expand the gas industry in any form is utterly irresponsible, and it is particularly irresponsible to choose to support an industry that carries all the additional environmental concerns that come with the process of fracking. I cannot believe that I am once again standing in this place arguing about fracking. I appreciate that the government has made substantial strides in the regulations since early 2010, which has not been without its struggles. I remember how hard the Australian Petroleum Production and Exploration Association fought to discredit the work I was doing in that space even though it has now conceded that much of what I was saying was spot on. However, I note that there is still no way of guaranteeing the safety of people and land in this process. I appreciate the government's intent to substantially increase the transparency of fracking activities by bringing in a number of long-awaited measures, such as baseline environmental monitoring prior to activity; a register of the chemicals used in fracking—oh, my goodness, industry fought very hard against that!—a commitment to look at the accumulative impact of unconventional gas exploration and production on infrastructure instead of continuing to deal with each application on an individual basis, which was absolute lunacy; and, finally, separation of the government agencies responsible for the promotion and regulation of the industry. I recognise that these are significant reforms; ones that I was told could not possibly happen when I was calling for them a decade ago.

I have long been concerned about what will happen to the abandoned wells in the decades after they cease being useful to the companies that originally drilled them. I remain concerned about this just as I remain concerned about the risk of stranded conventional gas infrastructure, which I have already spoken about in this place. I am concerned about what it will cost the public to clean up the mess and maintain the wells well beyond when we can expect the companies to still be in business and, even worse, if the companies involved put us in a situation similar to what happened with the *Northern Endeavour*.

Concerns about the use of water remain relevant, especially in the productive agricultural areas in the midwest where mining, agricultural and fracking operations compete for groundwater, and because climate change is reducing rainfall in other areas of the state. We have already seen the over-allocation of groundwater. Multiple areas in the great southern are now dependent on water being trucked in to keep livestock alive, and multiple townships are also reliant on water being trucked in.

We know that even if we were to stop emitting greenhouse gases right now, we would not see for decades an end to the climate change that we set in motion. Farmers in the south west will see less and less rain, and rainfall will occur outside the regular time frames. We will also see wild weather more often. It is unconscionable to not prioritise water for people, animals and food production over water for gas production, especially when we know that the industry is one of the biggest climate polluters. This will only make the situation worse. I am glad that the government intends to bring in a right of veto for private landowners for production wells, but I am not pleased that this does not apply to exploration wells. The best a private landowner can hope for is appropriate compensation while an explorer is investigating their land. As my colleague Hon Robin Chapple also discussed, there are a number of concerns within Aboriginal communities about how the right of veto for traditional owners has already played out and will continue to play out.

Aside from this motion, but in relation to the overall implementation plan, I point out that the idea of the clean energy future fund supported by the net royalties from onshore fracking is a bit of a joke. We already know that almost no net royalties will be seen and that this is just a way to avoid funding the work that must be done for the future. I understand that once again the government has caved in to industry pressure to go ahead with an industry; the technology for which we simply do not need and cannot afford. I will continue to raise my concerns about this issue as I have done for the past decade. I know that I am right, just as I knew I was right a decade ago. I feel confident that history will prove that to be the case and as it has to date. But in the meantime, I remain concerned about this

industry as a whole. We should not be looking to expand fracking. We should have maintained a moratorium over the whole state. I go further than that—I would like to see a ban on fracking over the whole state.

HON ALANNAH MacTIERNAN (North Metropolitan — Minister for Regional Development) [4.05 pm]: I appreciate the motivations of Hon Robin Chapple and Hon Alison Xamon, but we need to take into account the comment made by Hon Tjorn Sibma. It defies belief that the Greens want this motion disallowed. Let me be very clear about what will happen if it were disallowed. The regulatory framework for hydraulic fracturing would revert to the Petroleum and Geothermal Energy Resources (Hydraulic Fracturing) Regulations 2017, which would have the effect of lifting the statewide moratorium on hydraulic fracking on 20 June 2020 and enabling applications for hydraulic fracking across the state, except for the south west, Peel and the Perth metropolitan region where the ban will remain. It will remove current protections by lifting bans on the Dampier Peninsula, including Broome, national parks and areas within 200 metres of gazetted public drinking water source areas. As Hon Tjorn Sibma said, it is strange that the Greens want to disallow this motion.

Hon Alison Xamon: I just said I wasn't going to vote for the disallowance.

Hon ALANNAH MacTIERNAN: Thank you. We understand that the Greens' view is to ban fracking across the state. We very genuinely established a fully independent scientific panel that was not stacked in any way, shape or form because we wanted to know what the science was saying. We were not necessarily happy with the result, but the result was that in the Western Australian context, fracking could be conducted in an environmentally acceptable way. That was the advice of the independent panel. Consequentially, we sought to make exclusions that we thought were important for a range of reasons. The mover of the motion, Hon Robin Chapple, talked about the Walalakoo Aboriginal Corporation's concerns that its particular area was not included. It wants the ban extended to cover the natural national heritage-listed Fitzroy River. The complication about that particular one is defining where the Fitzroy River catchment is. It is such an extraordinary river that its catchment can be said to be very wide.

Hon Robin Chapple: The key issue is that the Walalakoo people wanted consultation.

Hon ALANNAH MacTIERNAN: Yes. We certainly have not been able to satisfy their requirements, but subsequent to the decision to move forward with these regulations, we have established another process that we undertook in a policy sense as part of our policy on fracking—that is, to look at the proposed iconic natural heritage places. In addition to having national parks, there is the concept in the policy of proposed iconic natural heritage places. I am not sure whether the member has seen this, but a discussion paper was put out on 10 December. It listed the Fitzroy River iconic natural heritage place and the Camballin floodplain iconic natural heritage place and the Kennedy Range iconic natural heritage place. That will provide the opportunity for the Walalakoo to have their input into what they see as the boundaries and their desire to have their areas captured by the fracking ban.

Hon Robin Chapple: The defined boundaries are established by this regulation; they are not negotiable.

Hon ALANNAH MacTIERNAN: What are not negotiable?

Hon Robin Chapple: The boundaries because they are in the regulation. They are prescribed.

Hon ALANNAH MacTIERNAN: The boundaries that are there now?

Hon Robin Chapple: Yes.

Hon ALANNAH MacTIERNAN: But that does not prohibit a subsequent category being described. At the moment, there are heritage parks and the Dampier Peninsula, as the boundaries are defined within the regulation. But my understanding of this is that we are considering a subsequent regulation that would capture iconic natural heritage places. In order to properly define that, we did not want to leave progress on these other matters until those very detailed discussions had been held. This is a document designed to guide a future path, as I understand it. I will read out the purpose as given in this discussion paper —

The purpose of this paper is to seek public comment and feedback about proposed iconic natural heritage places, within which the petroleum industry would not be permitted to set up well pads or undertake drilling for oil and gas exploration or production, involving hydraulic fracture stimulation, also referred to as hydraulic fracturing.

The aim of identifying iconic natural heritage places is to prevent potential impacts arising from direct development or proximity to increased traffic, noise or light associated with hydraulic fracturing.

A process is underway; maybe the member was not aware of that. It is intended, and has always been intended in our policy, that another class of area would be exempt, but we have yet to come to a determination on those precise boundaries. We are therefore proceeding with this place. However, we have put out this discussion paper. As I understand it, the comment period has now concluded. I am sure that the Walalakoo were involved in that discussion and a subsequent determination will be made.

Question put and negatived.

Extract from *Hansard*

[COUNCIL — Thursday, 12 March 2020]

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Hon Robin Chapple; Hon Tjorn Sibma; Hon Alison Xamon; Hon Alannah MacTiernan

Sitting suspended from 4.15 to 4.30 pm