

**Submission to the Joint Standing Committee on Northern Australia Inquiry into the Opportunities and Challenges of the Engagement of Traditional Owners in the Economic Development of Northern Australia**

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9 November 2021

We would like to thank the Joint Standing Committee on Northern Australia for its willingness to take a late submission from us to this important Inquiry. By way of brief background, Jon Altman is an economist and anthropologist, and Francis Markham is an economic geographer. We have made numerous submissions to parliamentary inquiries both jointly and individually on Indigenous and broader public policy issues in northern Australia. Both of us have lived and undertaken research in the north, so our views are empirically grounded as well as statistically and theoretically informed. Of particular significance to this Inquiry, we attach two data and cartographically rich earlier submissions: at Attachment 1 into the Inquiry into the Development of Northern Australia (dated March 2014) and at Attachment 2 to the Inquiry on the effectiveness of the Australian Government's Northern Australia agenda (dated September 2019). The first submission made five recommendations that we revisited in the second five years on. The report of the Select Committee on the Effectiveness of the Australian Government's Northern Australia Agenda (April 2021) made several references to our recent submission in Chapter 6 on First Nations people.

In this brief submission we set out to do three things. First, we make some overriding observations about the challenges of engaging traditional landowners in the economic development of Northern Australia. Second, we provide some updating perspectives on this issue based on developments we have observed over the last two years. And then, we make some brief comments against each of the Inquiry's terms of reference. We note that some of our colleagues at the ANU have also made submissions to this Inquiry so will look to avoid duplication of their observations. We conclude by again revisiting and updating our recommendations from 2014.

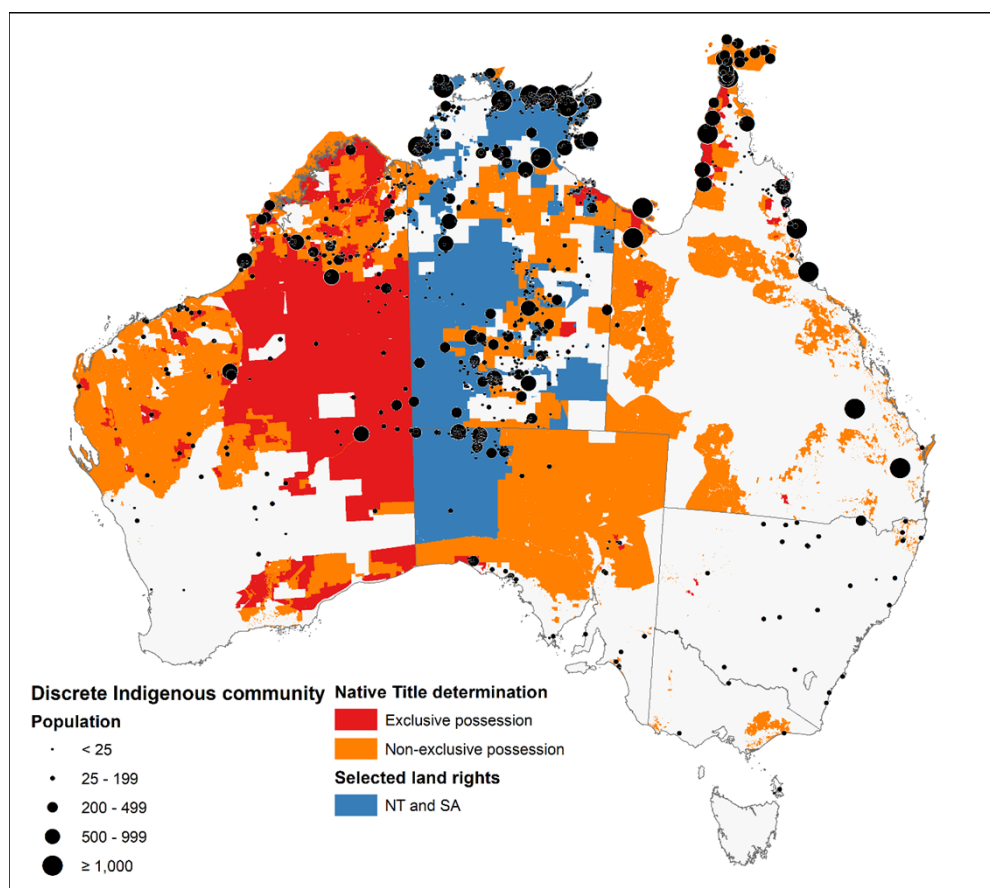
**Indigenous Australians and the Economic Development of Northern Australia**

Government policies at all levels are looking to improve the economic circumstances of Indigenous peoples living in Northern Australia, especially in situations where Indigenous peoples are landowners (under Australian law) — although forms of land titling vary considerably. This policy aspiration is most recently articulated in the National Agreement to Close the Gap signed between all levels of government and the Coalition of Peaks. A cruel paradox in recent years has seen the rapid expansion of Aboriginal lands in northern Australia and a concomitant (but likely unrelated) increase in the poverty experienced by over 50 per cent of Aboriginal people in very remote areas who are now living below the poverty line. This high rate of poverty is linked to high rates of welfare dependence with only between 3 and 4 Indigenous working-adult adults in 10 being employed in remote and very remote Australia (a good spatial proxy for northern Australia).

There are two quite different processes underway here that should not be conflated. The growth in Indigenous titled land is a result in large measure of a political response to a judicial decision of the High Court of Australia. The growth of native title determinations that now cover 3 million square kilometres of the continent, most in northern Australia as the map below shows, is a policy success. The deepening of Indigenous poverty is a process that has unfortunately been the consequence of poor policy making, itself influenced by political imperatives based on a dogged ideological commitment by successive governments to only consider conventional forms of market capitalist development for the most remote circumstances that are generally inhospitable to commercial enterprise, mineral extraction aside.

Much of this is illustrated in a series of maps in Attachment 1. Here we just provide just one map that updates Indigenous title lands and the location of what are termed discrete Indigenous communities.

**Figure 1. The spatial distribution of Indigenous titled lands and the location of discrete Indigenous communities.**



Some observations about this map. Clearly almost all northern Australia is Indigenous titled, although there is marked differences in forms of title and coverage. Almost all northern WA is held under exclusive and non-exclusive native title; about 50 per cent of the NT is inalienable freehold title under land rights law and about 25 per cent held under non-exclusive native title determinations; the areas of native title determination in north

Queensland are a mix of native titles but of lesser overall spatial coverage owing to higher levels of historic extinguishment. Two important historical observations are apposite. First most non-exclusive native title lands are in the pastoral zone, they provide commercial opportunity in cattle raising for generally non-Indigenous enterprises; and have small if any Indigenous resident populations. Second, most the land held under native title exclusive possession or under land rights law was unalienated crown land prior to claim with limited commercial value, except for small enclaves of mineral extraction. These are the lands where most former government settlements and missions in Northern Australia, now the larger discrete communities, are located. In terms of population, there are about 1,000 discrete Indigenous communities with a population of about 100,000, it is likely that most these people are legally-recognised as traditional landowners but not necessarily of the places where they reside. Indeed, despite a broadacre land claims process that began in northern Australia 45 years ago, there is no register of traditional owners, and so no ready means to link people with landownership status for policy-making and targeted support purposes. And while there are now over 230 registered prescribed bodies corporate that hold native titles, there is no register of all common-law native title holders.

As another general observation, the level of socioeconomic disparity between Indigenous and other Australians has been, and remains, greatest in remote and very remote regions for decades. Efforts to reduce disparities failed under the Aboriginal Employment Development Policy (1987–2000) and under COAG’s Closing the Gap framework (2008–2018). This is despite Indigenous landownership growing rapidly over this period, especially in the post-Mabo era. Today, there are an estimated 160,000 Indigenous people living in remote and very remote Australia, with about half this population living below the poverty line.

In our view the state project to deliver conventional forms of economic development to northern Australia is deeply problematic, arguably incoherent, and most definitely inconsistent. In relation to Indigenous traditional owners this is a project to deliver economic sameness for all in circumstances where sameness might not be possible for, or desired, by all. Indeed, the state quest for sameness might conflict directly with the quest of traditional owners for difference and diversity, although that is not saying that for some diversity might include western forms of development. Even though the Indigenous population density on Indigenous lands might be miniscule in global comparative terms, it is possible that there are too many people for conventional employment and commercial development and associated forms of wellbeing: in northern Australia there may be too few resources available (minerals aside) to deliver economic sameness. In any case, under all landownership regimes, traditional owners are provided with too few rights in commercially valuable natural resources, especially sub-surface minerals and oil and gas, but also fisheries and fresh water. It is worth reiterating that historically state and missionary efforts to deliver western forms of development to Indigenous people failed; and when wealth has been extracted from Indigenous lands it has been concentrated in the hands of a few, usually non-Indigenous domestic and international interests.

A tension that is emerging in the quest to conventionally develop the north, is that to secure native title rights and interests, claimants must demonstrate continuity in tradition and custom and connection to the claimed land. And with successful determination traditional

owners gain legal rights and interests that generally exclude commercial valuable resources but include property rights in natural resources for domestic non-commercial use. These rights and interests enhance the power of custom that is anathema and confrontational to dominant western liberal sensibilities about responsabilised individualism, material progress and independence from state support. In our view, policy makers need to take a reality check on what is possible in northern Australia and what levels of state support might be required if the myopic quest for sameness is to be maintained. This is not just to deliver sameness in services provision to remote Indigenous communities (including making up for extraordinary levels of backlog in housing, health services, education and physical and telecommunications infrastructure); but also, to deliver the same levels of direct and indirect subsidy enjoyed by many commercial interests in northern Australia in mining, public services, defence, and tourism.

Alternatively, if the relentless quest for sameness (that is failing) is relaxed, policies might be better tailored to assess local economic realities, respond to local traditional owner aspirations, fund remote communities on an equitable needs basis (bearing in mind the bedrock Australian principle of horizontal fiscal equalisation), support success where it is clearly evident, and ensure that adequate income support is provided in situations where there is insufficient mainstream opportunity thus assisting to underwrite unconventional forms of economic engagement like self-provisioning. We want to highlight that there is Indigenous success and opportunity in northern Australia currently in the provision of environmental and ecological services especially in Indigenous Protected Areas, in carbon farming, especially in the tropical savanna, in cultural tourism and the arts, and potentially in the generation of clean wind and solar energy production. We question though whether any of these are adequately supported (as a public good) given the relatively high costs of delivery in remote and difficult situations.

### **Recent Developments 2019–2021**

In the last two years since our submission of September 2019 (at Attachment 2) several issues have emerged, some influenced by the COVID-19 pandemic and its impact on Indigenous traditional owners and communities in northern Australia. We focus especially on three issues where we have recently made submissions to parliamentary inquiries.

1. There is a growing recognition that the Community Development Program designed to deliver income support to the unemployed in northern Australia has had disastrous consequences especially relevant to traditional owners living remotely. We highlighted the growing impoverishment resulting from the harsh application of mutual obligation in a submission to the Senate Standing Committee on Community Affairs Inquiry on the Adequacy of Newstart and related payments and alternative mechanisms to determine the level of income support payments in Australia in September 2019: people already living in deep poverty were being further impoverished with negative outcomes for personal, family and community health and wellbeing. In May 2021, the Australian government announced that it will abolish this program effective 2023 and is in the process of co-designing an alternative. We are nonetheless concerned that the proposed Remote Engagement Program has an unrelenting focus on conventional employment and development (rather than support for wellbeing and livelihood). This concern was recently

highlighted in a submission (with colleagues Elise Klein and Zoe Staines) to the Senate Finance and Public Administration Legislation Committee Inquiry into the Social Security Legislation Amendment (Remote Engagement Program) Bill 2021 in September 2021.

2. In 2020 there was renewed concern that the remoteness of Indigenous communities on Aboriginal titled lands in northern Australia might make them especially vulnerable to food insecurity associated with price gauging and supply chain disruptions. We made separate submissions on these challenges to the House of Representatives Standing Committee on Indigenous Affairs Inquiry into Food Pricing and Food Security and Remote Indigenous Communities in June 2020. Altman also made a submission to the Senate Select Committee on COVID-19. We sought to highlight that native title rights and interests that can be exercised over more than half the Australian continent (and over 85% of the coastline in the NT) should provide a means for traditional owners to self-provision, at least in part. We reported that the relaxation of mutual obligations alongside the payment of the COVID-supplement to many (from April 2020–March 2021) empowered many to exercise their food sovereignty to a greater degree. This observation highlighted that alternate forms of ‘development’ that improve livelihood prospects for traditional owners and their families are one distinct possibility.
3. The destructive impacts of under-regulated resource extraction on the time-deep cultural heritage of traditional owners were made manifestly clear by the highly publicised and much criticised debacle at habitation shelters at Juukan Gorge. Altman made a submission to the Joint Standing Committee on Northern Australia inquiring into the destruction of 46,000-year-old caves at Juukan Gorge in July 2020 as well as to the earlier Senate Legal and Constitutional Affairs Committee on the Native Title Legislation Amendment Bill 2019 in November 2019. These submissions highlighted that the rights of native title holders to veto mineral extraction on their lands need to be strengthened with free, prior, and informed consent provisions. Altman has also made submission to the Senate Finance and Public Administration Legislation Committee Inquiry into the Aboriginal Land Rights (Northern Territory) Amendment (Economic Empowerment) Bill 2021 in November 2021. This submission emphasised that the free, prior, and informed consent rights that traditional owners in the NT exercised over exploration on their land need to be maintained or even strengthened. It was also emphasised that financial resources generated by mining on Aboriginal land statutorily guaranteed in the NT should be available, as in the past, for social and cultural, as well as economic development, purposes rather than conventional forms of development being prioritised.

### **Some brief commentary on the Inquiry’s terms of reference**

Based on our earlier submissions in 2014 and 2019 as well as other research and submissions, we make the following comments on the Inquiry’s six terms of reference:

1. *The current engagement, structure, and funding of representative bodies, including land councils and native title bodies such as prescribed body corporates.* Assuming that the focus here is just on northern Australia, the three institutional forms that are referred to have been created by two different laws: The *Aboriginal Land Rights (Northern Territory) Act 1976* and the later *Native Title Act 1993*. The four NT land

councils (that have a governmental role over half the NT, an area of some 700,000 sq kms) have both land claims and land administration statutory functions. Native Title Representative Bodies (roles that the Northern and Central Land Councils in the NT also undertake) mainly play a role in assisting native title claimants, while registered prescribed bodies corporates have statutory roles representing the rights and interests of determined native title holders. These representative bodies are funded differently. The NT land councils' budgets are supported by mining royalty equivalents generated from mining on Aboriginal land; until legislative amendment in 2006 they were guaranteed at least 40 per cent of annual income paid to the Aboriginals Benefit Account (minus a mining withholding tax of 4%). On the other hand, what are termed NTRBs and PBCs are funded by the National Indigenous Australians Agency (NIAA). It is important in our view that these bodies are properly funded to carry out their statutory functions efficiently and effectively for their constituents. PBCs are inadequately funded and as they are required to incorporate under the Commonwealth's Aboriginal and Torres Strait Islander Corporations Act constantly run the risk of being insolvent and placed in special administration for not meeting regulatory requirements. In a recent commissioned report *Towards a Perpetual Funding Model for Native Title Prescribed Bodies Corporate*, Markham and colleagues at ANU estimate that only around 10 per cent of compliance costs of PBCs are funded and recommended the establishment of a Future Fund arrangement that would see PBCs funded in perpetuity in a similar manner as the Indigenous Land and Sea Corporation.

2. *The role, structure, performance, and resourcing of Government entities (such as Supply Nation and Indigenous Business Australia).* Government entities like Supply Nation, Indigenous Business Australia and especially the Indigenous Land and Sea Corporation can all have a role to play in assisting traditional owners engage with forms of northern development that accord with their aspirations. A problem all face is that their boards are appointed by the government of the day and might be inclined to support the government, rather than traditional owners, priorities. Each entity faces resource constraints and pressures to equitably support Indigenous people nationally rather than traditional owners in northern Australia. It is important that their activities complement each other; and that their resource allocations do not allow undue substitution/cost shifting by mainstream sources of potential support. For example, the government and land councils in the NT are currently proposing the establishment of a NT Aboriginal Investment Corporation to be underwritten by the Aboriginals Benefit Account with mining royalty equivalents. It is unclear why resources raised from extraction of minerals on Aboriginal-owned land should be committed to the development of northern Australia when other sources like the Northern Australia Infrastructure Facility have under-invested in Indigenous development prospects. It is also concerning that the Indigenous Land and Sea Corporation has sunk such a degree of capital into the acquisition and refurbishment of the Ayers Rock Resort that has impeded its ability to purchase land and water resources for Indigenous people. An injection of Commonwealth funds may be necessary to ameliorate this costly decision, without this cost being borne by either the intended beneficiaries of the Indigenous Land and Sea Corporation or the proposed beneficiaries of the NT Aboriginal Investment Corporation.

3. *Legislative, administrative, and funding constraints, and capacity for improving economic development engagement.* In our view, as noted earlier, the absence of strong property rights in commercially valuable resources; and the diversity of such rights is a brake on potential economic development, whatever form it takes. Administratively, there is an absence of recognition that Indigenous representative organisations need to be twice accountable: to the corporate/business world and to their Indigenous constituents. In our view it is important that Indigenous representative organisations have independent sources of funding that allow them a degree of independence from governmental oversight and co-option. These organisations should be able to politically advocate without fear of financial retribution for their constituents just like other advocacy organisations such as the National Farmers Federation or the Minerals Council of Australia. With time as these organisations grow, they should be able to increasingly self-finance. But in the immediate to medium term the importance of independence from government and accountability to their constituents should be regarded as a priority.
4. *Strategies for the enhancement of economic development opportunities and capacity building for Traditional Owners of land and sea owner entities.* Indigenous groups are invariably required to incorporate if they are to engage in economic development opportunities. All too often incorporation presents governance challenges especially in the distribution of benefits that might result from development projects on land that is invariably held under some form of communal or group title. There are groups and business that manage such tensions well using a variety of forms of incorporation including as charitable organisations, as business with liabilities limited by guarantee, or with the Office of the Registrar of Indigenous Corporations. It is important that effort is expended upfront to provide new corporations with sound advice on appropriate structure and constitution (or Rule Book). All too often there is excessive requirement for compliance with western incorporation law, which is understandable; but there is also a need to recognise that in many situations there is an equal need to comply with Indigenous law informed by the extant customs and traditions that are legally required to claim land and native title rights. In the past under more enlightened policy regimes opportunity was provided for Indigenous corporations undertaking similar functions (as outstation resource agencies, or Community Development Employment Project organisations, or community-based art centres) to meet and share experiences of best practice. Such forms of capacity building should be revived.
5. *The principle of free, prior, and informed consent.* It is essential that this principle is embedded in native title law for three reasons. First, it will align Australian law with five articles (10, 11(2), 19, 18(1) and 29 (2)) in the United Nations Declaration on the Rights of Indigenous Peoples belatedly endorsed by the Rudd government in April 2009. Second, it will align native title law with high-water benchmark provisions in the Aboriginal Land Rights Act passed in the NT some 17 years earlier. There is no reason that the rights and interests granted by native title law should be inferior to land rights law. Third, in the absence of de jure property rights in commercially valuable resources, especially sub-surface minerals, free prior and informed consent represents a de facto property right that provides traditional owners with a degree of commercial leverage in negotiations with applicants for exploration licences and for extraction projects on Indigenous titled lands. This principle is important on

social and economic justice grounds; and there is an emerging view that such a right might ensure heritage disasters like that Juukan Gorge do not re-occur.

6. *Opportunities that are being accessed and that can be derived from Native Title and statutory titles such as the Aboriginal Land Rights (Northern Territory) Act 1976.*

There are many opportunities that can be generated for traditional owners from the land rights and native title laws. We provide just a few illustrative examples from the NT where we mainly work that is located almost entirely in northern Australia. There are currently 15 Indigenous Protected Areas in the NT covering 260,000 sq kms, which alongside Aboriginal-owned Kadaku and Uluru National parks means that 20 per cent of the Australian National Reserve System is in the NT. These IPAs alongside other ranger programs generate numerous jobs for traditional owners and allow them to reside on the land that they own. Another example is the carbon farming efforts of Arnhem Fire Abatement (NT) Limited an Aboriginal-owned company that operates over 80,000 sq kms of Arnhem Land. In 2020/21 ALFA (NT) Ltd was issued 680,000 Kyoto Australian Carbon Credit Units (59% of the total for savanna burning) and earned just over \$10 million from sales revenue in part to the Emissions Reduction Fund, in part on the voluntary market with a premium paid for ACCUs generated on Aboriginal-owned land. And then there are the historic engagements that traditional owners have made in cultural tourism, working on mining projects and in the visual arts sector spectacularly exhibited at the Darwin Aboriginal Art Fair and Art Awards annually. And there are emerging possibilities in community and commercial fisheries and in both small-scale and large-scale renewable energy projects with the massive Sun Cable solar farm project at Powell Creek being an early exemplar (although negotiations with native title holders have yet to be completed, and it is notable that the Sun Cable developers have sought to locate their project on land that is not held under the Aboriginal Land Rights Act 1976, thus preventing traditional owners from exercising Free, Prior and Informed Consent). Each of these sectors provides opportunities to traditional owners but it is unlikely that any, or even their totality, will be able to eliminate the employment gap of 50 per cent between Indigenous and non-Indigenous people in the NT. Hence our call for realism: delivering appropriate forms of development for traditional owners will often require a suite of productive livelihood activities, some that are in the customary or non-market sector; others that are in the market sector. Elsewhere we have referred to these forms of economy as 'hybrid'. This diverse economy will also require appropriate forms of income support for those not employed in the mainstream labour market (that is absent in the remotest places) to ensure they enjoy a decent livelihood and are not a financial strain for those in employment.

### **Conclusion and recommendations**

In 2021, we remain comfortable with the five recommendations that we initially made in 2014 (Attachment 1) and reiterated five years later (Attachment 2). These recommendations are:

#### *Recommendation 1*

*It is recommended that Indigenous property rights are strengthened across Northern Australia to the minimum standard of free prior informed consent that accord with the UN*



*Declaration on the Rights of Indigenous Peoples and that additional resources be earmarked to enhance the capacity of Indigenous mediating institutions.*

We are especially attracted to the idea that a special Future Fund is established to underwrite the administrative costs of managing the expanding Indigenous estate with a degree of independence from government.

#### *Recommendation 2*

*It is recommended that the concept of ecological sustainability inform any plans for development in Northern Australia.* We note that this recommendation should attract additional attention given the recent interim report by the Senate Standing Committees on Environment and Communications on Oil and Gas Exploration and Production in the Beetaloo Basin and its reporting of strong First Nations opposition to oil and gas activities on country.

#### *Recommendation 3*

*It is recommended that this Inquiry (and the development of a White Paper this year) properly engage with available science; and that where there is uncertainty, the precautionary principle is deployed.*

We continue to see little evidence of this in relation to the reduced environmental regulation of the McArthur River Mine near Borroloola, the subsidisation of fracking for gas in the Beetaloo Basin and the subsidised connection of the inland rail from Toowoomba to Gladstone Port. In Attachment 2 we provide some information on the impact of global warming on projected climatic conditions in Northern Australia. We also note with concern the granting of a licence to Fortune Agribusiness to extract 40,000 megalitres of fresh water from Singleton Station near Tennant. This licence could adversely impact on the native title rights and interests of traditional owners.

#### *Recommendation 4*

*It is recommended that proper account is taken of the environmental benefits of land rights and native title alongside any benefits that might accrue to landowners from mining and other forms of intensive commercial land use.*

We note that extensive Indigenous land holdings in northern Australia have been committed to the Australian National Reserve System and that forms of managed burning of the tropical savanna are generating significant reductions in Greenhouse Gas emissions both from abatement and sequestration. It is difficult to find any quantification of the benefits of such activity in any measures of Gross Northern Product in contrast to more conventional sectors like mining and agriculture that are readily quantified. The sheer scale of Indigenous land holdings and the ability to utilise these lands as conservation commons represents an economic development opportunity.

#### *Recommendation 5*

*It is recommended that place-based approaches to economic development planning are adopted that highlight both realistic assessment of production possibilities based on the theory of competitive advantage and Indigenous aspirations in all their diversity.*

There are significant opportunities for traditional owners that will see them engage in diverse forms of economic development in northern Australia. We contend that to ensure a fuller engagement of traditional owners will require a fundamentally different policy-making

mindset that abandons a myopic commitment to conventional market capitalism and embraces diverse and now proven forms of alternate development that are all too rarely countenanced.

We end our submission with two observations. First, governments do recognise the public good generated by the activities of traditional owner groups and on their lands. But it is questionable whether the costs associated with generating that public good especially in conservation and in carbon farming is adequately supported given the additional costs of operating over vast spatial jurisdictions in the remotest and often environmentally and climatically difficult circumstances. The principle of fiscal equalisation should be paramount in the provision of state support for such activities. Second, it is important that the Committee encourage policy makers to consider not just what traditional owners can do for the development of northern Australia, but more importantly what the development of northern Australia can do for traditional owners.

**Attachment 1: Inquiry into the Development of Northern Australia**  
**A submission by**  
**Jon Altman and Francis Markham**  
**The Australian National University, Canberra**  
**March 2014**

Our submission focuses on the Indigenous interest in the development of Northern Australia, while at the same time recognising that in today's interconnected and intercultural world Indigenous and non-Indigenous interests are very clearly interconnected, sometimes in harmony, sometimes in conflict. Nevertheless, there seems to be a legitimate public policy rationale for focusing specifically on Indigenous interests including that Indigenous people own much of Northern Australia especially under land rights and native title laws and that they constitute a significant and growing proportion of the Northern Australian population. Historically the settler colonial development of the north has largely excluded Indigenous people so that today there are significant discrepancies in the socioeconomic status of Indigenous and other Australians evident everywhere in Australia but especially in remote and very remote Australia, the Australian Bureau of Statistics' geographical categories that encompass Northern Australia. In the context of today's dominant Indigenous policy paradigm of Closing the Gap one has to ask what prospects are there that the development of Northern Australia will contribute to this objective?

In this submission we seek to focus on three issues, land, people and resources that are of critical importance to the development of Northern Australia. In the last 12 months we have collaborated in a research project that has looked to use official information and GIS techniques to map Indigenous land in Australia and then to overlay this map over other information on population available in the census and natural resource endowments publicly available from a diversity of Commonwealth government agencies (see Data sources at end). In this submission we reproduce some of these maps focusing on the geographic jurisdiction Northern Australia as delineated by the Tropic of Capricorn.

Before turning to our maps and evidence-based commentary we want to make three broad opening observations.

First, we commend the major study by the Land and Water Taskforce *Northern Australia Land and Water Science Review 2009* to the Joint Select Committee on Northern Australia; we note that the Australian Academy of Science does likewise. While this comprehensive study of 1100 pages was never published in hard copy it remains available electronically with chapter summaries of particular value.<sup>1</sup> We partly note this as an intellectual disclosure of interest because one of us (Altman) was the lead author of *Chapter 7 Indigenous interests in land and water*.<sup>2</sup> We highlight this report and our specific chapter because we believe that despite its publication some four years ago it represents a significant summary of state of the art science and development thinking about Northern Australia.

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<sup>1</sup> See [http://www.regional.gov.au/regional/ona/nalwt\\_files/337388\\_NLAW\\_Review\\_2009.pdf](http://www.regional.gov.au/regional/ona/nalwt_files/337388_NLAW_Review_2009.pdf) accessed 28 February 2014.

<sup>2</sup> available at [http://www.regional.gov.au/regional/ona/nalwt\\_files/Chapter\\_07-Indigenous\\_interests\\_in\\_land\\_and\\_water.pdf](http://www.regional.gov.au/regional/ona/nalwt_files/Chapter_07-Indigenous_interests_in_land_and_water.pdf) accessed 28 February 2014.

Second, we would like to emphasise that in our view the summary observations we make at pages 48–49 of Chapter 7 remains as relevant today as in 2009. In particular, we would like to emphasise the following summary point paraphrased from page 48: The delivery of sustainable benefit to Indigenous stakeholders will require recognition of the diversity of Indigenous circumstances and aspirations. The hybrid economy framework, inclusive of the customary or non-market sector, can help to identify current and potential opportunities for Indigenous economic development. Targeted resources are required for detailed place-based or regional studies that identify Indigenous peoples' needs and aspirations and establish the potential for sustainable expansion of activities where Indigenous actors enjoy comparative advantage. The diversity of Indigenous economic activities and interests need to be recognised and accommodated in any development planning for Northern Australia.

Third, focusing specifically on the Inquiry's Terms of Reference we note a tendency to interchange the words 'development' and 'growth'. In our view these two words connote very different concepts, and a clear distinction is needed between them. Economic growth is generally associated with ever-expanding production converted to dollar terms and as measured by quantitative statistical indicators like gross domestic product in this case at the regional Northern Australia level. Such measures, unfortunately, also quantify the exploitation and depletion of non-renewable natural capital as a positive contributor to growth. Economic development on the other hand is a far more contested concept. As Edelman and Haugerud note in their introduction to *The Anthropology of Development and Globalization*<sup>3</sup> development is an unstable term with many meanings. It connotes improvement in wellbeing, living standards and opportunities, but also refers to historical processes of commodification, industrialisation, modernisation and globalisation. Of particular importance is its qualitative focus on wellbeing that can be harmed by the negative impacts of resource extraction on cultural and environmental landscapes, even as GDP grows.<sup>4</sup>

The tension between these terms can be conceptually mediated by the emerging sub-discipline of ecological economics that holistically embeds economy in society in the environment. Ecological economics reminds us that in today's world of uncertainty about the environmental sustainability of market capitalism it might be sensible to employ heterodox approaches and techno-skepticism; to consider carefully the relationship between human and non-human worlds; to address questions of equity and environmental justice; to vigilantly deploy the precautionary principle; and to set a proper price on extraction, especially if risks are high. As ecological economist Joan Martinez-Alier observes all too often the real social and cultural costs of resource extraction, abstractly referred to as negative externalities, are shifted to the poorest and least powerful<sup>5</sup>, in the Northern Australia context, Indigenous people. We mainly make this comment because the Inquiry's

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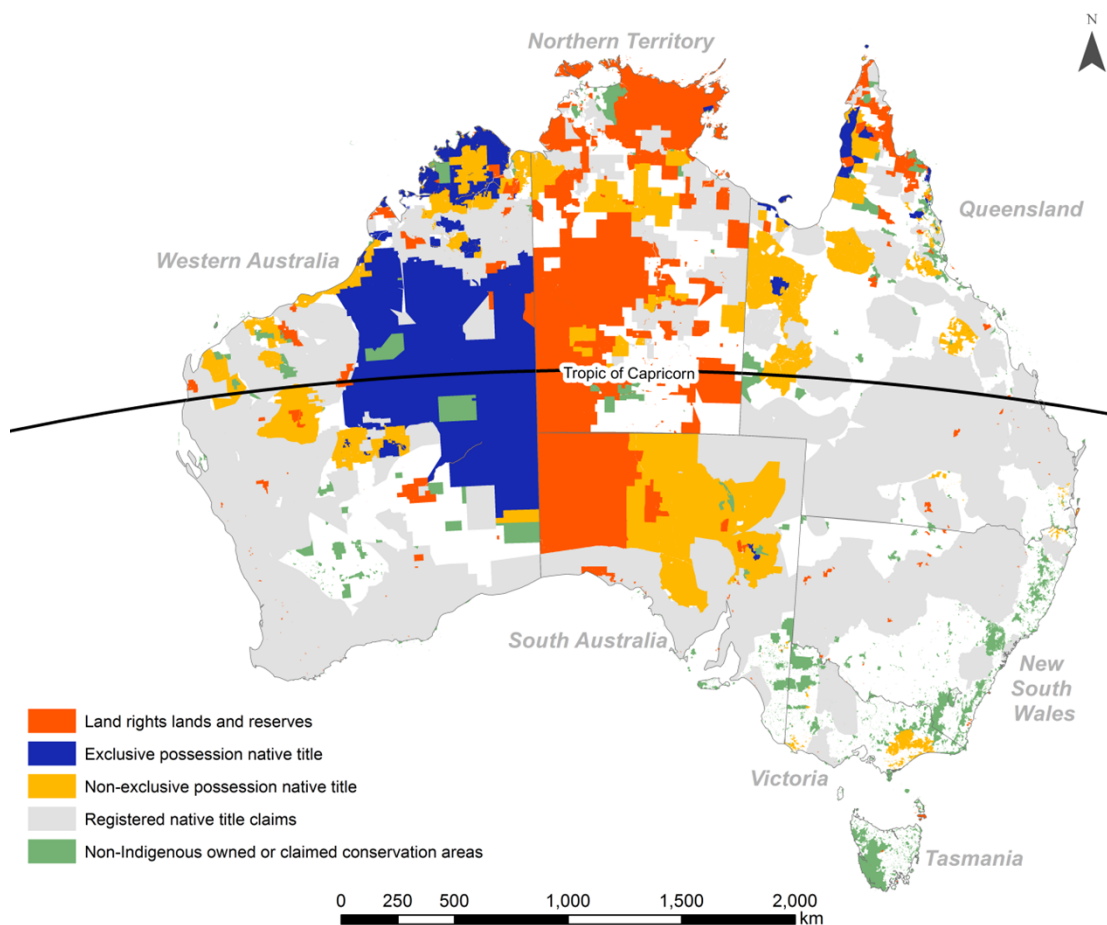
<sup>3</sup> Edelman, M. and Haugerud, A. (2005) (eds) *The Anthropology of Development and Globalization*, Blackwell Publishing, Oxford, UK.

<sup>4</sup> This issue is discussed at greater length in Altman, J.C. (2011) 'The Draft Indigenous Economic Development Strategy: A Critical Response, CAEPR Topical Issue No. 3/2011 available at: [http://caepr.anu.edu.au/sites/default/files/Publications/topical/TI2011\\_3\\_Altman\\_IEDS\\_Response.pdf](http://caepr.anu.edu.au/sites/default/files/Publications/topical/TI2011_3_Altman_IEDS_Response.pdf) accessed 28 February 2014.

<sup>5</sup> Martinez-Alier, J. (2002) *The Environmentalism of the Poor: A Study of Ecological Conflicts and Valuation*, Edward Elgar, Cheltenham, UK.

first term of reference seems to focus unduly on extractive industries (tourism and defence aside) with emerging industries like the provision of environmental service and the production of ecological services like fresh water, clean air and carbon abatement and sequestration relegated to 'other industries'.

We turn now to a series of empirical observations that bifurcate Australia into Northern Australia and the rest of Australia to conform to the Joint Select Committee's terms of reference. Some of the maps and tables reproduced are updates of information that we provided in Submission No. 25 to the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs Inquiry into the Native Title Amendment Bill 2012.<sup>6</sup>



**Figure 1: Indigenous land interests under three tenures.**

In Figure 1 we show the extent of Indigenous land interests at 31 December 2013 in Northern Australia. We distinguish three principle forms of Indigenous tenure, land rights and native title exclusive and non-exclusive possession. As a general rule property rights are most clearly defined and strongest in the first, land rights, especially in the Northern Territory where traditional owners are afforded free prior and informed consent rights.

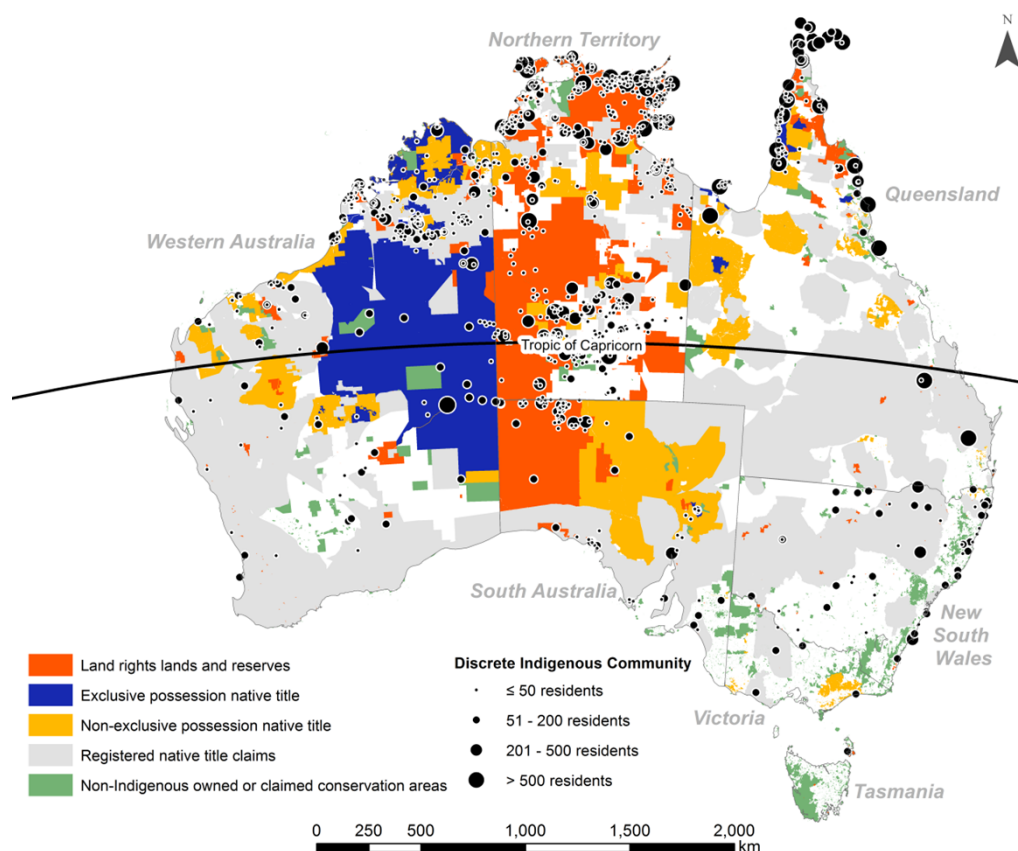
<sup>6</sup> Available at

[http://www.aph.gov.au/Parliamentary\\_Business/Committees/House\\_of\\_Representatives\\_Committees?url=atsia/native%20title%20bill/subs/sub%20025.pdf](http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=atsia/native%20title%20bill/subs/sub%20025.pdf) accessed 28 February 2014.

Property rights are weaker in land where native title has been determined exclusive and weaker again in areas of non-exclusive or shared native title rights. We refer to these three forms of tenure as lands of confirmed Indigenous interest. This map includes land claimed or scheduled under land rights law (an estimated 969,000 sq km), 92 determinations of exclusive possession totaling 752,000 sq km and 142 determinations of non-exclusive possession totalling 825,000 sq km. These three categories total 2.5 million sq km or roughly 33 per cent of terrestrial Australia.

Lands of confirmed Indigenous interest are spatially concentrated in Northern Australia. Northern Australia itself accounts for 39 per cent of the Australian continental landmass. More significantly, as shown in Table 1, lands of confirmed Indigenous interest account for 48 per cent of the 3 million sq km of Northern Australia.

Figure 1 also provides information about Indigenous land interest in over 300 native title claims registered with the National Native Title Tribunal. The outer boundaries of these claims cover 3.2 million sq kms, but recent history indicates that determinations, especially of non-exclusive possession, rarely include the entire claim area. Again, focusing on Northern Australia, information in Table 1 shows that Indigenous lands interests in Northern Australia could expand to nearly 76 per cent in the unlikely event that native title were determined to exist for the spatial entirety of all claims. Registered native title claims entail a number of legal rights pre-determination, in particular the right to negotiate about the granting of exploration licenses, the granting of mineral leases and compulsory acquisitions.



**Figure 2: Discrete Indigenous communities (2006) on Indigenous lands**

Turning now to population, according to the 2011 Census Northern Australia is home to 1,055,000 people (4.7% of Australia's population), 159,000 (15.0%) of whom are Indigenous accounting for 24 per cent of Australia's total Indigenous population (666,000 people). Figure 2 shows the distribution of discrete Indigenous communities according to the latest available data from the Community Housing and Infrastructure Needs Survey (CHINS) conducted in 2006 by the ABS. While these data are eight years old, they are the best available; they indicate 1187 discrete Indigenous communities in Australia, with 989 either on or within 1 km of Indigenous land. Discrete Indigenous communities are concentrated in Northern Australia, with 73 per cent of Indigenous communities located north of the Tropic of Capricorn. The vast majority of Northern discrete Indigenous communities are also in close proximity to Indigenous-owned land, with 87 per cent of Northern communities located on or near Indigenous-owned land, compared with 74 per cent for the rest of Australia.

In Table 1 we summarise information from the previous two maps. There are some cross-tabulations between land and population that are of development significance. First, while it appears that Indigenous people only constitute a small proportion of the population holding much land, in reality they constitute a far more significant proportion of the non-urban population, over 70 per cent in the Northern Territory. Second, the proportion of the population that is Indigenous varies markedly depending on form of tenure. On land held under land rights law and where exclusive possession native title is determined, the Indigenous share of the population is over 80 per cent. On the other hand, where land is determined non-exclusive native title the Indigenous share of the population drops to 25 per cent; and where there are registered claims the proportion is 11 per cent. Depending on what form determinations take might influence the proportion of the population that is Indigenous and this has clear ramifications for what form development might take, especially where land owners have a right to determine access.

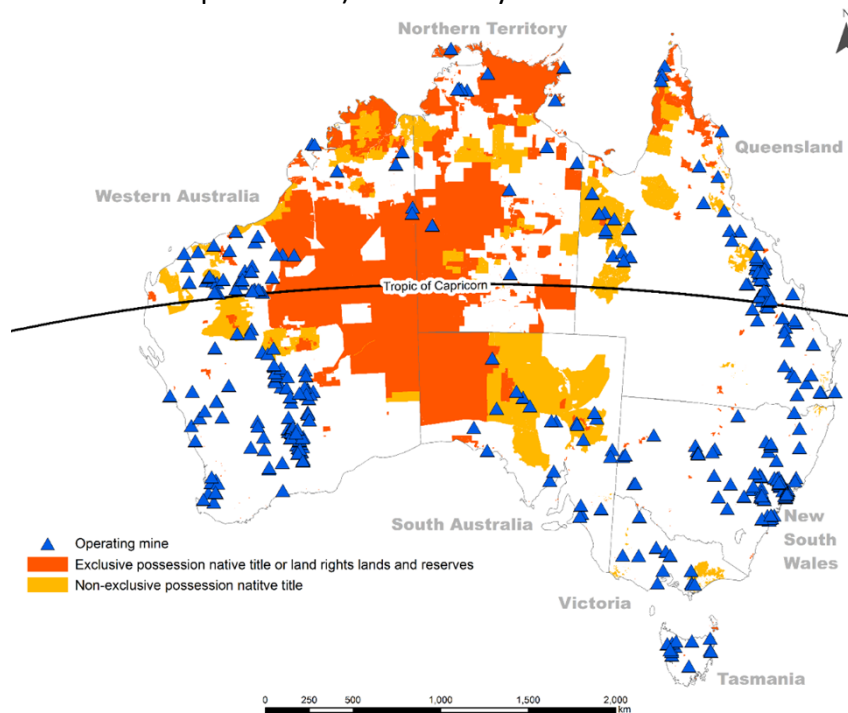
**Table 1: Indigenous land interests and population**

|   | Area<br>(km <sup>2</sup> ) | Area<br>(%) | Population | Indigenous<br>population | % population<br>Indigenous |
|---|----------------------------|-------------|------------|--------------------------|----------------------------|
| <b>Northern Australia</b>                                     | 3,004,451                  | 100.0       | 1,055,304  | 158,565                  | 15.0                       |
| <b>Land rights &amp; reserves</b>                             | 592,829                    | 19.7        | 56,031     | 48,796                   | 87.1                       |
| <b>Exclusive possession NT</b>                                | 443,458                    | 14.8        | 10,969     | 8,939                    | 81.5                       |
| <b>Non-exclusive possession NT</b>                            | 405,213                    | 13.5        | 7,076      | 1,788                    | 25.3                       |
| <b>Registered claims</b>                                      | 831,637                    | 27.7        | 355,156    | 38,990                   | 11.0                       |
| <b>Non-Indigenous owned or claimed<br/>conservation areas</b> | 79,935                     | 2.7         | 5,641      | 1,084                    | 19.2                       |
| <b>Remainder of Northern Australia</b>                        | 651,378                    | 21.7        | 620,431    | 58,969                   | 9.5                        |

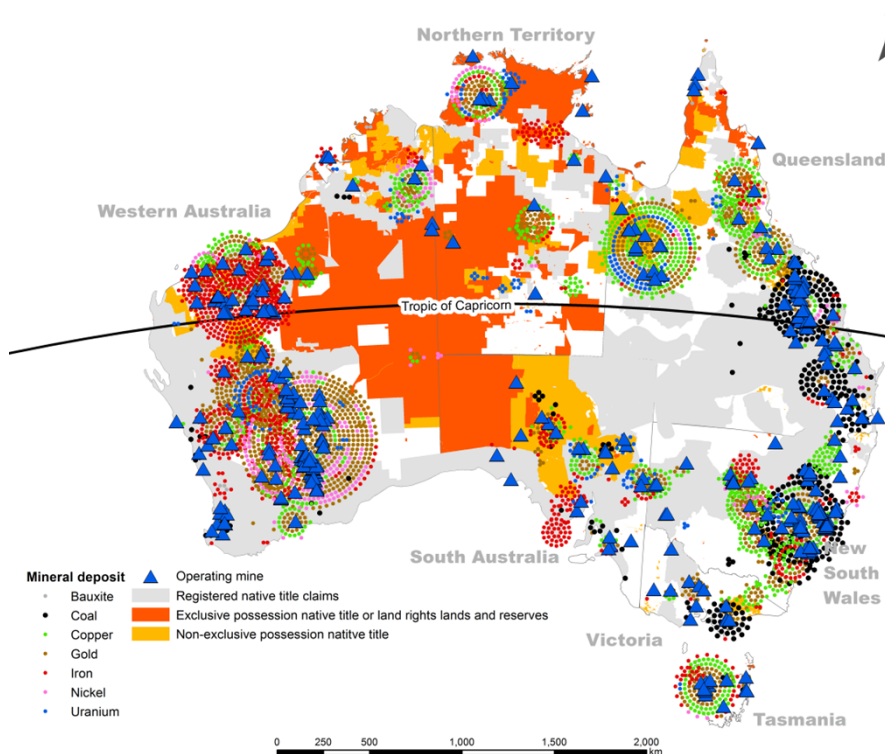
Overlaps removed between tenure types to ease interpretation. Population estimates derived from 2011 ABS estimated resident populations pro-rated using Mesh Block and SA1 census count weights.

In the following set of maps, we look to explore the resource endowments of Northern Australia at a very macroscopic scale. Each map has continental coverage and uses official information publicly available from government agencies (see Data Sources at end). But in

each case, we do two things. First as in earlier maps we distinguish Northern Australia from the Rest of Australia using the Tropic of Capricorn as the divider. And second, we provide a template of what we term Indigenous land interests (land rights and determinations of exclusive and non-exclusive possession) and overlay this over a series of resource maps.



**Figure 3: Operating mines (2013) and Indigenous land interests**



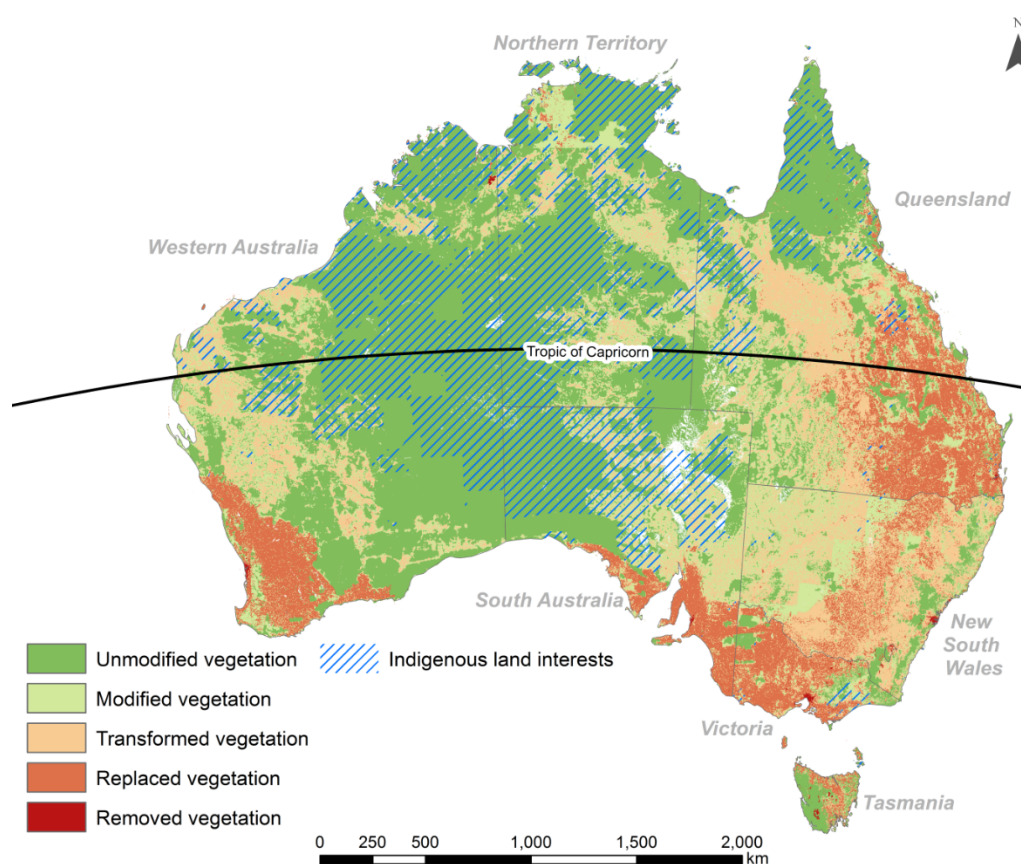
**Figure 4: Operating mines, known mineral deposits (2013) and Indigenous land interests**



Figure 3 (above) shows some metadata from 2013 on currently operating mines. Mines are under-represented in Northern Australia. Just 30 per cent of operating mines in Australia (118 of 399 mines) are located in Northern Australia, although Northern Australia accounts for 39 per cent of Australia's terrestrial area. Northern Australian mines are mostly located in areas where Indigenous exclusive land ownership is less extensive, such as the Pilbara, and South Eastern and Western Queensland.

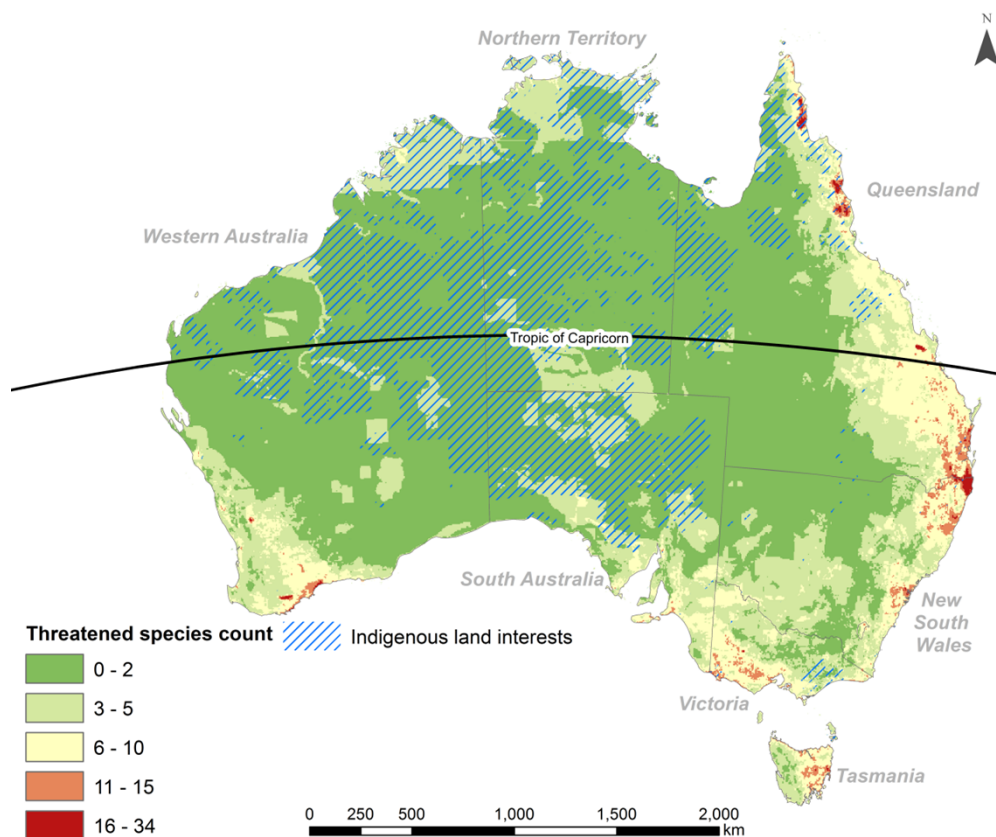
Mineral deposits metadata (Figure 4) tend to follow the same spatial pattern with some key mineral basins evident, mainly on land where there is limited Indigenous exclusive land ownership. In this figure we also show areas of registered native title claims to indicate that procedural rights to negotiate might be triggered in these jurisdictions. There is possibility that Indigenous lands are prospective but that they have been under-explored compared with more settled areas, even of Northern Australia.

Figures 5, 6, 7 and 8 focus on environmental values.



**Figure 5: Vegetation condition (2006) and Indigenous land interests**

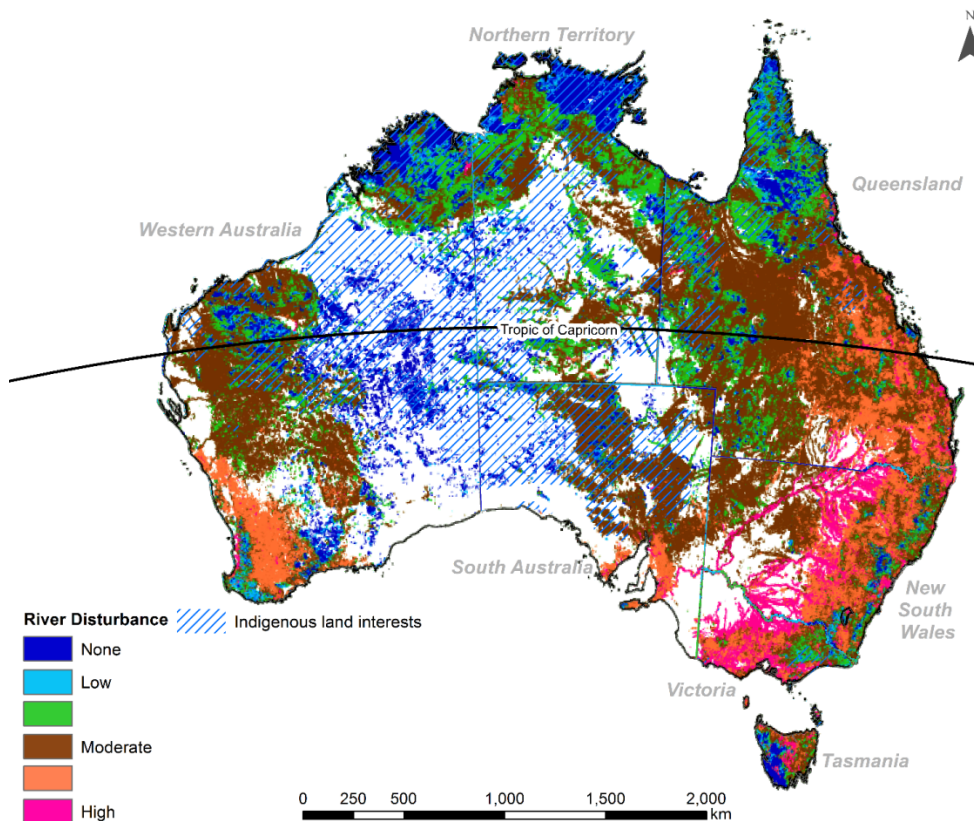
Figure 5 (above) shows that except in eastern Queensland the vegetation of much of Northern Australia is relatively intact. This can be interpreted as a consequence of little intensive development. Intense development and population concentration as Figure 5 shows are usually linked to removed, replaced or transformed vegetation. Importantly, some of the least modified vegetation in Northern Australia is evident on today's Indigenous land mainly because historically this has been land of low agricultural (and hence commercial) value.



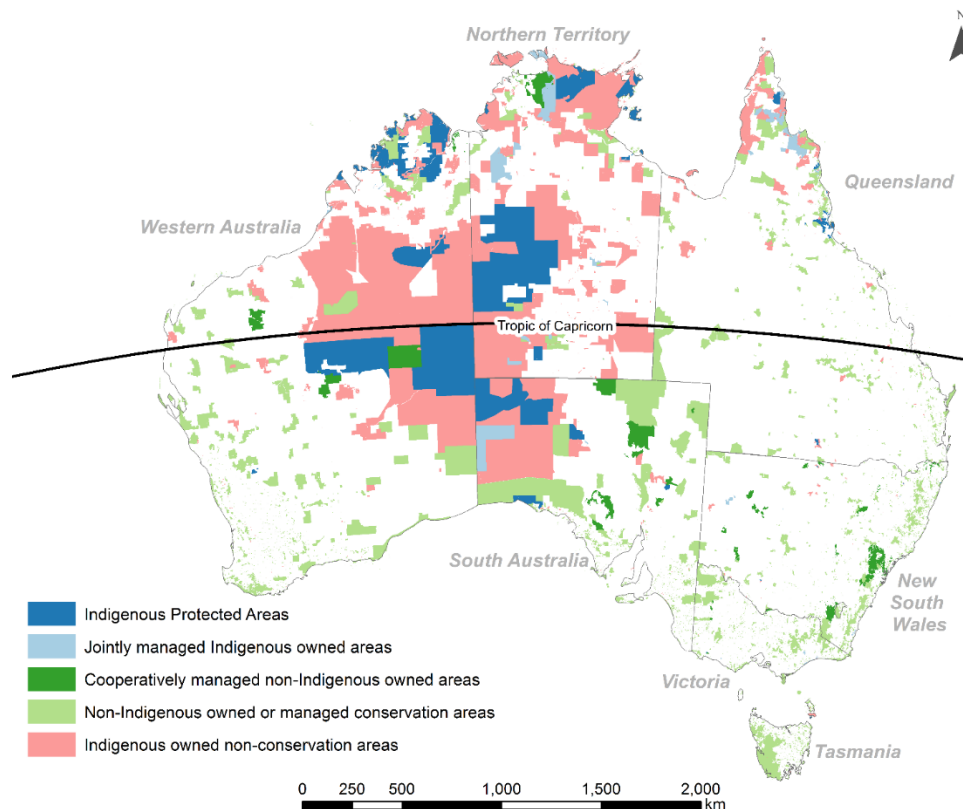
**Figure 6: Threatened species count (2008) and Indigenous land interests**

Figure 6 tells a similar story this time focusing on threatened species counts. We again emphasise that in this exercise we are using official statistics that many reputable biological scientists would challenge. Nevertheless, the same pattern emerges. First, threatened species counts are lower in Northern Australia. And second threatened species on areas of Indigenous land interest are lower again. As a general rule the greater human population density and the intensity of land use the higher the threatened species counts.

Figure 7 illustrates the condition of the riparian zones of rivers so crucial to biodiversity and water quality. What is very clear from this map is that the condition of riparian zones in the tropical regions of Northern Australia show relatively low river disturbance in marked contrast to the high river disturbance evident in the south east and south west of Australia, especially along the Murray Darling system. Much Indigenous land is in desert Australia where questions of riparian condition are largely irrelevant, but what is clear is that the riparian condition of rivers on Indigenous lands is relatively undisturbed although this is not to suggest in any way that these jurisdictions are threat free.



**Figure 7: River disturbance (2002) and Indigenous land interests**



**Figure 8: Indigenous and national conservation lands (2013).**

The environmental value of Indigenous land is seeing more and more incorporated into the Australian National Reserve System (the conservation estate) especially since the mid-1990s. In 1996 the Howard Government established an Indigenous Protected Areas program that allows traditional owners of land to enter agreements with the Australian government to promote biodiversity and cultural resource conservation. Environmental agencies are keen to expand the conservation estate cost effectively, while traditional owners are keen to either maintain the environmental and cultural values of their land or actively engage in their rehabilitation where damaged by postcolonial invasive threats including feral animals and exotic weeds.

Figure 8 (above) shows the extent of this coverage, there are currently 60 protected areas declared covering 15.5 per cent of the Australian land mass, while a further 170,000 sq km of the conservation estate is either jointly managed Indigenous land or co-managed by traditional owners on state land. Spatial information is currently available for 58 Indigenous Protected Areas; it shows that 26 out of 58 declared Indigenous Protected Areas are in Northern Australia with acreage of 51 per cent of the total. What is significant about this figure is that there is potential for much more Indigenous land to be included in the conservation estate if traditional owners so wish as Indigenous Protected Areas, jointly managed areas or cooperatively managed areas especially where there is non-exclusive native title determination.

### **Analysis and recommendations**

Our submission is largely positivist and seeks to assist the Inquiry into the development of Northern Australia with information on land tenure, populations and resources. We end with a few interpretative observations for consideration by the Joint Select Committee on Northern Australia bearing in mind that 48 per cent of Northern Australia is under some form of Indigenous tenure and that this proportion is likely to increase. We also provide several generic rather than specific recommendations.

- 1 History tells us that any development of Northern Australia will be slow and difficult and increasingly complex as diverse stakeholder groups use available political institutions, lobby groups and social movements to articulate their views on development, itself a highly contested notion. The size, remoteness and climatic inhospitability of much of Northern Australia results in it being uncompetitive in many industries and only competitive in some. The challenge to 'develop the North' is likely to increase as market and political imperatives combine to see a shift to rigorous commercial assessment of opportunity and less direct and indirect taxpayer subsidy of Northern industry. The decisions by Woodside to abandon plans for a major LNG project at James Price Point and by Rio Tinto Alcan to mothball its alumina refinery at Gove are instructive in this regard.
- 2 At present legal Indigenous land interests cover nearly half of Northern Australia and this proportion is set to expand. This suggests that whatever form development takes in Northern Australia it will need to be carefully negotiated with landowners. We make two observations here. First, Indigenous landowners enjoy differential property rights across Northern Australia ranging from the free prior informed consent rights enjoyed under Northern Territory Land Rights law to far weaker rights

- of consultation afforded those with non-exclusive native title determination. It is likely that there will be growing political pressure from Indigenous stakeholders for property rights to be strengthened as demonstrated in the Wild Rivers debate in Cape York in recent years. Second, the need to negotiate with traditional owners suggests that there is a critical and growing role for Land Councils, Native Title Representative Bodies and Prescribed Bodies Corporate in representing landowners in dealings with often powerful corporate and state interests. **It is recommended** that Indigenous property rights are strengthened across Northern Australia to the minimum standard of free prior informed consent that accord with the UN Declaration on the Rights of Indigenous Peoples and that additional resources be earmarked to enhance the capacity of Indigenous mediating institutions.
- 3 Much of the recent development debate in Australia has been limited to a focus on mining and commercial agriculture versus conservation and environmental services industries. In some cases, these are seen as embodying a tradeoff especially in iconic places like Kakadu National Park where coincidentally the Ranger Uranium Mine is currently closed due to a toxic spill. Australia's current high dependence on mineral commodity exports is over-influencing national discourse on ecologically sustainable development options. The exhaustive Land and Water Taskforce report of 2009 that we refer to above made two things quite clear. First in terms of gross acreage mineral extraction leaves a limited footprint, although this is clearly influenced by the nature of mineral extraction and processing. Second, Northern Australia constitutes a series of niches where particular industries enjoy comparative advantage be it mining, agriculture, pastoralism, tourism, carbon farming or the production of ecological services. Over twenty years ago, in 1991, Australia addressed the question of a National Strategy for Ecologically Sustainable Development through an intergovernmental process. We seemed to have addressed such issues of national importance in a more sanguine manner in those days; **it is recommended** that the concept of ecological sustainability inform any plans for development in Northern Australia.
- 4 A cursory glance at our maps indicates that Northern Australia is in far better environmental shape than the more developed south east and south west of the continent. Arguably environmental degradation in these regions was due to the absence of scientific information about the adverse impacts of over-exploitation and the absence of appropriate regulatory institutions. This is very apparent, for example, in the over-allocation of fresh water in the Murray Darling Basin region. As the Academy of Science notes in its submission, and we concur, there is considerable historical and comparative scientific information that should inform any development strategies for Northern Australian. While there is an adage that suggests that 'history shows that we do not learn from history' this needs to be seriously challenged to ensure that we learn both from the southern experience and historical failures like Humpty Doo rice project. It would be counter to the national (and global) interest if the mistakes of Southern Australia were replicated in Northern Australia. **It is recommended** that this Inquiry (and the development of a White Paper this year) properly engage with available science; and that where there is uncertainty, the precautionary principle is deployed.
- 5 We note much debate in public and policy discourse about the purported impediments created by statutory forms of Indigenous land tenure, most recently

articulated by Adam Giles, MLA the Chief Minister of the Northern Territory in his Ministerial Statement Indigenous Economic Development on 12 February 2014. In our view such institutional barriers are often highly abstracted and generalized rather than real. It is important to note what has been achieved in terms of natural and cultural resource management under restricted common property regimes that would have been impossible with individualized freehold tenure. What are regarded as an impediment or weakness by some stakeholders might be regarded as strengths by others. Hence land rights allow traditional owners to control what happens on their land and to amalgamate lands into environmental commons as Indigenous Protected Areas. In some regions like Arnhem Land more jobs have been created for local people in provision of environmental services than in mining and mineral processing at major mines. **It is recommended** that proper account is taken of the environmental benefits of land rights and native title alongside any benefits that might accrue to landowners from mining and other forms of intensive commercial land use.

- 6 Finally, as we noted at the outset it is important that we do not conflate progress and development with economic growth; and that we broaden our notions of what constitutes development. As Robert Costanza and his colleagues have recently argued in January 2014 that such indicators are dangerously inadequate as measures of quality of life.<sup>7</sup> In the Indigenous policy context there is an over-arching focus on statistical social indicators and Closing the Gap as the comparative means to measure progress. But there is a real possibility that such measures might improve at a national level while Indigenous people's wellbeing declines at a regional or local level. **It is recommended** that place-based approaches to economic development planning are adopted that highlight both realistic assessment of production possibilities based on the theory of competitive advantage and Indigenous aspirations in all their diversity.

### Data sources

Land rights data courtesy of Northern Territory Department of Lands, Planning and Environment; Queensland Department of Natural Resources and Mines; South Australian Department of Planning, Transport and Infrastructure; Victorian Department of Sustainability and Environment; Western Australian Department of Indigenous Affairs; Geoscience Australia; Indigenous Land Corporation; PSMA Cadlite. Native title determination and registered claims data courtesy of the National Native Title Tribunal. Discrete Indigenous Communities data courtesy of the Australian Bureau of Statistics and the former Commonwealth Department of Families, Housing, Community Services and Indigenous Affairs. Conservation area data courtesy of the Commonwealth Department of the Environment. Population statistics are derived from the Australian Bureau of Statistics Estimated Resident Population 2011 Census. Mine and mineral deposit data are courtesy of Geoscience Australia. Vegetation condition data are courtesy of Bureau of Rural Sciences. Threatened species estimates are courtesy of the Commonwealth Department of Agriculture, Forestry and Fisheries. The River Disturbance Index, developed by Stein, Stein

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<sup>7</sup> Costanza, R. et al. (2014) 'Time to leave GDP behind', *Nature*, volume 505, pp. 283–285 available at: <http://www.nature.com/news/development-time-to-leave-gdp-behind-1.14499>

and Nix<sup>8</sup> was provided the Commonwealth Department of Environment. Indigenous Protected Area data was provided by the Commonwealth Department of Environment. Joint- and co-managed area data were constructed by the authors based on a variety of sources, primarily provided by the Commonwealth Department of Environment and the Australian Institute of Aboriginal and Torres Strait Islander Studies.

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<sup>8</sup> Stein, J.L. Stein, J.A. and Nix, H.A. (2002) 'Spatial analysis of anthropogenic river disturbance at regional and continental scales: identifying the wild rivers of Australia', *Landscape and Urban Planning*, volume 60, pp. 1–25.

**Attachment 2:**

**Submission to the Select Committee on the effectiveness  
of the Australian Government's Northern Australia agenda**

Professor Jon Altman and Dr Francis Markham  
The Australian National University, Canberra  
16 September 2019

Thank you for your letter of 30 July 2019 alerting us of this Select Committee inquiry and inviting us to make a submission by 20 September 2019.

By way of brief background, we provided a submission to an earlier Inquiry into the Development of Northern Australia by the Joint Select Committee on Northern Australia in March 2014.

Our earlier submission focused on Indigenous people and land in the north because in 2014 Indigenous peoples constituted a significant, and possibly growing, proportion of the population of the north; and because nearly half of Northern Australia in 2014 came under some form of Indigenous land title. We append that submission below in part because we believe that much of the now historical information contained in it and our analysis of this information remains pertinent five years on. We also append the earlier submission because we make some passing reference to it and its recommendations here.

In the current submission we do three things. First, we briefly summarise our earlier submission from 5 March 2014. Second, we make four observations about what has changed in the last five years. And lastly, we revisit our recommendations from 2014 to ask if any had impact on policy formation and if they remain of relevance today.

**Summary of our earlier submission**

In our earlier submission we looked to present some statistical and spatial information on land, people and resources in the north using official information and GIS techniques to highlight the significance of Indigenous forms of land title in the north, the relative significance of the Indigenous population and the natural resource assets on Indigenous lands. Rather than summarise all that information we append our earlier submission.

At the same time, we noted that there is a growing body of scientific research about Northern Australia that needs to be deployed as the issue of its development is revisited. This is the third revisiting of this issue in the last decade. We referred in 2014 to the major study by the Land and Water Taskforce that delivered its major report *Northern Australia Land and Water Science Review 2009*. We especially emphasised that any development planning for Northern Australia that looked to deliver sustainable benefits to Indigenous stakeholders (now included in this Inquiry's term of reference 1b) will require recognition of the diversity of Indigenous circumstances and aspirations. The Australian Government's Northern Australia agenda is heavily focused on 'economic growth' and 'economic development'. We noted in 2014 that these two terms connote very different. Economic growth is generally associated with expanding production converted to dollar terms and as



measured by quantitative statistical indicators like gross domestic product at the regional Northern Australia level. Economic development on the other hand is a far more contested concept that is inclusive of improvement in wellbeing, living standards and opportunities, but also refers to historical processes of commodification, industrialisation, modernisation and globalisation. Economic development from the cultural perspective of Indigenous landowners and residents of Northern Australia might mean something very different than that contained in the Australian Government's agenda as broadly outlined in *PIVOT NORTH Inquiry into the Development of Northern Australia: Final Report (2014)* or in *Our North, Our Future: White Paper on Developing Northern Australia (2015)*. Indeed, two central questions that animated our submission were whose Northern Australia is being developed and what form will such development take? These two questions remain of relevance especially in relation to term of reference 1b of the current Inquiry with its focus on First Nations (Indigenous) people.

### **Some evident changes 2014–2019**

In the last five years there have been many changes in Northern Australia of relevance to this Inquiry. We briefly highlight four focused on people, land and the climate that strike us as most pertinent to this Inquiry.

#### *Increased Indigenous poverty in Northern Australia*

Despite any attempts to facilitate private and public investment in infrastructure and economic development in Northern Australia, the situation for Indigenous people has deteriorated. This observation is based on the five-year intercensal period 2011–2016 that was not available to us when we made our earlier submission in 2014. But there is clear evidence that Indigenous poverty rates by Northern jurisdictions, be it the Northern Territory as a whole or very remote Australia that is primarily in the north have increased both in absolute and relative (to non-Indigenous people and non-remote Indigenous people). This is documented clearly in two publications of relevance to this inquiry. (Altman, JC 2017 'Deepening Indigenous poverty in the Northern Territory', *Land Rights News Northern Edition* October 2017 and F Markham and N Biddle 2018 'Income, poverty and inequality' *2016 Census Paper 2*, Centre for Aboriginal Economic Policy Research, ANU).

Clearly the periods 2011–2016 and 2014–2019 differ and so arguably investments made under the Australian government's Northern Australia agenda might not yet be apparent. But there is no evidence to suggest that any of mainstream employment or major project development in the north would have changed this situation of increased poverty. It could certainly be argued that this is a consequence of changed institutional arrangements owing to the introduction from 1 July 2015 of the Community Development Program throughout Northern Australia. But this just reflects that there has been no improvement in employment for Indigenous Australians with the employment/population ratio in the north being in the region of 30 per cent (very remote Australia) to 40 per cent (remote Australia) as measured in the 2016 census.

#### *Growing Indigenous land titling in Northern Australia*

Between 2014 and 2019 the extent of Indigenous land interests nationally and in Northern Australia have continued to expand. In our earlier submission we estimated that the three main categories of indigenous land title made up of land rights and native title exclusive and

non-exclusive possession totaled 33 per cent of terrestrial Australia (at 31 December 2013) and 48 per cent of Northern Australia. At 30 June 2019 it is estimated that 49 per cent of terrestrial Australia is under one of these three forms of Indigenous title. Over 60 per cent of Northern Australia is currently held subject to one of these forms of Indigenous rights. This proportion is likely to expand further as the native title determination process over registered claim areas is completed. The question of whose Northern Australia becomes of growing significance as more and more of the north is legally recognised under Australian law as being Indigenous owned.

The recent High Court judgment in the Timber Creek compensation determination case of 13 March 2019 indicates that native title lands, even if of non-exclusive possession, have significant and compensable real estate value. (In the interest of proper disclosure of interest, it should be noted that we both fulfilled roles in the original Northern Territory v Mr Griffiths and Lorraine Jones Federal Court case in 2015–16.)

#### *Climate change projections*

Between 2014 and 2019 there has been growing scientific consensus that global warming will have escalating negative impacts on climatic conditions in Northern Australia. This is an emerging national and international trend that will have an impact on the Northern Australia agenda (Term of Reference 1e).

One readily available source of predictive information is The Australia Institute's HeatWatch initiative that puts current Australian research about temperature increases due to global warming into context, using data from the Bureau of Meteorology and the CSIRO. This research that is available at <https://www.tai.org.au/heatwatch> provides temperature change predictions for much of Northern Australia.

Let us refer to just one very relevant example for Darwin (from E Hanna and M Ogge 2018 'Cooked with gas: extreme heat in Darwin' The Australia Institute, Canberra) that focuses on the number of days when the temperature exceeds 35°C, with such extreme heat being dangerous for human health, for ecosystems and agriculture. From 1911, when the Commonwealth took over administration of the NT and Bureau of Meteorology temperature information became available, to 1940 there were an average 5.6 days per annum when the temperature exceeded 35°C. In the period 2012–2017 this had increased to 22.2 days per annum. It is predicted using CSIRO modelling that by 2030 this figure will increase to between 108 and 132 days per annum and by 2070 to between 178 and 275 days per annum with the low estimate based on a strong emissions reduction scenario, the high estimate based on a business-as-usual assumption.

In a parliamentary debate over the NT Acceptance Bill in 1909, Alfred Deakin stated 'But I must add that, apart from the splendid mineral, pastoral, and agricultural possibilities in the Territory, which will enable it to become populous, progressive, and productive, we must remember that in its proper development lies the key, not only to the defence of Australia, but to the development of its north. About one-half of Australia lies north of a line running from the Gascoyne River to Gladstone. Is this half to be neglected?' ... Either we must accomplish the peopling of the Northern Territory or submit to its transfer to some other nation. The latter alternative is not to be tolerated. The Territory must be peopled by a

white race'. (Hansard on 15 October 1909). The NT Acceptance Act was passed in 1910 and the NT was purchased by the Commonwealth for £6,180,548 (\$840 million in today's terms).

We present this vignette in part to highlight how over a century ago Australian government aspirations to develop the north for both economic and strategic defence reasons were remarkably like those today. We imagine that if Deakin were able to survey Northern Australia today, he would judge it neither 'populous', 'progressive', nor 'productive' on his early twentieth century criteria. We also wonder if thinking back then might have been different if knowledge about 21<sup>st</sup> century climate had been available to Deakin in 1909 when climatic conditions were much more benign. We too wonder how white Australians will cope with living and working in the north under the alarming climatic conditions being predicted by the CSIRO.

#### *Slow population increase*

The *White Paper on Developing Northern Australia* outlined a desired 'trajectory to reach a population of four to five million by 2060'. Population trends between 2011 and 2016 have shown that this desire lacks realism given the actual demographic and economic geography of Northern Australia, especially given current policy settings. Indeed, much of Northern Australia saw net out migration between 2011 and 2016.

Projecting 2011–2016 trends regarding births, deaths and migration forward can provide a sense of the difference between the trajectory the White Paper aspires toward, and a more likely reality. Table 1 shows the results of such an exercise, focusing on Northern Australia, with projections disaggregated by Indigenous status. The model projects a total population in Northern Australia that will reach little over 1.3 million by 2040, with no clear path to 'four to five million by 2060'.

*Table 1: Population projections for Northern Australia, 2016 – 2041. 'Series A' (no identification change). Source: Unpublished population projections by Markham and Biddle (2019).*

| Year | Indigenous<br>(persons) | Non-Indigenous<br>(persons) | Indigenous<br>(%) |
|------|-------------------------|-----------------------------|-------------------|
| 2016 | 193 397                 | 845 624                     | 18.6              |
| 2021 | 208 182                 | 894 166                     | 18.9              |
| 2031 | 240 129                 | 979 834                     | 19.7              |
| 2041 | 272 375                 | 1 049 710                   | 20.6              |

#### **Revisiting our recommendations**

In 2014 we made five recommendations. We revisit them here not with the vain hope that they have been implemented but to ask if they remain relevant and are still worthy of consideration.

##### *Recommendation 1*

*It is recommended that Indigenous property rights are strengthened across Northern Australia to the minimum standard of free prior informed consent that accord with the UN*

*Declaration on the Rights of Indigenous Peoples and that additional resources be earmarked to enhance the capacity of Indigenous mediating institutions.*

We note that draft Closing the Gap Refresh is looking to strengthen Indigenous property rights, although we understand that the draft targets are under revision by the *Joint Council on Closing the Gap*. The Land and Water priority area has an outcome the aspiration that Indigenous peoples land, water and cultural rights are realised. A Land and Water target was to be developed by mid-2019 in all jurisdictions to support Aboriginal and Torres Strait Islander Peoples' access, management and ownership of land to which they have a traditional association or which can assist with their social, cultural and economic development <https://closingthegap.niaa.gov.au/draft-targets-for-discussion>. This target has not, yet, been articulated. Free prior and informed consent accords with the Indigenous peoples right, asserted in the UN Declaration, to freely pursue their economic, social and cultural development. It is already integrated into aspects of Commonwealth law, such as the benchmark Aboriginal Land Rights (Northern Territory) Act, passed by the Commonwealth in 1976.

Proper resourcing of Prescribed Bodies Corporate would go some way toward leveling the playing field and reducing transactions costs for all parties in native title negotiations. This moderate and sensible reform, which falls far short of guaranteeing free prior and informed consent, has not occurred on any systematic basis to date.

#### *Recommendation 2*

*It is recommended that the concept of ecological sustainability inform any plans for development in Northern Australia.*

We do not see any evidence that the concept of ecological sustainability is being mobilized in the implementation of the Northern Australia agenda. We reiterate, as in our earlier submission that some of the most environmentally intact regions of terrestrial Australia are located on Indigenous titled lands in Northern Australia.

#### *Recommendation 3*

*It is recommended that this Inquiry (and the development of a White Paper this year) properly engage with available science; and that where there is uncertainty, the precautionary principle is deployed.*

We see little evidence of this, especially given the early proposal for the North Australia Infrastructure Facility to underwrite the financing the Galilee Basin Rail Project. We have provided some information in this submission on the impact of global warming on projected climatic conditions in Northern Australia.

#### *Recommendation 4*

*It is recommended that proper account is taken of the environmental benefits of land rights and native title alongside any benefits that might accrue to landowners from mining and other forms of intensive commercial land use.*

There seems to be little effort to rigorously assess the relative costs and benefits of different forms of development in Northern Australia. As one example with which we are familiar, Arnhem Land Fire Abatement (NT) Limited has reduced carbon emissions across 80,000 sq km of tropical savannah by an estimated 2.7 million Australian Carbon Credit Units (ACCUs). We are also aware of the natural and cultural resource management activities undertaken by community-based ranger programs operating in Indigenous Protected Areas across Northern Australia. It is far from clear to what extent such activities that are generating environmental benefits of national and global value are gaining access to appropriate levels of funding or to investment instruments like the Northern Australia Infrastructure Fund.

We note that environmental and economic objectives are not always in conflict. Recent research by Diane Jarvis, Natalie Stoeckl, Ro Hill and Petina Pert has demonstrated that Indigenous Land and Sea Management activities have far greater economic multiplier effects than mining or pastoral industries in Northern Australia (2018, 'Indigenous land and sea management programs: Can they promote regional development and help close the (income) gap?', *Australian Journal of Social Issues*, 53 (3), 283-303). In other words, funds such as those available through the North Australia Infrastructure Facility will have greater regional economic impact if invested in land and sea management rather than the resources sector or agri-business.

#### *Recommendation 5*

*It is recommended that place-based approaches to economic development planning are adopted that highlight both realistic assessment of production possibilities based on the theory of competitive advantage and Indigenous aspirations in all their diversity.*

As outlined in our earlier submission there is limited recognition of diverse Indigenous development aspirations including in accessing the non-market native title rights and interests that are guaranteed in law and that could assist livelihood improvement in local contexts. There is an ongoing privileging of the commercial over the customary that in many contexts is resulting in deepening impoverishment for Indigenous people living in very remote contexts in Northern Australia with no mainstream labour market opportunities. The Australian Government to insist that Newstart payments and payments under the Community Development Program that invariably land individuals and households below the poverty line are transitional payments, a safety net that is provided until mainstream employment is secured. But in many Indigenous contexts in Northern Australia there is a total regional absence of sufficient jobs and commercial opportunity. In such contexts innovative institutions like Universal Basic Income should be trialled or relatively successful programs from the past like the Community Development Employment Projects (CDEP) scheme should be revisited. Little consideration is given to alternative forms of Indigenous economy in the Australian Government's Northern Australia agenda despite over a decade of Closing the Gap developmental failure.

Submission ends