



Australian Government
National Indigenous
Australians Agency



NIAA

Economic Empowerment Bill 2021

Submission to the Senate Finance and Public
Administration Legislation Committee

Economic Empowerment Bill 2021

The National Indigenous Australians Agency (NIAA) welcomes the Finance and Public Administration Legislation Committee's consideration of the *Aboriginal Land Rights (Northern Territory) Amendment (Economic Empowerment) Bill 2021* (Economic Empowerment Bill) and we thank you for the opportunity to make a submission. This submission first sets out the journey NIAA has undertaken in partnership with Aboriginal, industry and government stakeholders since 2018 to design the reforms and then provides further detail about each of the key measures.

The Economic Empowerment Bill will empower Aboriginal peoples in the Northern Territory (NT) to activate the economic potential of their land and grow the prosperity of Aboriginal communities for generations to come, while retaining the strong rights and interests provided under the *Aboriginal Land Rights (Northern Territory) Act 1976* (Land Rights Act).

The reforms puts the government's Closing the Gap commitments into practice through:

- shared decision-making and working in partnership with Aboriginal people, and
- supporting strong economic participation and Indigenous peoples' relationship with their land and waters.

The NIAA, Aboriginal, industry and Territory Government stakeholders have come together in partnership to design the Economic Empowerment Bill over 26 meetings since 2018 and we are continuing to consult with Aboriginal stakeholders as the Bill progresses through Parliament. This is in addition to the consultation undertaken by the Northern Territory Land Councils across their membership, with four meetings of the joint Land Councils, and ongoing meetings within each of the Land Council regions.

The centrepiece of the reforms is the establishment of a new Aboriginal-controlled Northern Territory Aboriginal Investment Corporation (the NTAIC). The Economic Empowerment Bill unlocks over \$680 million of Aboriginals Benefit Account (ABA) funding over three years, establishes processes for further funding to be released, and puts decision making about this funding in Aboriginal Territorians' hands through the NTAIC.

The NTAIC will make payments to community projects and invest in Aboriginal businesses throughout the NT to support sustainable Aboriginal economies and Aboriginal social and cultural aspirations for the long term. Shared decision making is a foundational principle of the NTAIC, which moves decisions about Aboriginal money out of Canberra and into the NT, from Ministerial control to Aboriginal control.

The reforms also modernise and streamline the provisions relating to exploration and mining on Aboriginal land, whilst maintaining strong controls for traditional owners, and support improved land administration and local decision-making.

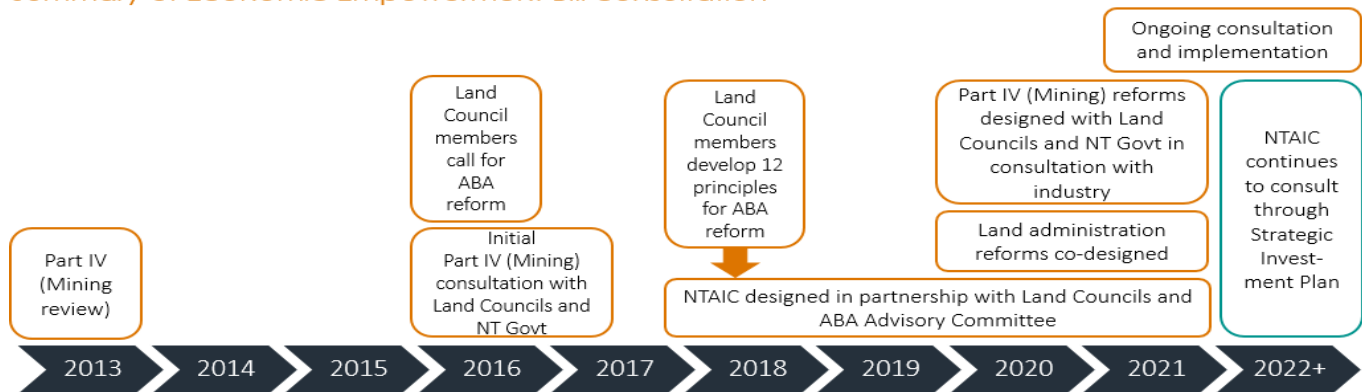
The reforms have been developed in partnership

The NIAA is committed to working in partnership with Aboriginal peoples and this has been central to our approach to these reforms. Despite the COVID-19 pandemic, the NIAA has continued to progress reforms that Aboriginal Territorians have been calling for since 2016 and earlier, working closely and regularly with stakeholders to develop the reforms.

Co-design of the NT Aboriginal Investment Corporation and land administration with Aboriginal Territorians

Over the past 3.5 years, the NIAA has worked together with the NT Land Councils to develop the package of reforms that led to the Economic Empowerment Bill. The NIAA has also consulted closely with the ABA Advisory Committee, which currently provides advice to government on ABA beneficial payments, throughout this journey.

Summary of Economic Empowerment Bill consultation



The Land Councils are the core institutions established under the Land Rights Act. They represent traditional owners in the NT and one of their core statutory roles is to seek the consent of traditional owners and consult other Aboriginal peoples living within their region on a range of matters relevant to Aboriginal land.

Throughout the co-design process, the Land Councils have continued to take the direction of Council members including traditional owners and other Aboriginal people living in the NT. The four Land Councils have held four joint meetings about the reforms since 2016. The reforms have been discussed at 19 Central Land Council meetings since 2015 and the Northern Land Council has discussed the reforms regularly at the roughly 20 full, executive and regional council meetings they hold each year.

In 2016, the members of the four NT Land Councils developed a model for greater Aboriginal control of the ABA. In 2018, the joint Land Council membership endorsed 12 principles to guide ABA reform and submitted them for Government consideration. The NTAIC has been built on these 12 principles through extensive ongoing collaboration with the NT Land Councils and their full membership.

NIAA collaborated with the NT Land Councils and the ABA Advisory Committee on the design of the NTAIC through 10 formal co-design meetings since 2018 and numerous working group meetings. The land administration changes were also requested by the NT Land Councils through this co-design process. Some of the changes remove unused or ineffective provisions inserted in 2006 and 2007.

Aboriginal Territorians have asked for community controlled township leasing that is not reliant on a government controlled entity to provide local decision making. The new nomination and approval processes for community controlled township leasing facilitates more communities joining with the Gumatj people holding their own community controlled township lease at Gunyangara since 2017 and recently the Mirarr controlled township lease at Jabiru since June 2021.

The reforms will facilitate the ability of traditional owners to fulfil their economic vision for the future of towns transitioning away from mining in coming years by allowing the Land Councils to negotiate agreements with proponents where the land is subject of a deed of grant held in escrow. Under the Gove Peninsula Futures Reference Group, the Australian and NT Governments, RTA Gove Pty Limited, Land Council and traditional owner stakeholder groups have established the Land Tenure Working Group. The Working Group has asked for greater certainty in dealing in land held in escrow, which is an essential element of planning for Nhulunbuy to move to local control as it transitions from a mining town in north east Arnhem Land.

The NIAA has continued our partnership with the NT Land Councils and ABA Advisory Committee, holding an additional two meetings since the Economic Empowerment Bill was introduced to Parliament on 25 August 2021, establishing a steering committee to prepare for implementation and establishment of the NTAIC's interim Board, should the Parliament pass the Economic Empowerment Bill.

Once established, the new NTAIC will continue this collaboration with Aboriginal Territorians through three key mechanisms:

- Eight Board members elected and appointed by the NT Land Councils will represent community interests

- There is also opportunity for Aboriginal interests to be represented through an additional two directors appointed by the Board that are required to be independent from the NT Land Councils and the Government
- The Economic Empowerment Bill requires the NTAIC to consult with all Aboriginal Territorians and Aboriginal organisations in the NT on its Strategic Investment Plan, which will set out its investment priorities for a 3 to 5 year period and be tabled in Parliament.

Collaboration on the mining reforms with Indigenous, industry and territory government stakeholders

The Part IV (Mining) reforms also have a long history. The *Aboriginal Land Rights (Northern Territory) Amendment Act 2006* included a number of reforms to Part IV (Mining) and the requirement for an independent review of the operation of Part IV, five years from the amendments coming into operation. An independent Report on Review of Part IV (Mining) was completed in 2013.

The 2013 Part IV (Mining) Review considered submissions from a range of key stakeholders including the four NT Land Councils, Minerals Council of Australia (NT Division) (MCA NT), Association of Mining and Exploration Companies (AMEC) and the Australian and NT Governments.

Land Councils and the NT Government were initially consulted in relation to the recommendations of the 2013 Review through a Part IV Working Group established in 2016.

In 2020 the Part IV Working Group was again formed, comprising the four NT Land Councils, NT and Australian Governments (NIAA and the Department of Industry Science Energy and Resources). Extensive consultations were subsequently held with peak industry bodies MCA NT, AMEC and APPEA. Written submissions were also provided by MCA NT and AMEC.

Key Part IV (Mining) stakeholder consultations in 2020-2021 included four meetings with the Part IV Working Group, five meetings with industry peak bodies, one CEO Roundtable with Land Councils, industry peak bodies, NT and Australian Governments, three submissions from industry peak bodies and one meeting each to consult with Land Councils and NT Government on the Exposure Draft.

Further detail on key measures

NT Aboriginal Investment Corporation

Purpose and functions

The NTAIC fundamentally aims to create opportunities for Aboriginal Territorians to build long term prosperity by increasing Aboriginal control of funding debited from the ABA and empowering Aboriginal Territorians to determine their own funding priorities based on local knowledge, cultural and financial expertise.

The ABA is a Special Account that collects and distributes royalty equivalents from mining on Aboriginal land. The Commonwealth pays amounts equivalent to royalties generated for the NT Government from mining on Aboriginal land into the ABA. The ABA's balance is currently around \$1.3 billion and growing steadily. The ABA is expected to grow by over \$1 billion every 2.5 years (gross) out to 2030.

This growth presents enormous opportunity for investment in Aboriginal communities in the NT. Yet, mining revenue waxes and wanes over time as mines open and close and Aboriginal Territorians and Government have given close consideration to how to manage the ABA so that it continues to benefit generations to come. A key goal of these reforms is to empower Aboriginal Territorians to use the ABA's growing balance support their own aspirations by establishing an Aboriginal-controlled statutory body to strategically manage the ABA's growing balance over time.

The Government currently makes almost all funding decisions from the ABA. Thirty per cent of ABA royalty equivalents are paid to Land Councils to distribute for the benefit of Aboriginal people affected by mining activities on Aboriginal land under section 64(1) of the Land Rights Act. The Minister for Indigenous Australians (the Minister) makes all other ABA funding

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decisions, including debiting the ABA to make payments for the administrative costs of the NT Land Councils, costs associated with administering township leases, the Executive Director of Township Leasing and her Office, and importantly for these reforms, payments made for the benefit of Aboriginal Territorians (beneficial payments).

The ABA Advisory Committee currently provides highly valued advice to the Minister about beneficial payment funding priorities but all decisions are ultimately made by the Government. ABA beneficial payments are then administered by the NIAA through a grants process. The ABA Advisory Committee will be repealed once the NTAIC commences and the NTAIC's Board begins making decisions about beneficial payments. This fundamentally shifts Aboriginal people's role in managing ABA benefit payments from an advisory role to a decision-making role. We note, the existing ABA beneficial payments process will continue until the NTAIC commences to ensure there is no gap in beneficial payments funding.

The NTAIC will put decision making about beneficial payments in Aboriginal hands and create an environment that supports strategic investments in Aboriginal commercial projects that will grow intergenerational prosperity. It will have a broad economic remit, being able to make beneficial payments, invest in Aboriginal businesses and invest its surplus funding in financial markets to generate returns to feed back into community. It will also be able to provide financial assistance, like sponsorships and loan guarantees, make loans to Aboriginal businesses, borrow additional funding, enter into joint-ventures and other partnerships and form companies and subsidiaries.

The NTAIC must perform its functions in line with its statutory purposes:

- To promote the self-management and economic self-sufficiency of Aboriginal people living in the NT; and
- To promote social and cultural wellbeing of Aboriginal people living in the NT.

We note the amendments to the Land Rights Act, including the NTAIC amendments, use the terms 'Aboriginal person' and 'Aboriginal people' rather than the term 'Aboriginal', which is used elsewhere in the Land Rights Act. The terms 'Aboriginal person' and 'Aboriginal people' have been used to reflect contemporary language. These terms are already used in section 20CA of the Land Rights Act. They do not change the existing definition of 'Aboriginal' in the Land Rights Act or affect the meaning of any existing sections that use the term 'Aboriginal'. The definition of 'Aboriginal people' or 'Aboriginal person' makes clear that those terms have the same meaning as the term 'Aboriginal' used elsewhere in the Land Rights Act.

NTAIC Governance

The NTAIC will have a diverse, representative Board with a range of cultural, financial and environmental management expertise. The Board will comprise 12 directors:

- Eight directors elected by the NT Land Council membership, which includes traditional owners and other Aboriginal people living in the NT. Two directors will be appointed by each Land Council.
- Two government directors, one appointed by the Minister for Indigenous Australians and one by the Minister for Finance. These directors must have expertise in financial, business or land, water or environment management.
- Two directors appointed by the Board, who must be independent from the Land Councils and Government. These directors must have land, water or environmental management expertise and/or financial or business expertise and could also represent community interests.

Given its broad economic remit it is important that the NTAIC has strong financial expertise and advice embedded within its governance structure. The Economic Empowerment Bills establishes an Investment Committee to support the Board with additional financial expertise. The Investment Committee will provide advice on the NTAIC's Strategic Investment Plan alongside the advice provided by Aboriginal peoples and organisations in the NT through the NTAIC's statutory consultation process. It will also provide advice on the NTAIC's investments in Aboriginal businesses and commercial projects and its investment of surplus funds in financial markets.

As a corporate Commonwealth entity, the NTAIC and its directors and staff will be subject to the accountability and transparency requirements of the *Public Governance, Performance and Accountability Act 2013*.

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The Economic Empowerment Bill also provides for the NTAIC to be reviewed after seven years. This will provide opportunity to reflect on the NTAIC's achievements, ensure its functions are fit for purpose and further consider the strategic direction of remaining ABA funding.

NTAIC Funding

The Economic Empowerment Bill releases over half the current balance of the ABA, or over \$680 million to the NTAIC over its first three years of operation and establishes a process for determining additional ongoing funding over time.

Investment funding

An initial \$500 million endowment will be debited from the ABA and paid to the NTAIC after its first Strategic Investment Plan is tabled in Parliament (around 18 months after the NTAIC commences at the latest). This substantial initial endowment is one of the great strengths and features of the NTAIC. It provides certainty to the NTAIC and puts it in a strong position to invest in Aboriginal enterprise and financial markets to grow the wealth and well-being of Aboriginal Territorians. The endowment creates the opportunity for a modest source of self-generating revenue, which the Board could choose to feed back into additional beneficial payments and investments over time.

The Economic Empowerment Bill enables the Minister to release additional endowments over time having regard to on estimates provided by the NTAIC. As the balance of the ABA grows, this mechanism provides the potential for the NTAIC to invest more ABA funding in Aboriginal businesses and financial markets, generating better returns than the limited returns able to be earned in the Special Account and again injecting those returns back into communities.

Beneficial payment funding

\$60 million per year will be provided for the first three years of the NTAIC's operation to support its beneficial payment program. This amount reflects current forward estimates of ABA beneficial payment funding. The Minister will also set ongoing yearly funding for beneficial payments having regard to estimates provided by the NTAIC. This mechanism is consistent with the statutory funding mechanism for the Land Councils.

Administrative funding

The Minister will set ongoing administrative funding having regard to on estimates provided by the NTAIC. This mechanism is also consistent with the Land Councils statutory funding mechanism.

These NTAIC funding arrangements provide great potential for the NTAIC to grow and support community aspirations. They also balance certainty for the NTAIC with the need to ensure there remains sufficient funding in the ABA to meet the needs of other parties that are dependent upon it. Whilst the ABA is growing rapidly now, mining royalties fluctuate as mines open and close. Without a flexible mechanism for determining ongoing NTAIC funding, these fluctuations could affect the funding of other parties reliant on the ABA. The NTAIC's estimates process mitigates this risk by providing enabling the Minister to determine future funding taking into account advice of the Board and the balance of the ABA over time.

Mining reforms

The Economic Empowerment Bill clarifies and streamlines key aspects of the exploration and mining process on Aboriginal land, saving time and money, while retaining the rights and interests of traditional owners to refuse consent to – or veto – applications over their land. A reduction in the time and cost of processing licence applications over Aboriginal land will increase clarity and confidence for all stakeholders.

Land Councils have statutory responsibilities to consult with and ensure informed, group consent of traditional owners about land use on Aboriginal land. The Economic Empowerment Bill preserves the existing rights and entitlements of traditional owners to refuse consent to land use proposals on Aboriginal land in the NT – known as the 'veto' power.

The Land Rights Act does not currently provide a process for mining and exploration licence applications to be amended, other than by recommencing the application process. Greater clarity and efficiency will be achieved by providing a process for applications to be amended and assessed by Land Councils for substantial compliance against the requirements of the Land Rights Act.

Repealing the requirement for the Minister to consent to the grant of an exploration licence, following notification of traditional owner and Land Council consent, will save processing time and simplify the consent process. Traditional owners and Land Councils have significantly more experience and knowledge of mining and exploration processes than when the Land Rights Act was introduced in 1976 with the provision for Ministerial consent. Ministerial oversight through the consent process is largely symbolic, and creates unnecessary 'red tape'. Appropriate Ministerial consent and oversight will be retained in relation to high value exploration licences, national interest issues, cancellation of exploration licences and mining interests and the granting of mineral leases.

Greater clarity will be achieved for all stakeholders by aligning the Land Rights Act with contemporary forms of resource titles and relevant NT Legislation. Further clarity and 'red tape reduction' will result from the removal of delegated functions to the NT Mining Minister that relate to the cancellation of an exploration or mining interest, while ensuring the NT Mining Minister is consulted.

Land Councils are responsible for convening meetings to consult with traditional owners about mining and exploration proposals on Aboriginal land. The Bill provides for Land Councils to have more flexibility in convening traditional owner meetings for the purpose of considering exploration licence applications. This might involve the convening of more or fewer meetings as considered appropriate by a Land Council. Land Councils retain the responsibility to consult with and ensure the free, prior, informed consent of traditional owners in relation to any exploration and mining proposals.

The Bill set out matters which must be discussed at a meeting convened for consultation with traditional owners for considering the exploration proposal and the terms and conditions of any agreement. However the Bill provides greater flexibility as to what is discussed at the meeting depending on whether the proponent exercises their right to attend such meetings.

Importantly, existing timeframes for traditional owners to negotiate exploration and mining proposals will be retained: there will be no added time pressure on traditional owner decision making.

Land administration reforms

The Bill enhances local control by strengthening the opportunities for communities to take charge of decision-making on matters that directly affect them. Concomitant reforms improve land administration by confirming existing practices and removing provisions that are ineffective or restrain traditional owner choice.

Enhancing local control

Community entity township leasing

Aboriginal communities in the NT recognise the cultural and economic value of township leasing. Township leases protect traditional owner title over their land while providing for tradeable interests that deliver housing, business opportunities and government services. Subleases provide security and certainty for investors, which is critical to fostering economic development. Community entity township leasing takes this model one step further by providing local decision making that is separate from the Land Councils and government.

In 2015 the Government moved to recognise the need for community entity township leasing to enable traditional owners themselves to hold a township lease through a local approved community entity. There are two community entity held leases over the townships of Gunyangara and Jabiru.

The Land Rights Act does not currently prescribe in any detail the approval processes and funding arrangements for approved community entities holding township leases. The Economic Empowerment Bill reflects current practice by setting out a process through which community entities may be nominated and approved to hold a township lease. A majority of members of the approved community entity must either be the traditional owners or Aboriginal people who live in the township area.

A governance framework is being established to make certain that approved community entities remain transparent and accountable, and a new budget process to fund operational costs from the Aboriginals Benefit Account will ensure the sustainability of the approved community entities.



Accelerate the ability for Land Councils to enter into contracts

Raising the amount at which Land Councils are required to seek the Minister's approval to enter into a contract from \$1 million to \$5 million reduces red tape and gives greater autonomy to traditional owners and their communities to direct the Land Councils to target investment that can meet local needs.

Improving leasing certainty

Clarifying that Land Councils can enter into agreements over land held in escrow provides certainty for residents, businesses and government service providers, particularly in towns that are transitioning to local Aboriginal control because mining operations in the area are winding-up.

This aligns with existing section 11A (which relates to dealings in land under claim), and includes the same statutory requirement for the Land Councils to consult with traditional owners and affected Aboriginal people to ensure a proposal is understood. The Land Councils must be satisfied the terms and conditions of the proposal are reasonable before seeking traditional owner consent.

Improving land administration

Repealing section 28A of the Land Rights Act

Township leasing was introduced at the same time as section 28A of the Land Rights Act, and while the latter has never been used, there are now ten communities with township leases in place with strong interest from communities in community entity township leasing. Repealing section 28A and improving the processes for community entity township leasing is consistent with the objectives of the Economic Empowerment Bill to enhance Aboriginal control over land and simplify land administration.

Land Councils remain best placed to exercise the functions set out in the Land Rights Act due to their capacity and institutional knowledge, including through the operation of well-established regional networks. The existing section 28A provisions allow for the concurrent exercise of Land Rights Act functions which could lead to duplication, invariably resulting in inter-group disputation and a drain on resources.

The delegation of Land Council functions was opposed by Land Councils when inserted in 2006, and runs counter to the long held principle that amendments to the Land Rights Act should only be made with the express support of the traditional owners and Land Councils.

Improving the functionality of the permit system

Section 74AA was introduced in 2007 and provides that only the issuer of a permit may revoke that permit. This means that minority groups within traditional owner communities may issue permits and refuse to revoke them. Repealing this provision will restore consistency with the *Aboriginal Land Act 1978* (NT).

Increasing the penalty for unauthorised access to Aboriginal land from ten penalty units to 50 penalty units means the maximum penalty will rise from \$2,220 to \$11,100 on current penalty unit values. The increase will deter people from unlawfully entering or remaining on Aboriginal land, and assist with protecting areas of cultural and environmental significance.