

**NURRDALINJI NATIVE TITLE ABORIGINAL CORPORATION
ICN 9392**

**Response to Questions on Notice, Senate Environment and Communications Reference
Committee Inquiry into Oil and Gas Production in the Beetaloo Sub-basin
*Public Hearing Darwin, 22 March 2022***

1. Answer to Question on Notice from Senator McMahon

We provide the following information to support our statement that fracking has caused damage in Australia and overseas.

We refer the Committee to our previous, detailed, [Answer to Question on Notice, dated 6 August 2021](#) which provided evidence of water contamination from comparable operations in the United States, including spills of hydraulic fracturing fluids or additives, impacts on drinking water and produced water spills into ground and surface waters. It detailed evidence of severe health consequences from living close to unconventional drilling sites, contaminated well water, contaminated livestock and polluted air.

We noted in this answer that the U.S Environmental Protection Agency (EPA) undertook a critical peer reviewed report and study spanning several years. The final report outlines clearly that hydraulic fracturing for shale gas has caused water contamination in the United States. These studies are of critical relevance to the Northern Territory and Australia, as there is yet no other production scale shale gas developments in Australia.

We also refer the Committee to [The Compendium of Scientific, Medical, and Media Findings Demonstrating Risks and Harms of Fracking](#) (December 2020). This is a fully referenced compilation of evidence outlining the risks and harms of fracking, released annually by Physicians for Social Responsibility. The Compendium comprises scientific, medical, and media findings of the harms of fracking.

Various Australian inquiries have collected evidence of damage from fracking to country, water, communities and local economies. Of particular note to the NT is [The independent Scientific Inquiry into Hydraulic Fracturing of Onshore Unconventional Reservoirs in the Northern Territory](#).

With regard to examples of damage from gas mining in Australia, it is noted that the shale gas industry is still in its infancy in Australia. Traditional Owners and members of Nurrdalindi have had their attention drawn to the potential damage from shale gas fracking not by the industry, but from [educational videos such as this](#) from the Protect Country Alliance (2015). The video shows evidence of the damage done by shale gas fracking in the US and eastern states of Australia.

A recent research report by the Climate Council, [Kicking the gas habit: How gas is harming our health](#) (2021) notes that:

Evidence of negative health impacts in Australia is emerging, and while independent research, free of any ties to the gas industry, from here is limited, this is consistent with overseas studies.

The tremendous growth in unconventional gas extraction in Australia over the last five years has occurred against the growing body of evidence from the United States that such practices

increase risks to the health of local populations. While the evidence from Australia has many gaps, there are concerning indications that many of the problems documented overseas are beginning to be seen here.

There are now many studies finding significant and concerning links between oil and gas development and adverse health outcomes in communities living nearby, both in Australia (McCarron, 2018; Werner et al., 2018) and in the USA (Deziel et al., 2020).

Contamination of land and water – whether as a result of an accident or negligence – is almost inevitable given the scale of extraction activity in Australia.

Incidents have already occurred, including an instance where a groundwater aquifer was contaminated in New South Wales Pilliga region by coal seam gas operations in the area ([Carey et al., 2014](#)). This led to higher than normal levels of uranium and heavy metals in the groundwater.

The Climate Council report points to early evidence of impacts on health of fracking in Queensland's Darling Downs:

Health impacts from coal seam gas developments have been a major concern in the local community since the industry arrived in the early 2000s (Hutchinson, 2013). The industry's growth coincided with complaints from residents about health issues they believed they were suffering because of coal seam gas developments.

A series of studies based on hospitalisation rates in that region from 1995-2011 found that people living in areas with coal seam gas developments were more likely to be hospitalised for neoplasms (tumours) and blood/immune diseases than areas of regional Australia without coal seam gas (Werner et al., 2016), and that there was a significant increase in hospitalisations for respiratory diseases among children (Werner et al., 2018).

A separate study in 2018, based on hospitalisation rates from 2007-2014, observed that the growth in gas production, and the accompanying surge in local emissions of nitrogen oxides, carbon monoxide, particulate matter (PM10), volatile organic compounds and formaldehyde, was accompanied by a marked increase in hospitalisations for acute respiratory and circulatory conditions (McCarron, 2018). It concluded that the "the burden of air pollution from the gas industry on the wellbeing of the Darling Downs population is a significant public health concern".

Other documented incidents of damage from fracking in the eastern states of Australia are detailed in the following reputable media reports:

[Linc Energy fined \\$4.5m for pollution amounting to 'ecological vandalism'](#) 11 May 2018

[Linc Energy: Secret report reveals toxic legacy of coal gasification trials near SE Qld town of Chinchilla](#) 10 August 2015

[Company fined for dumping CSG fracking water from AGL site in Newcastle sewer](#) 19 December 2014

[Santos fined after coal seam gas project contaminates aquifer 'with uranium'](#) 8 March 2014

Northern Territory Traditional Owners, including current members of Nurrdalindi, pastoralists and regional business owners also undertook site visits of gasfields in Queensland and NSW in 2018-19 and spoke with impacted landholders, regional councils, businesses and industry groups to understand how the shale gas fracking industry is likely to impact them. Findings of

these visits and briefings showed that Territorians' concerns regarding the industry's significant disruptive industrial footprint on private and public lands were well-founded. Those living in proximity to gasfields told these visitors about economic losses and decline in the value of properties, health impacts from nearby fracking operations as well as other risks and impacts.

2. Answers to Questions on Notice from Senator Thorpe

Do you think the Northern Land Council is doing a good job representing your community?

No. The Northern Land Council (the NLC) is not properly representing or protecting the interests of Traditional Owners and Native Title holders in the Beetaloo Sub-basin in relation to gas exploration and production, or acting in a way that promotes or guarantees the genuine free, prior and informed consent of native title holders. Key problems are:

- NLC maintaining tight central control rather than promoting genuine self determination
- NLC's failing to establish or support regional governance and decision making forums for native title holders and traditional owners
- NLC's failing to foster or develop regional discussion, coordination or strategy in response to gas development
- NLC's failing to proactively consult in a way which empowers and equips genuine decision making, timely and accurate information and advice
- NLC's inability to faithfully represent the views of native title holders in its engagement with fracking companies, because of its failure to consult with impacted native title holders
- NLC acting on assumptions or non-existent instructions to engage with miners and others, without the proper involvement of native title holders
- NLC not appreciating crucial differences between its functions under the *Aboriginal Land Rights (Northern Territory) Act 1976* and the *Native Title Act 1993*

Nurrdalinji recognises that Beetaloo Sub-basin native title holders need a strong and effective NLC. We have actively tried to engage with the NLC about resetting its relationship and ways of working with native title holders. Unfortunately we have so far been unsuccessful.

In 2021 the NLC actively opposed our attempts to have our own Prescribed Body Corporate recognised.

In this regard we would like to provide some clarification in relation to some answers Nurrdalinji Chairperson Johnny Wilson gave at the hearing on 22 March to questions about the Federal Court proceedings seeking to have the NLC/TED PBC arrangement replaced by Nurrdalinji.

The proceedings were commenced after a well notified meeting at Daly Waters in September 2020 and in accordance with decisions made at that meeting. The application was made by a number of individuals, including Nurrdalinji's Chairperson Johnny Wilson, on behalf of common law native title holders for 9 separate determinations of native title in the Beetaloo Sub-basin area.

When our Chair was asked by Senator Thorpe in the hearing whether he believed the outcome of the proceedings was fair and just, he replied to the effect that it was not at all fair. However, he did not mean that the Court had been unfair. The Court did not dismiss the proceedings or

make any other decision about the application. Instead, the applicants discontinued the proceedings in the face of the NLC's response to them.

What was unfair and unjust about the proceedings was the way we were disadvantaged heading into them, and the way the NLC responded to them. For months, Beetaloo Sub-basin native title holders requested the NLC to meet and discuss our concerns. The NLC chose not to respond at all. When we then began organising our own meeting, we asked the NLC for help, in order to make sure it was as fully notified as possible, and we invited them to come and speak to the meeting. They chose not to respond to these requests and invitations as well. So we went ahead with our meeting, and at the meeting we believed we properly decided, to set up Nurrdalini and to have it replace the NLC/TED PBC arrangement.

The NLC's initial response was a rude and disrespectful letter. Then, when we started the proceedings, we were met with a letter from the NLC's lawyers saying that the meeting had been incorrectly and insufficiently notified, that it was not well attended enough and that we had not used a correct traditional decision-making process (without any indication of how they thought we should have made the decisions). The NLC told us that unless we discontinued the proceedings they would seek orders that "costs incurred up to 4:00 pm (AEDT) on Monday, 15 February 2021, be paid on the usual basis but costs incurred thereafter be paid on an indemnity basis". Against that pressure, one of the applicants wrote to our lawyer (copying in the NLC's lawyer) saying he wanted to withdraw and also resign from Nurrdalini. The remaining applicants felt they had no choice but to discontinue at that point, even though we didn't agree with the arguments the NLC had raised.

This means Beetaloo Sub-basin native title holders remain stuck with the NLC/TED PBC arrangement, under which we have no ability to manage our own business, and the NLC continues to make no efforts that we are aware of to help us replace it.

Have you been given information about the combined or cumulative impacts of fracking all the different gas projects in the Beetaloo or are they all being explained separately?

Neither the Federal or NT government, the NLC or any gas companies have attempted to give us information about the combined or cumulative impact of fracking proposed for the Beetaloo Sub-basin. It suits the gas companies to keep the projects separate, so their enormous combined impacts and the risks they present are not fully understood.

This is also a deficiency with the processes required by the *Native Title Act 1993*. The only consultations it requires relate solely to individual project rights (ie the individual exploration permits or production licences under the *Petroleum Act 1984*) as the companies apply for them. This is also how the NLC is consulting. Its staff come out to see us only when they need a decision about a particular permit or licence. When they do consult they often do not consult very widely or adequately. This means there has never been an occasion (other than the September 2020 at Daly Waters meeting we organised ourselves) for consideration of region wide and cumulative risks and impacts (and opportunities).

The combined or cumulative impacts of fracking proposed for the Beetaloo, particularly on our water and sacred sites, demands much more significant information and consultative processes. The need for regional discussion and decision making is especially important at this moment. It is clear that the impacts of fracking operations are not confined to the place where the surface infrastructure is located. Country is linked by water and risks in one area create risks throughout the entire region. The water which runs through all our country connects us all as one and

affects us all as one. And gas development operations are intensifying with support from the Commonwealth government.

We need a regional and iterative consultation process about gas development in the Beetaloo Sub-basin. The advice to be provided on risks and impacts, as part of region wide consultations, should include:

- the development proposed for the Beetaloo Sub-basin, including the scale of those developments
- what is known and what is still unknown - for example, the extent to which the SREBA baseline study has been completed
- the risks of fracking for our precious groundwater and surface water as well as connected sacred sites
- the combined amount of greenhouse gasses that will be produced, from exploration to production stages
- detail about safeguards that are in place as well as those yet to be implemented - for example, a progress report on the implementation of the Pepper Review recommendations which the NT government has promised to complete
- how the NLC's way of working with us will change so that we can trust it and rely on it for advice and support
- what new structures and processes would be put in place to ensure we have a stronger voice than we do - both in relation to negotiations and during production
- a realistic appraisal of any potential benefits to native title holders and traditional owners, including how any compensation will be held, managed and used or distributed.

Do you feel like you have a good understanding of what the impacts of the fracking industry will be on your member's country, water country, sky country and sacred sites?

We now have some understanding of the significant risks posed by fracking, although this came as a result of our own independent research, not as a result of information provided by the Federal and NT governments, the gas industry or the NLC.

Historically, the consultations for the petroleum exploration permits in our region (which occurred some 15 or 20 years ago) did not, by a very long shot, equate with us being provided with information about current fracking plans. They did not equate to us giving our informed consent to the fracking operations currently planned.

Consultations need to foster genuine, inclusive, well-informed and independently advised discussion across the region. Consultations also need to take place in stages, occurring over a decent period of time.

Can the Top End Default PBC represent members of Nurrdalinji adequately, when it was only ever intended to be set up as a temporary measure and established well before large-scale fracking in the Beetaloo Basin was imagined?

The Top End (Default) Prescribed Body Corporate (TED PBC) is not able to adequately represent anyone. There is no effective PBC (or other regional governance forum) in our region or anywhere in the Top End. We have no say in or control over the TED PBC, yet the NLC still claims it speaks on behalf of our people and country.

The TED PBC is just the NLC Executive Council with another name. It has no funds, no property, no staff. It is purely a creature of the NLC and is 100% controlled by the NLC. It cannot make decisions or resolve to instruct the NLC except on terms set by the NLC. Native title holders cannot requisition a meeting of the TED PBC or exercise any of the other protections

that PBC members elsewhere in Australia have under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*. An arrangement like this is not tolerated anywhere else in Australia, and it is doubtful it is even lawful.

The NLC may say native title holders across the region consented to the TED PBC arrangement. In truth there was no choice. Many native title holders still do not know that the TED PBC exists, or even what a PBC is. So far as they are aware, the NLC is all that there is and there is no choice about the matter.

The NLC previously publicly justified the TED PBC arrangement as a temporary measure to ensure legal compliance in places where there was no development occurring in any event. The stop-gap NLC/TED PBC arrangement is not in any way appropriate or sufficient for the momentous challenges we are now facing in the Beetaloo Sub-basin region. As we have said above, we need genuine regional discussion, decision making and voice. The arrangements weaken our voice and effectively deny Top End native title holders agency in relation to our country.

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Submitted by email 31 March 2022