



***Submission: The Industry Research and
Development (Beetaloo Co-operative Drilling Program)
Instrument 2021***

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With thanks:

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About ANTaR

ANTaR is a national advocacy organisation working for Justice, Rights and Respect for Australia's First Peoples. We do this primarily through campaigns, advocacy and lobbying.

Our current national campaigns include:

- Constitutional Recognition and Equality – for Constitutional change to recognise Australia's First Peoples and remove discriminatory elements from our founding document; and
- Advocating for treaty and agreement-making processes across Australia.

We also engage in national advocacy across a range of policy and social justice issues affecting Aboriginal and Torres Strait Islander communities, including native title, languages and cultures, economic and community development, remote communities' services and infrastructure, health and human rights.

ANTaR is a foundational member of the Close the Gap Campaign Steering Committee, the Change the Record Campaign Steering Committee and the Redfern Statement Alliance.

ANTaR has been working with Aboriginal and Torres Strait Islander communities, organisations and leaders on rights and reconciliation issues since 1997. ANTaR is a nongovernment, not-for-profit, community-based organisation.

Introduction

ANTaR welcomes this opportunity to make representation in solidarity with our First Nations partners and stakeholders into the processes surrounding *The Industry Research and Development (Beetaloo Co-operative Drilling Program) Instrument 2021*.¹ There have been many years of community and Traditional Owners opposition² to the Federal and Northern Territory (NT) governments' intention to support Hydraulic Fracturing of Onshore Unconventional Reservoirs in many sites across the NT. In June 2021 community opposition was successful in securing a Senate inquiry.³ The Inquiry is tasked with examining the *Industry Research and Development (Beetaloo Cooperative Drilling Program) Instrument 2021*, whose purpose is to encourage and facilitate accelerated gas exploration in the Beetaloo sub-basin through the provision of grants. Since the 2021 Federal budget, the government has provided \$550M in subsidies to the gas industry.^{4 5 6 7}

In this submission, ANTaR briefly recaps the environmental, social, cultural and economic objections commonly levelled against both Federal and Territory governments' pursuit of this industry in the NT before addressing two specific concerns related to due process: adherence to all recommendations of the Scientific Inquiry into Hydraulic Fracturing in the Northern Territory 2018 Final Report;⁸ and recognition of the principle of informed prior consent to the Traditional Owners of the sites in question.⁹

¹<https://www.legislation.gov.au/Details/F2021L00567>

²www.theguardian.com/world/2014/jun/13/offshore-fracking-fight-washes-up-arnhem-land

³<https://nit.com.au/fracking-inquiry-for-beetaloo-basin/>

⁴<https://www.industry.gov.au/data-and-publications/unlocking-the-beetaloo-the-beetaloo-strategic-basin-plan/action-1-building-a-clear-picture-of-the-beetaloo>

⁵<https://www.miningweekly.com/article/first-beetaloo-grant-awarded-2021-07-07>

⁶<https://www.nsenergybusiness.com/news/australian-federal-budget-oil/>

⁷<https://www.afr.com/politics/federal/taxpayers-to-spend-hundreds-of-millions-to-save-last-fuel-refiners-20210511-p57qz1>

⁸<https://frackinginquiry.nt.gov.au/inquiry-reports?a=494327> [Summary]

⁹<https://apo.org.au/sites/default/files/resource-files/2021-01/apo-nid310681.pdf> [Key Messages]

Commonly voiced fears / objections to the expansion of the ‘unconventional’ (fracking) oil and gas industry in the NT include:

- The threat to security and quality of water with the impacts of fracking and concerns regarding wastewater management was one of the biggest issues raised during the Government’s Independent Scientific Inquiry; ¹⁰
- Threats to sacred sites and waterways; ¹¹
- Absence of consent from Traditional Owners; ¹²
- Public funding should be spent on people not profits ¹³;
- Fracking of the Beetaloo and McArthur basins are a climate disaster for the NT and beyond; ¹⁴
- Fast tracking of exploratory drilling is just a stepping stone for expansion, thus ruining the possibility of limiting global warming to the Paris Climate Agreement target of 1.5 degrees celsius. ¹⁵

Unless these valid concerns can be addressed adequately, **ANTaR recommends** that the Senate Inquiry consider them all in its investigation and reporting.

NT initiated Scientific Inquiry into Hydraulic Fracturing in the Northern Territory 2018 Final Report¹⁶ - Adherence to due process

The NT commissioned an Independent Inquiry in 2016 with its Final Report in 2018. Of particular relevance to the current Senate Inquiry is the final Implementation chapter (16) which states that:

The recommendations in this Report are a complete package. That is, they must be implemented in their entirety in order to mitigate the risks associated with any onshore shale gas industry in the NT to an acceptable level. Further, if the Government lifts the moratorium, the recommendations must be implemented in a clear, timely and transparent manner.

¹⁰<https://www.smh.com.au/national/fractured-future-water-fears-as-drilling-for-gas-begins-in-the-nt-20191003-p52xfj.html>

¹¹<https://www.abc.net.au/radio/programs/worldtoday/traditional-owners-fear-gas-fracking-threat-to-traditional-sites/13344778> [May 2021]

¹² <https://nit.com.au/fracking-inquiry-for-beetaloo-basin/>

¹³ <https://thenewdaily.com.au/finance/finance-news/2021/05/12/oil-subsidy-climate-budget-2021/>

¹⁴ <https://www.openaustralia.org.au/senate/?id=2021-06-15.185.2>

¹⁵<https://www.abc.net.au/news/2020-02-29/beetaloo-basin-gas-field-could-jeopardise-paris-targets/12002>

¹⁶<https://frackinginquiry.nt.gov.au/inquiry-reports?a=494327>

In 2021, the NT government cancelled a contract tasked with undertaking part of the Strategic Regional Environmental and Baseline Assessment (SREBA) Cultural and Economic study,¹⁷ an essential criteria to be adhered to prior to drilling beginning in 2022. The NT government assured the public that it will adhere to due process set out in the 2018 Final Report, however, skepticism about their commitment to this prevails in sections of the community.¹⁸

ANTaR recommends that the Senate Inquiry consider due process for this work and the advice set out in the 2018 report.

ANTaR further notes that the seminal *Independent Review of the Environmental Protection Biodiversity Conservation (EPBC) Act – Final Report 2020*¹⁹ makes a scathing judgement on the state of the Environment across Australia stating:

Australia's natural environment and iconic places are in an overall state of decline and are under increasing threat [See Key Messages].

It calls for a set of National Environmental Standards to be implemented immediately. Federal Minister, Susan Ley acknowledged in January 2021 that the government was committed to working through the full detail of the recommendations.²⁰

To date, the Federal government has not taken any action in response to the EPBC Act Report 2020. **ANTaR recommends** that the Senate Inquiry considers these new National Environmental Standards in its assessment of the Northern Territory government's adherence to the Independent Scientific Inquiry into Hydraulic Fracturing in the NT.²¹

¹⁷<https://nit.com.au/nt-government-terminates-beetaloo-basin-contract/> [May 7 2021]

¹⁸ IBID

¹⁹<https://apo.org.au/sites/default/files/resource-files/2021-01/apo-nid310681.pdf> [Key messages]

²⁰<https://minister.awe.gov.au/ley/media-releases/review-supports-reform-environmental-laws>

²¹<https://frackinginquiry.nt.gov.au/inquiry-reports?a=494327>

Principle of Free prior informed consent of Traditional Owners

The rights of First Nations peoples of the NT are legally protected by a series of laws such as NT Land rights, Federal Native Title Rights, Heritage Conservation and Aboriginal Sacred Sites Acts. Furthermore, Australia is a signatory to the United Nations Declaration of Rights of Indigenous People (UNDRIP) in particular the right of Indigenous people to maintain, protect and develop the past, present and future manifestations of their cultures (Articles 12, 13, 25, 26, 31, 32.)²² Despite these protections and rights, one of the most reiterated complaints made by Traditional Owners about the mining corporations dealings with them include the following sentiments contained in an open letter earlier this year to the the NT Parliament with over 35,000 signatures:

...they have failed to “follow proper process in consultation with us, failed to acquire consent, failed to provide transparency in their dealings with us, and have systematically excluded our voices from the decision-making process for activities on our Country.”²³

The Senate Inquiry will already be very familiar with the fallout from the national tragedy that occurred when the Juukan Caves in WA were destroyed in WA in May 2020. It is clear that the Australian public have expectations that the cultural and environmental heritage of the land and seas will be protected. All Australian governments to some degree are culpable of outdated, and often egregiously inadequate cultural heritage laws that do not recognise the primary role of traditional owners in protecting cultural heritage. In November 2020, an Australian National University event entitled: *Destruction of Juukan Gorge: Law Mining and the Protection of Aboriginal heritage* judged very harshly, noting that all levels of State and Federal law fail to place First Nations People at the centre of Aboriginal cultural heritage policy.²⁴

Since the loss at Juukan Gorge there have been eloquent promises of ‘Never Again’.²⁵ The pursuit of expanding the hydraulic fracturing industry in the NT has considerable implications for the environmental, social, cultural and economic future of Australia.

²²<https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html> [Articles 11, 13, 25, 26, 31 and 32]

²³<https://nit.com.au/fracking-inquiry-for-beetaloo-basin/>

²⁴<https://law.anu.edu.au/multimedia/videos/panels-and-seminars/destruction-juukan-gorge-law-mining-and-protection-aboriginal>. [Nov 2020]

²⁵https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Northern_Australia/CavesatJuukanGorge/Interim_Report

ANTaR recommends that the Senate Inquiry pursue a national approach to laws that accord a primary authority to First Nations peoples where such a clash between economic, environmental and cultural priorities exist.

Conclusion

Thank you again for the opportunity to provide a submission on this important Senate Inquiry.

ANTaR offers our ongoing support to a process that meets the expectations of Aboriginal and Torres Strait Islander peoples and we would also welcome the opportunity to meet with the Senate Committee to discuss any of the points raised in this submission.

Sincerely

Paul Wright

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