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29/04/26

Dear Chair and Members of the Legislative Scrutiny Committee,

**Re: Pipelines and Petroleum Legislation Amendment (Industry Development) Bill 2026**

I acknowledge the work of the Legislative Scrutiny Committee and the Committee Secretariat for their diligent work in examining this Bill and preparing a report for Parliament.

I also acknowledge those who provided submissions to the Committee. The inquiry received 20 submissions from a wide range of industry stakeholders, environmental organisations, and land councils representing Aboriginal peoples in the Territory.

Having considered the submissions and the Department's responses to the Committee's written questions, I am concerned that the Bill does not fully satisfy the Committee's Terms of Reference. The Committee is required to consider whether legislation has sufficient regard to the rights and liberties of individuals, allows the delegation of administrative powers only in appropriate cases and to appropriate persons, confers entry powers only with appropriate safeguards, and has sufficient regard to Aboriginal and Torres Strait Islander tradition. In my view, there are specific provisions in this Bill that should be amended before it is passed to ensure those requirements are met. I therefore make the following recommendations.

**Entry to Aboriginal land without a permit**

The Bill allows inspectors to enter Aboriginal land without holding a permit under the Aboriginal Land Act 1978 (NT) (ALA) - not just in a genuine emergency, but also in circumstances where seven days' written notice has been given. The same exemption applies to persons acting under a Ministerial or CEO compliance direction.

The CLC accepted the emergency exemption. Their concern is with the non-emergency access. They submitted:

> If a notice period is possible, then the person should also be applying for a permit under the Aboriginal Land Act 1978.

The Northern Land Council raised concerns that the expanded entry powers create "an unacceptable risk of damage to sacred sites, cultural heritage" and that no justification has been provided for overriding the permit requirement outside of emergencies. They

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recommended that access to Aboriginal land during the permit phase remain subject to proper notice and permit requirements, other than in a genuine emergency.

The Department's response was that the provisions are consistent with existing defences under the Aboriginal Land Rights (Northern Territory) Act 1976, which recognise that a person performing functions under NT law is not committing an offence by entering Aboriginal land. The Department concluded this was "a consistent policy position."

The permit system under the Aboriginal Land Act is not a technicality. It is the mechanism through which Traditional Owners exercise real oversight over who enters their land and why. The permit process gives land councils and Traditional Owners notice and an opportunity to respond. Where there is time to give seven days' written notice to a landowner, there is time to apply for a permit.

Our Terms of Reference require us to consider whether the Bill has sufficient regard to Aboriginal and Torres Strait Islander tradition. I am not satisfied that it does in relation to these provisions.

The Bill should be amended so that where a person proposes to enter Aboriginal land in a non-emergency situation – that is, where they are giving seven days' written notice – they must also hold a permit under the Aboriginal Land Act, or have genuinely applied for one. Emergency entry can continue to operate as currently drafted. This change would not obstruct the compliance objectives of the Bill. It would simply ensure that Traditional Owners retain meaningful oversight in situations where there is time for that oversight to occur.

***Recommendation:***

*Require that any entry onto Aboriginal land by an inspector or a person directed to undertake works under Parts 5B or 5C of the Energy Pipelines Act 1981 (as amended) be subject to the permit requirements of the Aboriginal Land Act 1978 (NT), except where there is a genuine emergency as defined in proposed section 58ZQ.*

**Third party review:**

The CLC submitted that landowners affected by pipeline licences and related decisions should have standing to apply for merits review. The Department rejected this, saying it would "create uncertainty for industry and the Government" and was inconsistent with the

NT Government's 2025 decision to remove third party review from other resources legislation.

I note that the 2025 decision to remove third party merits review from the Petroleum Act, the Water Act, and the Planning Act was itself controversial. Treating it as settled policy that cannot be revisited is a decision with real consequences for Aboriginal landowners who have no pathway to challenge decisions affecting their land other than expensive judicial review.

The majority notes that landowners can make representations to the Minister before a licence is granted. That is true. It is also true that the Minister is not required to accept those representations, and there is no mechanism for a landowner to challenge a decision they believe did not properly take their concerns into account.

***Recommendation:***

*The Bill should be amended to provide standing for affected landowners, including Aboriginal landowners and native title holders, to apply for merits review of decisions to grant, vary or transfer a pipeline licence over land in which they hold an interest*

**Retention licences and the impact on Traditional Owners**

The Bill makes significant changes to the retention licence framework to facilitate 'checkerboarding' in the Beetaloo Sub-basin - the creation of smaller, multiple petroleum interest areas across the basin to encourage investment and accelerate development. Proposed sections 42A and 42B allow retention licence areas to be divided and amalgamated. Submitters raised concerns about the impact on Traditional Owners' cultural and spiritual connection to land via expanded infrastructure networks and exclusion zones.

The CLC also raised a specific and important concern about sacred site clearances: reliance solely on the Aboriginal Areas Protection Authority (AAPA) register is insufficient because it is not comprehensive, and clearance certificates issued by the CLC protect against prosecution for interfering with sites not captured on the AAPA register.

The Department's response was that regulated activities (seismic surveys, drilling, fracking) require Sacred Sites Clearances. This does not address the CLC's concern. The Department

confirmed clearances are required; it did not address whether the clearance process is adequate when the AAPA register is incomplete.

Saying that clearances are required is not the same as saying that the clearance process is adequate. The Bill should require proponents dividing or amalgamating retention licence areas to obtain clearance certificates from the relevant land council, not just rely on the AAPA register.

***Recommendation:***

*The Bill should be amended to require proponents seeking to divide or amalgamate a retention licence area under proposed sections 42A or 42B to obtain either a* AAPA Authority Certificate or Land Council Sacred Site Clearance Certificate *The AAPA register is not comprehensive, and land council clearances provide an additional and important layer of protection for sacred sites that the current framework does not require.*

**The 'fit and proper person' test and landholder rights**

The Bill introduces a 'fit and proper person' test for applicants seeking a permit or pipeline licence. However, proposed section 4B(2) explicitly states that the Minister is not required to conduct an investigation to determine whether a person meets this test, but need only consider the information placed before them.

Submitters raised significant concerns about the inadequacy of this framework. The Arid Lands Environment Centre submitted that this creates a "low bar" that places the compliance burden on regulators receiving information rather than the proactive vetting of industry actors. Frack Free NT argued that the provisions are "tokenistic" and that the Minister's considerations must be expanded to include the applicant's past conduct when negotiating land access with vulnerable landholders.

The Department defended the provision, arguing that it avoids imposing an "additional administrative burden" to investigate a person prior to making a determination, and noted it aligns with other resources legislation. The majority of the Committee has accepted this rationale.

I do not agree that administrative convenience should take precedence over rigorous vetting for proponents of major, high-risk infrastructure. Furthermore, a company's past conduct in

land access negotiations is a fundamental indicator of whether they are 'fit and proper'. Ignoring this aspect leaves landholders, including Aboriginal landowners, without adequate protection from coercive or unfair negotiation tactics.

***Recommendation:***

*The Bill should be amended to remove the exemption from investigation under proposed section 4B(2), thereby requiring the Minister to proactively investigate whether an applicant is a fit and proper person. Additionally, proposed section 4B(1) should be amended to explicitly include an applicant's past conduct in negotiating land access with landholders and Traditional Owners as a mandatory consideration in the fit and proper person test.*

**Conclusion**

The Committee's terms of reference require us to consider whether legislation has sufficient regard to Aboriginal and Torres Strait Islander tradition. I am not satisfied that this Bill does.

Across the issues examined above, the Bill consistently prioritises regulatory streamlining and industry certainty over the rights of Aboriginal landowners and Traditional Owners. The majority's position that the existing framework adequately protects Aboriginal rights and the Department's assurances are sufficient treats legal compliance as the ceiling rather than the floor. The fact that a provision does not explicitly breach the ALRA or the NTA does not mean it has sufficient regard to Aboriginal and Torres Strait Islander tradition.

In line with our obligations on this committee to consider whether legislation has sufficient regard to Aboriginal and Torres Strait Islander tradition, I provide this dissenting report.

**Justine Davis**

Independent Member for Johnston