



20 May 2024

Senator Jana Stewart
Chair
Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs
PO Box 6021
Parliament House
CANBERRA ACT 2601

By email: JSCATSIA@aph.gov.au

Dear Senator Stewart

Minerals Council of Australia submission into economic self-determination and opportunities for Aboriginal and Torres Strait Islander Australians

The Minerals Council of Australia (MCA) appreciates the opportunity to provide some recommendations and comments for the consideration of the Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs.

The Australian minerals industry has long-standing and transformative partnerships with Aboriginal and Torres Strait Islander Traditional Custodians and the communities they represent.

Industry, governments and Aboriginal and Torres Strait Islander people have shown that working together, in partnership, will create opportunities to support closing the gap at the same time allowing for significant wealth sharing opportunities. These opportunities set the foundations for creating intergenerational wealth outcomes amongst Aboriginal and Torres Strait Islander people.

The Australian minerals industry plays an important role in our Traditional Custodian communities by contributing to equitable access to stable housing, secure employment, primary healthcare and skills development.

The Australian minerals industry continues to have a significant role to play in supporting economic empowerment of Australian Aboriginal and Torres Strait Islander peoples.

In calendar year 2022 MCA members have reported approximately \$949 million procured directly from 488 Indigenous businesses, Aboriginal and Torres Strait Islander people were approximately 6 per cent of the workforce which included approximately 10 per cent of all mining apprentices and trainees.

Every Australian has a stake in the success of the Australian minerals industry, Aboriginal and Torres Strait Islander people are partners in this success. Investment outcomes are fostered when Traditional Custodians have greater access and opportunity for genuine financial partnership arrangements in future minerals developments.

To maintain the minerals industry's competitive edge and increase wealth generating opportunities for Aboriginal and Torres Strait Islander Australians, government and the mining industry must continue to work together to develop appropriate enabling policy frameworks that maintain Australian industry competitiveness.

Recommendations

Governments across Australia have an important role in enabling strong and equitable partnerships between industry and Aboriginal and Torres Strait Islander communities. Accordingly, the MCA recommends that governments should:

- Provide more flexibility in leveraging income streams into finance for investments in economic advancement of Traditional Custodian communities
- Enable investments with Traditional Custodians by focussing on opportunities in manufacturing, minerals processing facilities, supporting infrastructure and adjacent supply chain industries required to meet emerging industries and the needs of nearby communities and delivering the Future Made in Australia vision
- Ensure any external parties providing advice, including expert opinion relied upon in courts and tribunals, to Aboriginal and Torres Strait Islander communities are held to the highest professional standards of conduct and accuracy
- Fulfil their responsibilities for providing sufficient and sustained baseline funding to enable Traditional Custodian organisations to establish foundations and undertake core activities. Fee-for-service and funding arrangements between land users and Traditional Custodian organisations should not, and cannot, replace sustained baseline government funding
- Work in partnership with Aboriginal and Torres Strait Islander communities, industry proponents, heritage specialists and others to document and promote leading practice approaches to co-design, co-management and protection
- Support and ensure Traditional Custodian representative bodies are accountable and transparent in operations, including how they engage with Traditional Custodians in decision-making
- Be transparent about reasons for decisions and conditions relating to projects, including how information, rights, interests, benefits and impacts have been assessed and weighed and the protections in place ¹
- Work with the native title sector and industry to develop tailored guidance on working with Traditional Custodian organisations.

Strengthen foundations to create an environment that supports economic development

Research suggests that a young person commencing a job today will likely be doing a very different task in a decade.² An active leadership position is required from governments and industry when negotiating land use agreements with Traditional Custodians which will always provide better localised outcomes and opportunities that communities desire.

Furthermore, governments have a critical role in providing accurate estimates of approval timeframes as this will allow project proponents and Traditional Custodians some certainty in planning to deploy investment opportunities towards economic participation.

As the Council for Aboriginal Reconciliation says, the mining industry should ‘more actively involve itself in the education of Aboriginal [and Torres Strait Islander] people in the areas where they have operations’.³ The Australian minerals industry has a wealth of experience in managing large scale

¹ Joint Standing Committee on Northern Australia, [The Way Forward](#), Parliament of the Commonwealth of Australia, October 2021, p. xxix.

² N Mundine AO and E Henderson, *Crafting the future Minerals industry engagement with Indigenous Australia*, Minerals Council of Australia, 2017, p. 10.

³ Council for Aboriginal Reconciliation, [Exploring for common ground – Aboriginal reconciliation and the Australian mining industry](#), Commonwealth of Australia, 1993, p. XIII.

operations and while the minerals industry provides existing pathways for employment and procurement opportunities to Traditional Custodians, more can be done with genuine partnerships between industry, government and Traditional Custodians. To assist with job creation and better access to services, the minerals industry requires investment in manufacturing, minerals processing facilities, supporting infrastructure and adjacent supply chain industries required to meet emerging industries.

By addressing an industry need through government investment, Traditional Custodians can harness community led closing the gap initiatives by developing genuine financial partnership approaches with the minerals industry tied to government investment critical minerals and the Future Made in Australia plan.

One of the most significant challenges for policy and decision-makers as well as land users, including the minerals industry, is how to give practical effect to free prior and informed consent (FPIC).

Recent policy recommendations have appropriately recognised the importance of FPIC in guiding how industry and governments engage with Aboriginal and Torres Strait Islander peoples regarding the identification, protection and promotion of cultural heritage. While largely focused on the minerals industry, these are relevant to all land users. Working in a partnership approach focusses on the outcomes as opposed to just ensuring that the minimum regulatory provisions are being met.

Implementation of FPIC needs to be considered in the context of overriding other rights and interests where agreement cannot be reached or where clarity is lacking regarding who to reach agreement with.

The Productivity Commission considered this issue in detail in its 2020 Resources Sector Study Report reflecting that '[T]hese principles are not absolute: they must be balanced against other interests'.⁴ It also noted 'governments should be explicit and transparent that they are weighing up competing rights in making a decision to allow a project to proceed'.⁵ Furthermore, the report says 'in making decisions, proportionality of the impact should also be a key consideration'.⁶

Looking globally, the Canadian Government also provides instructive insights describing the principles as 'reflecting the ideals behind the relationship with Indigenous peoples, by striving to achieve consensus as parties work together in good faith on decisions that impact Indigenous rights and interests'.⁷ The Canadian Government also confirms that FPIC does not provide a right of veto over government decision-making.⁸

Support the growth of business and entrepreneurship

Indigenous economic development can grow through investments in critical minerals, manufacturing and minerals processing facilities along with emerging clean energy sources such as solar and wind, hydro and other forms of battery storage, 'providing many new opportunities for jobs and business and initiatives'.⁹ By continuing to listen to the local communities and entering into community led agreements, the MCA supports governments, community led organisations and local Traditional Custodians in their endeavours that will bring about positive and practical intergenerational opportunities for greater health outcomes and increased economic participation for Aboriginal and Torres Strait Islander Australians.

⁴ Productivity Commission, [Resources Sector Regulation – Study Report](#), Commonwealth of Australia, 2020, p. 249.

⁵ Ibid, p. 249.

⁶ Ibid, p. 329.

⁷ Government of Canada, [Backgrounder: United Nations Declaration on the Rights of Indigenous Peoples Act](#), Government of Canada, viewed 22 January 2024.

⁸ Ibid.

⁹ Commonwealth of Australia, [Indigenous Economic Development Strategy 2011-2018](#), Commonwealth of Australia, Canberra, 2011, p. 17.

The minerals industry has a strong track record in this area, as a leader in Indigenous employment and bringing Indigenous business into its supply chains.¹⁰ This example of working in partnership for a shared outcome should be applauded and for other land users to learn from the decades of experience within the minerals industry and Traditional Custodians. Creating the next generation of Aboriginal and Torres Strait Islander entrepreneurs requires a partnership approach across industry and across sectors.

Australia must improve the capacity for Traditional Custodians to sustainably manage native title rights and interests and provide more flexibility in leveraging income streams into finance for investments in economic advancement of Traditional Custodian communities.

Prescribed Bodies Corporate (PBCs), including local lands councils, are the key means for Traditional Custodians to negotiate land access agreements and cultural heritage agreements. PBCs require certainty in funding and an ongoing increase in funding to ensure Traditional Custodians can negotiate effectively and reduce reliance on independent third-party consultants in managing engagement between PBCs and industry.

The *Native Title Act 1993* (Cth) provides for certain types of Native Title Agreements (NTA) regarding the use and management of areas of land and/or waters. NTA's can also outline a compensation (royalty) element with regards to land and/or water use. As a result of a 2013 income taxation law change, native title 'benefits' are considered non-assessable non-exempt income and are therefore not subject to income tax.

Lenders generally prefer stable and regular income that can be verified and used to assess ability to repay. The non-assessable non-exempt income NTA payments create difficulties for Traditional Custodians to obtain commercial financing options that are necessary to finance longer term projects, such as mining and associated processing facilities, that have intergenerational benefits.

Improving the capacity for Traditional Custodians to sustainably manage native title rights and interests must be seen as a high priority to delivering better outcomes for their communities and creating sustainable intergenerational wealth outcomes. This will undoubtedly create better outcomes across all Closing the Gap priority areas and targets through individual community designed and led initiatives.

Identify, construct and profit from community based economic assets

Previous research suggests that while many Indigenous communities are asset rich, the structures of communally owned capital (be it land or a compensation fund) are often not conducive or enough to generate significant, long-lasting economic development for a community or its members to join the real economy.¹¹

The distribution of benefits from mining activities extend widely to supplier industries and their workers, as well as the regions and communities where these businesses are located. Across industries, mining has been consistently at the forefront of productivity growth. Because the sector is extensively woven into the fabric of the economy, its productivity gains spill over to other industries.

Mining and minerals processing investment and activity therefore present Traditional Custodian communities with opportunities to progress true economic empowerment provided there is equitable access to investment options.

While Australia should always be seeking out new and innovative economic opportunities, we should also seek to strengthen and build on the industries we are good at and have a demonstrated international competitive advantage in. Doing otherwise is simply foregoing opportunity and choosing a path to lower living standards for all Australians.

¹⁰ N Mundine AO and E Henderson, op. cit., p. 27.

¹¹ N Mundine AO and E Henderson, op. cit., p. 26.

Working together in genuine partnerships

Strong and equal partnerships are developed and sustained where each party has in place the capability, systems and processes to support effective decision making. A partnerships approach for Indigenous people is that it gives them a say in planning for the future.¹²

Effective local decision-making supports stability, clarity and predictability for both Aboriginal and Torres Strait Islander communities and industry on all matters associated with self-determination, reconciliation and co-design. This most often occurs where Traditional Custodian representative bodies have well developed governance and consultation structures and positive, trusted relationships with native title service providers. Access to advice, systems and capability to jointly implement, monitor and review agreements is another success factor. Clarity and consensus within each community about who speaks for Country is a crucial element.

The MCA is actively supporting capability development to enhance Aboriginal and Torres Strait Islander opportunities that are fit for individual community needs while working with communities to improve governance systems that will strengthen and sustain partnerships.

The MCA strongly advocates for governments having an important role in enabling strong and equal partnerships and support decision making by providing sufficient and sustained baseline funding to Traditional Custodian representative bodies.

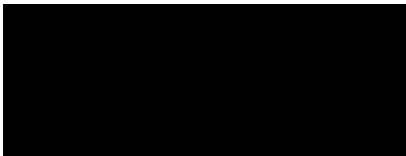
As the MCA has worked with governments in the areas of climate, environmental stewardship, critical minerals investment, international trade and innovation policies, we are now embracing the opportunity to working in partnership with government and Traditional Custodians to reinforce the Australian mining industry's role is creating intergenerational wealth opportunities.

Aboriginal and Torres Strait Islander peoples are a core partner in mining and industry is a major stakeholder in transforming economic and health disparity of Traditional Custodians and their communities.

Mining embraces its responsibility to support Aboriginal and Torres Strait Islander peoples to have a voice over their culture and their heritage as well as achieving their economic aspirations and wealth creation for generations to come. In doing so, Australian mining will also continue striving to achieve consensus decisions on appropriate impacts on their rights and interests.

If the committee has any questions, Matthew Denyer, Principal Adviser – Indigenous Partnerships and Communities can be contacted on [REDACTED]

Yours sincerely



**TANIA CONSTABLE PSM
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¹² T Tiplade and MA Barclay, [Indigenous Employment in the Australian Minerals Industry](#), The University of Queensland, Brisbane, 2007, p. 10.