



Nurrdalinji Native Title Aboriginal Corporation

ABN: 32 608 508 769

ICN: 9392

Chief Minister

The Hon. Natasha Fyles

By email: chief.minister@nt.gov.au

cc Northern Land Council - IansS@nlc.org.au, JardJ@nlc.org.au

Dr David Ritchie - Hydraulicfracturing.Independentoversight@nt.gov.au

Dear Chief Minister,

Petroleum Legislation Amendment Bill 2022 – recovery on an appraisal basis

As you may know, Nurrdalinji Native Title Aboriginal Corporation exists to directly represent the interests of native title holders in the Beetaloo Sub-basin area of the Northern Territory. Membership is open to all native title holders in the area. Our members and directors are all native title holders for this area.

Nurrdalinji has concerns about several aspects of the *Petroleum Legislation Amendment Bill 2022* (the “Bill”).

Appraisal recovery and native title

Our first concern relates to the inclusion of provisions that will allow the holders of exploration permits and retention licences to recover petroleum on an *appraisal basis* (“appraisal recovery amendments”), despite the fact that many important recommendations of the Pepper Inquiry are yet to be implemented.

If the appraisal recovery amendments apply to existing exploration permits and retention licences, they will expand the rights to the permit or licence holder beyond their current rights. The holder’s expanded rights will include rights to construct *appraisal production infrastructure* and conduct production operations. These are clearly beyond the scope of their current exploration rights. In this way, the amendments will in fact create new additional rights to mine that have additional and significant impacts on native title rights and interests.

All of this means that, properly considered, the appraisal recovery amendments amount to a native title *future act* of a kind that falls within s 24MA of the *Native Title Act 1993* and that attracts the operation of the *right to negotiate* provisions in Part 2, Division 3, Subdivision P of that Act. This means the new legislation will be invalid if the right to negotiate provisions are not complied with. Those provisions have not been complied with in relation to the making of the Bill and it is not clear how, as a matter of practicality, they could be.

Appraisal recovery and Aboriginal land rights

By expanding the rights of the holder of an existing exploration permit or retention licence, the Bill also impacts the integrity of the legislative scheme that encompasses Part IV of the *Aboriginal Land Rights (Northern Territory) Act 1976* (“Land Rights Act”) and Northern Territory minerals and petroleum legislation. The Land Rights Act clearly envisages that the mining company will give a

detailed application to the Land Council first in relation to exploration and then in relation to production. The appraisal recovery amendments will mean that the holder of an exploration licence (to use the term in the Land Rights Act) will have the right to conduct operations that they were not required to detail in their application to the Land Council for the licence. To this extent, the Bill could be inconsistent with Commonwealth legislation. It will also throw into doubt the validity of any consent that is said to have been given by the traditional Aboriginal owners and in turn by the Land Council for the grant of an exploration permit.

Merits review

Nurrdalinji has additional concerns in relation to the way the Bill addresses the merits review recommendations of the Pepper Inquiry (recommendation 14.24).

In particular, we are concerned firstly that third party merits review will not be available in relation to critical decisions such as the Minister's decision to approve an EMP or grant a production licence.

Secondly, the range of persons who will have standing to seek merits review is narrower than what the Pepper Inquiry recommended in important respects. Most significantly it will not include people who are "indirectly affected". This category will include native title holders and traditional owners for other lands in the Beetaloo Sub-basin area, whose interests may well be affected due to being connected by waters as well as songlines. We have consistently expressed concerns to the government and in public inquiries and the connected nature of interests in the Beetaloo Sub-basin is not being properly considered.

Thirdly, it is of concern to us that no provision has been made to ensure that the NTCAT members who hear merits review requests have expertise in native title.

Concluding comment

We understand that you intend that the Bill will be debated and passed in the upcoming parliamentary session. Because of the serious matters we have raised above, however, we urge you to reconsider the Bill.

We would be pleased to meet with you to discuss this further.

Yours sincerely,



Johnny Wilson

Chairperson

On behalf of the Board of Directors

18 November 2022