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29/04/26

Dear Chair and Members of the Legislative Scrutiny Committee,

Re: Mineral Titles Legislation Amendment Bill 2026 (Serial 56)

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 nine written submissions. The land councils - the Central Land Council (CLC), the Anindilyakwa Land Council (ALC), and the Northern Land Council (NLC) - each raised serious concerns about the impact of this Bill on Aboriginal landowners and native title holders. Those concerns have not been adequately addressed.

The Committee report records that:

> The Committee is satisfied that the proposed mineral leases for small scale mining, tourist fossicking, and fossicking will be subject to the right to negotiate under the Native Title Act 1993. Additionally, the Committee was assured that Part II of the Aboriginal Land Act 1978 provides an appropriate mechanism for access to Aboriginal land for the purposes of preliminary exploration and fossicking.

That satisfaction rests almost entirely on the Department of Mining and Energy's responses to written questions. However, the evidence before the Committee raises real and unresolved questions about whether this Bill adequately protects Aboriginal people's rights over their land. In line with my responsibility on this Committee, I provide this dissenting report.

My commitment is that legislation passed by this Parliament must be clear, evidence-based, and must not erode the rights of Territorians in the process of streamlining regulation for industry.

Access to Aboriginal land: the consent problem

The Bill proposes to treat a permit issued under Part II of the Aboriginal Land Act 1978 (NT) (ALA) as written consent for preliminary exploration and fossicking under the Mineral Titles

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Act 2010 (MTA). The majority accepted the Department's assurance that Part II of the ALA provides "an appropriate mechanism" for this.

Submissions said clearly it does not. Their concern is straightforward: a permit under Part II of the ALA is issued for a specific purpose. It was not granted with mining or fossicking activities in mind. Treating it as blanket consent for new activities under the MTA removes the protection that the land council consent process is meant to provide. As the Land Councils highlighted, attempting to bypass Commonwealth law with a Territory-level permitting regime risks constitutional inconsistency. The Department's response did not address this but simply reasserted that the mechanism is appropriate.

I also note that the Bill's drafting around the constructive consent provisions is confused. The Explanatory Statement incorrectly describes the relevant legislation in clause 52, and the majority has had to recommend corrections. This does not give confidence that the interaction between this Bill and the ALA has been carefully worked through.

Recommendation: *Clause 11 of the Bill must be removed in its entirety, so that a permit under Part II of the Aboriginal Land Act 1978 (NT) is not treated as written consent for the purposes of section 21 of the Mineral Titles Act. Any access for preliminary exploration and fossicking on Aboriginal land must continue to be strictly governed by the informed consent and consultation processes set out in Part IV of the Aboriginal Land Rights (Northern Territory) Act 1976 (Cth).*

New mineral leases

The Bill creates four new types of mineral title, including leases for small scale mining, tourist fossicking, and fossicking. The majority says it is satisfied these leases will attract the right to negotiate under the Native Title Act 1993 (Cth) (NTA). This satisfaction comes from the Department's written answers, not from anything in the Bill itself.

The CLC and ALC were explicit about this problem. As the CLC submitted, to ensure there is no doubt, the Bill should make clear that section 74 of the MTA applies to the grant of these new leases on land where native title has not been extinguished. If the Government is confident the right to negotiate applies, as it says, there is no good reason not to put that on

the face of the legislation. Leaving it to a departmental assurance creates legal uncertainty for everyone: for Aboriginal people whose rights may be affected, and for title holders who could face challenges to the validity of their leases down the track.

Recommendation: *The Bill should be amended to expressly provide, on the face of the legislation, that section 74 of the MTA applies to the grant of mineral leases for small scale mining, tourist fossicking, and fossicking on land where native title has not been extinguished.*

Tourist fossicking lease

The tourist fossicking lease is a particular concern. Proposed section 45J allows a lease holder to bring tourists onto their land to fossick. The CLC raised questions about what tourists will be told about their obligations, and how any breaches will be enforced. The majority's answer is to recommend the Department publish guidance. Guidance is not law. It cannot be enforced. For activities that may occur on or near Aboriginal land or areas of cultural significance, that is not an adequate response.

Recommendation: *The non-binding guidance recommended by the majority in relation to tourist fossicking (proposed section 45J) should be replaced with enforceable obligations on lease holders, including penalties for breach.*

General lease

The Bill allows the Minister to convert non-compliant existing interests (NCEIs) into a new "general lease" where no other mineral title is appropriate. The ALC, CLC, and NLC all raised concerns about this. The NLC described the general lease as "conceptually problematic" because it does not fit within the existing structure of the mineral titles regime.

The CLC identified two specific legal problems. First, converting an NCEI on Aboriginal land to another title constitutes the grant of a mining interest. Any such grant must comply with Part IV of the Aboriginal Land Rights (Northern Territory) Act 1976 (Cth) (ALRA). The CLC recommended that section 74 of the MTA be explicitly applied to conversions to avoid the risk of invalidity.

The Department's response was that there are "no titles suitable for conversion to a general lease on Aboriginal land." That may be the current administrative position, but it is not written into the Bill. Nothing in the Bill prevents the Minister from attempting such a conversion, and if that happens without compliance with the ALRA, the conversion may be invalid.

Recommendation: *The Bill should be amended to expressly apply section 74 of the MTA to conversions under proposed sections 204 and 204A, to make clear that any conversion of a non-compliant existing interest must comply with the ALRA and, where applicable, the future acts provisions of the NTA.*

Second, the CLC and ALC warned that a general lease - which authorises activities "specified by the Minister" - could confer additional rights beyond what the original NCEI provided. If it does, that would trigger the future acts requirements of the NTA. The Department denied this. But the scope of a "general lease" is by definition uncertain. The Department's assurance that no new rights will be granted is not the same as the legislation saying so. The work of testing whether a law will do what the Government says it will do must happen before the law is passed, not after.

Recommendation: *The Bill should be amended to explicitly limit the Minister's power, stating on the face of the legislation that a general lease granted under proposed sections 204 and 204A cannot confer any new rights, or authorise any additional activities, beyond those strictly provided by the original non-compliant existing interest.*

This Bill does not have sufficient regard to Aboriginal and Torres Strait Islander tradition

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.

This reform process has been driven largely by industry. The Approvals Fast-Track Taskforce recommended streamlining. Industry bodies supported the Bill. The land councils, whose constituents hold rights over significant areas of land affected by these changes, raised detailed and serious concerns. Those concerns have been met with departmental assurances rather than legislative amendments.

The majority's recommendations are largely about fixing drafting errors and asking the Department to publish guidance. Those are important, but they do not address the substantive problems identified by the CLC, ALC, and NLC.

The five amendments recommended above would not prevent this Bill from passing. They would make it legally sound and ensure that Aboriginal Territorians' rights are protected alongside industry's interests.

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