LOCK THE GATE ALLIANCE
AUSTRALIANS WORKING TOGETHER TO PROTECT OUR LAND, WATER, AND FUTURE

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Re: Environment Protection Legislation Amendment (Chain of Responsibility) Bill 2022

To whom it may concern,

Lock the Gate Alliance welcomes the opportunity to comment on the draft Chain of Responsibility legislation.

The Lock the Gate Alliance is a national collection of grassroots organisations made up of over 120,000 supporters and hundreds of local groups concerned about risky coal mining, coal seam gas and fracking. Several of these groups are located in Darwin, Katherine and Alice Springs, as well as rural and remote areas around the NT. Our members include farmers, traditional custodians, conservationists and urban residents. The Lock the Gate Alliance has a vision of healthy, empowered communities that have fair, democratic processes available to them to care for their land and water.

We strongly support the introduction of Chain of Responsibility laws in relation to environmental protection and rehabilitation obligations.

As recognised in the Pepper Inquiry's *Final Report*, such legislation should ensure 'that gas companies cannot avoid their environmental responsibilities and that those who are in a position to influence a company's compliance are held accountable'.[1] In the context of onshore gas in the Beetaloo Sub-basin, where the interest-holders seeking to develop gas resources include numerous subsidiaries and joint venture entities, legislation enabling accountability to be traced back along corporate relationships, where fair and reasonable, is vital to protecting the NT Government and taxpayers.

We acknowledge the work done by the Department to date in consulting on these laws and in preparing the draft Bill, and there are multiple elements of the draft amendments that we support. These include the application of the powers under the Bill to the *Petroleum Act* (and thereby to activities/obligations outside the scope of the *Environment Protection Act*), and the capacity to issue notices to multiple parties (in sections 192J and 192M).

However, we are concerned that the current drafting of section 192D may exclude entities who should fairly be held accountable for environmental degradation caused by their corporate associates.

[1] Scientific Inquiry into Hydraulic Fracturing in the Northern Territory - Final Report (2018), 426.

The current test for determining whether a person has a 'relevant connection' to a high risk entity is subjective, and requires the CEO to consider 'the extent to which the person is, or has been at any time within the preceding 3 years, in a position to influence' the entity's conduct in regards to the way or extent to which it complies with its approvals, duties and/or compliance notices.

The phrasing of this provision - which applies the relevant sphere of influence narrowly to the entity's compliance with a duty, approval or notice - could exclude situations where the person was in a position to influence other matters that then impact the company's environmental performance. For example, it is not clear that this would capture a person who was in a position to influence the calibre of contractors engaged to perform works, or to place pressure on the company to speed up construction or to achieve lower operational costs. None of these matters necessarily directly or explicitly relates to the company's conduct in relation to a duty, approval or notice, but all could have serious consequences for the company's performance of its environmental obligations.

Although the test is subjective and the CEO must consider other matters to the extent they deem them relevant, subsection (1) is the only completely mandatory consideration. It appears that the CEO could lawfully decide that a person did not have a relevant connection to a company purely because their role was not directly relevant to how the company complied with a specific duty/approval/notice, even if the person wielded significant general influence due to a huge financial stake in the company, voted on its budget and annual report, advised or influenced it in relation to its operations, etc.

This is also problematic because the financial benefit aspect of the rationale underpinning CoR laws is obscured. There are two logical pathways by which a separate entity or person could be deemed morally responsible for the faults of a company in this context: either they were in a position to influence the company's operations and failed to ensure those operations were conducted to a high enough standard, or they stood to benefit from the activities that caused the environmental harm such that they ought to bear some responsibility for rectifying the harm. The first ground for liability is reflected, albeit narrowly, in the mandatory consideration in subsection (1), but the second is buried in a list of other considerations the CEO must only consider to the extent that they deem it relevant (subsection (3)(e)). We consider that this is just an important reason for the chain of responsibility laws to apply, and that the provision relating to financial interest or benefit should be placed on the same footing as subsection (2).

Thank you for considering our submission.

Kind regards,

Sam Moorhead
Lock the Gate Alliance