

s47E(d)

PDR: s47E(d)

**NATIONAL INDIGENOUS AUSTRALIANS AGENCY
MINISTERIAL SUBMISSION**

NIAA
Mr Griggs
Mr Exell
Mr Bulman
Mr Beswick
Mr Jeffries

MO
Mr Fordham
Mr s22(1)

To: Minister for Indigenous Australians

PROPOSED AMENDMENTS TO PART IV (MINING) OF THE ABORIGINAL LAND RIGHTS (NORTHERN TERRITORY) ACT 1976 (ALRA) s22(1)

Recommendations - that you:

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2. Note the issues raised by industry peak organisations in recent consultations about the proposed amendments to Part IV of the ALRA.

K
Noted / Please Discuss

KEN WYATT

Date:

Kenneth Wyatt
7 January 2020

Comments:

Please discuss after 2018

Key Points:

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- a. The proposed amendments form part of a broader package of ALRA reforms currently being progressed by the Agency in consultation with the NT Land Councils and NT Government.
- b. The amendments will implement key recommendations of the 2013 Report on Review of Part IV of the *Aboriginal Land Rights (Northern Territory) Act 1976* (Part IV Report) s47E(d) refers).

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Industry consultation

3. Following your approval in July to initiate industry consultation (s47E(d) refers), the Agency provided an Industry Consultation Discussion Paper to industry peak bodies – s22(1)

(Attachment C refers).

- a. The Industry Consultation Discussion Paper includes the recommendations of the Part IV Report and outlines the proposed amendments that have the preliminary support of the four NT Land Councils and the NT Government (Tables 1 and 2 Attachment C).
4. In August 2020, the Agency and the Department of Industry, Science, Energy and Resources (DISER) held preliminary meetings with the industry peak bodies.
 - a. On 30 September 2020, a Roundtable was held between the industry peak bodies, NT Land Council CEOs and senior officers of the NT Government, NIAA and DISER.
 - b. The Roundtable addressed key issues raised by industry peak bodies - in particular, industry's desire to engage directly with Traditional Owners and build stronger partnerships with Land Councils and, s22(1)
5. Overall, stakeholders expressed a shared view of the need to work together to build relationships and reach outcomes for traditional owners.

6. s22(1)

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- i. s22(1) [Redacted]
- b. s22(1) [Redacted]
 - i. s22(1) [Redacted]

(Table 1, Attachment C refers).
 - ii. s22(1) [Redacted]
- c. s22(1) [Redacted]
 - i. s22(1) [Redacted]
 - ii. s22(1) [Redacted]

Sensitivities:

- 7. s22(1) [Redacted]
- 8. s22(1) [Redacted]

Next Steps

- 9. The four Land Councils are expected to provide initial endorsement of the proposed amendments by mid-December 2020. We will seek their further input and agreement on exposure draft legislation proposed for release, subject to policy authority, in early 2021.
- 10. The NT Government intends formalise its position following release of exposure draft legislation.

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Background:

11. In June 2020, a Part IV Working Group comprising officials from the four NT Land Councils, the NT Government and the Australian Government (the Agency and DISER) reached preliminary agreement on all 22 recommendations, including 12 that involve legislative change.
12. ^{s22(1)}
^{s22(1)} (Table 1, Attachment C).
- a. Two further proposed amendments, not related to the Part IV Report, will implement other matters agreed by the Part IV Working Group aimed at creating efficiencies and cost savings for applicants (Table 2, Attachment C refers).
13. The Working Group has not raised further issues for consideration in response to the submissions from industry peak bodies.

Wayne Beswick
Branch Manager
Land Branch
8 December 2020

Policy Officer: ^{s22(1)}
Phone no: ^{s22(1)}
Consultation: Central Group, NT Land
Councils, DISER, NT Government

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ATTACHMENTS

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ATTACHMENT C INDUSTRY CONSULTATION DISCUSSION PAPER

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Review of Part IV (Mining) of the *Aboriginal Land Rights (Northern Territory) Act 1976* Industry Consultation - Discussion Paper

Purpose

The purpose of this Discussion Paper is twofold:

- to inform without-prejudice consultations with resource industry bodies of the Australian Government's progress in responding to the 2013 Report on Review of Part IV of the *Aboriginal Land Rights (Northern Territory) Act 1976* (Report), and
- to invite the views of industry on proposed legislative amendments arising from consideration of the Report by the Australian Government and key stakeholders – the four Northern Territory (NT) Land Councils and the NT Government.

This Discussion Paper sets out a process and timeframe for consultations with resource sector industry groups. It also indicates a series of preliminary positions on the Review's recommendation which are provided on a without-prejudice basis to assist further consultation.

Australian Government Policy Context

The Hon Ken Wyatt AM MP, Minister for Indigenous Australians has portfolio responsibility for the administration of the *Aboriginal Land Rights (Northern Territory) Act 1976* (Land Rights Act).

The proposed reforms to Part IV of the Land Rights Act are intended to support the efficient administration of exploration and mining on Aboriginal land in the NT and make it easier for traditional owners to enjoy the benefits of investment in their land. The Minister has said he will not amend the Land Rights Act without the support of the four NT Land Councils.

Background

In 2013, the Aboriginal Land Commissioner completed an independent review of Part IV of the Land Rights Act pursuant to a statutory requirement. The resulting Report was tabled in the Australian Parliament in June 2013, and can be accessed at:

https://parlinfo.aph.gov.au/parlInfo/download/publications/taledpapers/68985/upload_pdf/alc_review_of_part_iv.pdf;fileType=application%2Fpdf#search=%22publications/taledpapers/68985%22

The Report presented 22 recommendations to promote efficiencies in the administration and operation of the Land Rights Act in respect of exploration and mining activity on Aboriginal land in the NT. Resource industry bodies were among the stakeholders that provided submissions to the Report.

The process of preparing a response for consideration by the Australian Government has been ongoing since 2013, interrupted at times by intervening priorities and Federal elections.

In 2015 the Council of Australian Governments completed its 'Investigation into Indigenous Land Administration and Use'. The Investigation report recommended the Australian Government work with the NT Government, NT Land Councils and industry to assess whether the exploration and mining provisions of the Land Rights Act can operate more effectively and efficiently, and consider the appropriateness of implementing the recommendations of the Report.

In 2016, senior representatives from the Australian Government, the NT Government and the NT Land Councils were nominated to a Working Group to consider the Report and in 2017 reached preliminary agreed positions on the Report's recommendations. Competing stakeholder priorities subsequently prevented the Working Group from progressing to proposed industry consultation.

In late 2019 NIAA sought to reconvene the Working Group however due to Covid-19 impacts on all stakeholders, meetings were not held until May 2020. The current Working Group is comprised of officer-level representatives of the Australian Government (the National Indigenous Australians Agency and the Department of Industry, Science, Energy and Resources), the NT Government (Department of the Chief Minister and Department of Primary Industry and Resources), Central Land Council, Northern Land Council, Tiwi Land Council and Anindilyakwa Land Council.

At meetings in May and June 2020, the Working Group parties reached preliminary agreed positions on each of the Report's 22 recommendations. The Working Group has recognised that some of the recommendations could be addressed by procedural changes not requiring legislative amendments. The Working Group preliminary positions are summarised in the table below. These positions are not yet endorsed by the representatives' organisations.

The Working Group also considered other matters not included in the Part IV Report but relevant to creating efficiencies in the operation of Land Rights Act. Proposed amendments are included in this Discussion Paper.

Industry consultation

Consultation with peak resource industry stakeholders will provide an important update to their submissions considered in the 2013 Report and will inform the Australian Government's response to the Report.

This Discussion Paper is being provided to the following industry bodies:

- s22(1) [redacted]
- s22(1) [redacted] and
- s22(1) [redacted]

Working Group positions on Report recommendations and other matters

As noted above, the Working Group's preliminary views outlined in Table 1 have been developed for the purposes of consultation and are yet to be considered for formal endorsement and authorisation through each party's relevant governance arrangements.

Each of the 22 recommendations of the Report seek to improve the operation of Part IV of the Land Rights Act. The recommendations are broadly grouped into five categories as below:

- To improve the application and consent processes for granting exploration licences (Recs 1-8)
- The role of the Minister for Indigenous Australians in the granting of exploration licences by the NT Government (Recs 9-10)
- More efficient and consistent operation of Part IV (Recs 11-16)
- The delegation of functions and powers to the NT Mining Minister (Rec 17)
- Alignment of Part IV with related Australian and NT Government legislation (Recs 19-22)

Other matters considered by the working group also support the more efficient and consistent operation of Part IV and are outlined in Table 2.

Table 1.

2013 Part IV (Mining) Review Recommendations Agreed Working Group positions	Working Group preliminary positions	Land Rights Act amendment	Working Group Comments	Explanation
Recommendations to improve the application and consent process for granting exploration licences				
Recommendation 1: That amendment to the Land Rights Act aimed at encouraging applicants to comply with the time limit set out in s 41(2) be considered.	s22(1)			
Recommendation 2: That s 41 of the Land Rights Act be amended to require the relevant Land Council to notify the NT Mining Minister (NTMM) of the date upon which it received an application from the applicant.				
Recommendation 3: That the Land Rights Act be amended to permit an applicant, with the written consent of the Land Council, to amend an application to a Land Council under s 41(1), and that any such amendment be forthwith notified by the Land Council to the NTMM who shall have 28 days thereafter to disallow the amendment.				

2013 Part IV (Mining) Review Recommendations Agreed Working Group positions	Working Group preliminary positions	Land Rights Act amendment	Working Group Comments	Explanation
	s22(1)			
<p>Recommendation 4: That s 42(13) be amended so as to permit negotiating parties to agree to extend the negotiating period initially by two years or a shorter period, rather than two years, and subsequently by 12 months or a shorter period, rather than 12 months.</p> <p>Recommendation 5: That s 42 be amended so as to permit negotiating parties to agree to extend a special negotiating period determined under s 42(18) by 12 months or a shorter period.</p>				
<p>Recommendation 6: That s 42 be amended so that: (a) the Land Council be required to convene such meetings as it considers “appropriate” rather than “necessary” with traditional Aboriginal owners; and (b) the Land Council and the applicant may agree to waive the requirement to conduct meetings in accordance with s 42(4).</p>				

2013 Part IV (Mining) Review Recommendations Agreed Working Group positions	Working Group preliminary positions	Land Rights Act amendment	Working Group Comments	Explanation
	s22(1)			
Recommendation 7: That Land Councils and the relevant representative bodies for exploration and mining companies give consideration to the negotiation of a shorter pro forma exploration agreement for use in Part IV negotiations, with a particular focus on the elimination of terms and security requirements that merely duplicate pre-existing statutory obligations.				
Recommendation 8: That s 42(4) be amended by adding a requirement that the applicant must pay all costs reasonably incurred for all meetings convened under that section.				
Recommendation 9: That consideration be given to the benefit of securing the Minister's consent, and, if it is assessed that it does not add "quality" to the decision making process, to the possible repeal of ss 40(a)(ii), 42(8), (8A), (9), and (10) and other consequential amendments.				

2013 Part IV (Mining) Review Recommendations Agreed Working Group positions	Working Group preliminary positions	Land Rights Act amendment	Working Group Comments	Explanation
	s22(1)			
Recommendation 10: That, in the alternative to Recommendation 9, s 42 of the Land Rights Act be amended so as to require the applicant to provide a copy of the agreement entered into by the Land Council and the applicant as to the terms and conditions to which the grant of the exploration licence is subject, and the Land Rights Act be further amended so that the 30 days within which the Minister’s determination must be made runs from the date of receipt of the copy of the agreement.				
Recommendations relating to the more efficient and consistent operation of Part IV				
Recommendation 11: That s 46(1)(a)(viii) be amended so that the quantity of environmental information in relation to a proposed mining	s22(1)			

2013 Part IV (Mining) Review Recommendations Agreed Working Group positions	Working Group preliminary positions	Land Rights Act amendment	Working Group Comments	Explanation
works that needs to be included in a s 46 mining proposal be the same as that environmental information that is required to be provided under NT environmental legislation.	s22(1)			
Recommendation 12: That ss 40(b) and 43 be repealed. It is a matter of policy whether some provision equivalent to s 40(b) and supporting provisions should be enacted in relation to proposed mineral leases.				
Recommendation 13: That s 44A(1) to the extent that it prohibits terms and conditions which provide for compensation for the value of				

2013 Part IV (Mining) Review Recommendations Agreed Working Group positions	Working Group preliminary positions	Land Rights Act amendment	Working Group Comments	Explanation
minerals removed or proposed to be taken from the land be repealed.	s22(1)			
Recommendation 14: That Part IV be made exempt from the application of s 27(3) so that the Minister's consent is not required both in relation to the payment of over \$1,000,000 and in relation to the granting of the exploration licence or mineral lease.				

2013 Part IV (Mining) Review Recommendations Agreed Working Group positions	Working Group preliminary positions	Land Rights Act amendment	Working Group Comments	Explanation
<p>Recommendation 15: That s 19(11)(a) be repealed insofar as it purports to include extractive mineral titles within the definition of “estate or interest in land”.</p> <p>Recommendation 16: That a new section be added to the Land Rights Act requiring that an extractive mineral title not be granted unless the Land Council has given notice to the NTMM that it is satisfied of all the matters set out in s 19(5). Consequential amendments to the MTA may also be necessary.</p>	s22(1)			
<p>Recommendations for the delegation of functions and powers to the Northern Territory</p> <p>Recommendation 17: That the Minister’s powers under ss 47(1)(d) and 47(3)(a) be excluded from delegation to the NTMM under s 76(2), and that a requirement to consult the NTMM be added to s 47(3).</p>				

2013 Part IV (Mining) Review Recommendations Agreed Working Group positions	Working Group preliminary positions	Land Rights Act amendment	Working Group Comments	Explanation
	s22(1)			
Recommendations relating to the alignment of Part IV with related Australian Government and Northern Territory legislation				
Recommendation 18: That consideration be given to incorporating provisions into the Land Rights Act similar to those set out in s 24MD of the Native Title Act 1993 (Cth) for dealing with the grant of access authorities.	s22(1)			
Recommendation 19: That s 75, relating to miner’s rights, be repealed. Recommendation 20: That titles issued under the Geothermal Energy Act (NT) be brought				

2013 Part IV (Mining) Review Recommendations Agreed Working Group positions	Working Group preliminary positions	Land Rights Act amendment	Working Group Comments	Explanation
<p>within the operation of Part IV, by including: (a) geothermal exploration permits under the definition of “exploration licence”; and (b) geothermal retention licences under the definition of “exploration retention licence”.</p> <p>Recommendation 21: That amendments to ss 48(1A) and 3 be made as recommended in this Report in order to ensure separate moratorium provisions run in relation to geothermal energy title applications.</p>	s22(1)			
<p>Recommendation 22(1) – That the definitions of “extractive mineral” and “mineral” in s 3 be amended so that they reflect the definitions of those terms contained in ss 10 and 9 respectively of the MTA.</p>				
<p>Recommendation 22(2) – That the definition of “exploration licence” in s 3 be amended so that references to “prospecting authorities” are removed, and extractive mineral titles are specifically excluded.</p>				
<p>Recommendation 22(3) – That the definition of “exploration retention licence” in s 3 be amended so that it refers to exploration licences in retention under the MTA, and extractive mineral titles are specifically excluded.</p> <p>Recommendation 22(4) – That the definition of “mining interest” in s 3 be amended so that extractive mineral titles are specifically excluded.</p>				

Other matters considered

The Working Group has considered and supported legislative amendment in relation to two matters not the subject of recommendations made in the Report. Both matters would create further efficiencies in the operation of Part IV of the Land Rights Act.

Table 2.

Other matters	WG agreed position	ALRA amendment	Comments	
<div>s22(1)</div> <div></div>				

s22(1)



Next Steps

The NIAA will coordinate the scheduling of meetings between the Australian Government, Working Group representatives and industry representative bodies. The NIAA's primary contact is as follows.

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NT Land Operations Section, Land Branch
Economic Policy and Programs Group
National Indigenous Australians Agency

p. s22(1)

m. s22(1)

e. s22(1)

The Working Group anticipates industry engagement through online or face to face meetings in Darwin, in **July and August 2020**.

- August 2020 – Australian Government (NIAA / DISER) and industry bodies pre-meeting/s
- 30 September 2020 – Land Council and industry peak bodies Round Table

The Working Group also welcomes written submissions from industry representative bodies on the matters raised in this Discussion Paper by **16 October 2020**.

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NATIONAL INDIGENOUS AUSTRALIANS AGENCY MINISTERIAL SUBMISSION

NIAA
CEO
Ms Mitchell
Ms Hope
Mr Jeffries
Mr Bulman
Mr Jacomb

To: Minister for Indigenous Australians s22(1)

s22(1)

ALRA REFORMS s22(1)
s22(1)

NIAA Executive
Coordination

MO
Mr Lomas
Ms s22(1)

Recommendations - that you:

1. Agree to the proposed minor policy changes set out in this brief that give effect [REDACTED] to reform the *Aboriginal Land Rights (Northern Territory) Act 1976* (ALRA); strengthen the new Aboriginals Benefit Account (ABA) entity's governance and put appropriate limits on its investment decisions to reduce risk for the Commonwealth and for Aboriginal people in the Northern Territory (NT); further strengthen and streamline land administration; [REDACTED]

s34(3)

Agreed / ~~Not Agreed~~

2. [REDACTED]

3. [REDACTED]
4. Note the governance and financial risk factsheet at Attachment C, which outlines measures Government is putting in place to ensure best practice governance for the ABA entity and appropriate Government controls on its financial decisions.

Noted / ~~Please Discuss~~

5. [REDACTED]

KEN WYATT 

Date:  27 July 2021

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Comments:

Key Points:

1. Following ^{Section 34(3)} [redacted] the *Aboriginal Land Rights (Northern Territory) Act 1976* (ALRA) ^{Section 34(3)} [redacted] ^{34(2), s34(1)(c)} [redacted], we met with you to discuss the policy settings for these measures on 2 June 2021. You requested the National Indigenous Australians Agency (NIAA) strengthen governance and financial controls on the new ABA entity to manage risks to the entity and government. Capturing your feedback, the following improvements have been made:
 - a. To further strengthen the Aboriginals Benefit Account (ABA) entity's governance we recommend the ALRA reforms set out:
 - i. A requirement for the ABA entity Board to agree a Code of Conduct for its Chief Executive Officer (CEO) with you and publish it.
 - ii. A requirement for the ABA entity Board to publish a Code of Conduct for its directors.
 - iii. That a serious breach of these Codes of Conduct is a ground for termination for the CEO and Board directors. This will set a new standard and be the strongest mechanism for termination across all Indigenous portfolio bodies.
 - iv. That the Board director appointed by the Minister for Finance must be on the Board's Investment Committee.
 - v. That at least one Government appointed director and one independent director be present to meet a Quorum.
 - b. To reduce financial risk to Government and the new ABA entity we have designed the following measures in collaboration with the Department of Finance:
 - i. The new proposed \$100 million investment threshold, which requires the ABA entity to seek your approval for any single investment decision above \$100 million, and
 - ii. The requirement for ABA entity's lending, borrowing and ability to provide guarantees and acquire derivative financial products to be governed by rules agreed between you and the Finance Minister.
 - c. Further information about the governance and financial controls can be found at paragraph 10 below and in the Background.

2. ^{s22(1)} [redacted]

s47E(d)

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a. s22(1)

3. s22(1)

a. s22(1)

i. s22(1)

ii. We provided drafts of the legislation to your Office on 19 July 2021.

4. s22(1)

Consultation on proposed changes

5. We updated the NT Land Councils on 7 July 2021 on changes since we last formally engaged in November 2020 and possible minor policy changes outlined in the Background, noting they are subject to your and the Prime Minister and Finance Minister's approval. The Land Councils are supportive of the proposed changes.
6. We have consulted with Department of Finance and the Department of the Prime Minister and Cabinet (PM&C) officers on the proposed policy changes.

a. s34(3)

i. s34(3)

ii. s34(3)

7. s34(3)

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a. s34(3)

b. s34(3)

Consultation with Executive Director of Township Leasing (EDTL)

8. The EDTL has been involved in the working group on ALRA reforms alongside the Land Councils, including at the Alice Springs workshop held on 3 and 4 November 2020 where the key parameters of legislation were co-designed and agreed among stakeholders. NIAA also consulted with the EDTL on the s34(2), s34(1)(c)

and s47C

a. s22(1)

9. We have continued our consultations with the EDTL and provided an early draft of relevant parts of the draft legislation, including the proposed changes to embed community entity township leasing in the ALRA.

a. s47C

b. s47C

c. s47C

d. s47C

e. s47C

Governance and Termination arrangements

10. As you requested at our ALRA reform deep dive on 2 June 2021, we have provided a summary of the governance and financial mechanisms in place for the ABA entity drawing on industry best practice, including appropriate limits on investment decisions (Attachment C).

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- a. The termination arrangements address issues seen in other portfolio bodies and sit alongside the new proposed \$100 million investment threshold and Government rules on the ABA entity's financial instruments:

i. Government and independent directors on the Board

- (a) 12 Board directors:
- (i) 2 government appointed directors – 1 appointed by the Minister for Indigenous Australians and 1 appointed by the Minister for Finance, with expertise in financial, business or land, water and environment management.
 - (ii) 2 independent directors appointed by the Board. These directors will provide independent financial and business advice.
 - (iii) 8 directors appointed by the four NT Land Councils. These directors provide strong accountability to Aboriginal Territorians.

ii. Codes of Conduct provide strong grounds for termination

- (a) Board and CEO will be required to publish Codes of Conduct.
- (b) CEO's Code of Conduct will be agreed by the Minister for Indigenous Australians.
- (c) Board members and CEO can be terminated for serious breaches of the Codes of Conduct – this will set a new standard and be the strongest mechanism for termination across all Indigenous portfolio bodies.

iii. Additional termination mechanisms

- (a) Ministers can terminate their appointed directors for misbehaviour, incapacity or illness, bankruptcy, absence from 3 meetings without a leave, a serious breach of the Code of Conduct, or breach of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) duties of officials.
- (b) Land Councils can terminate their appointed directors for the same reasons.
- (c) Board can terminate independent director appointments for the reasons set out above and if they are no longer able to provide independent advice.

iv. Government involvement in CEO appointment/termination

- (a) The Board can only appoint (or terminate) the CEO with the written agreement of the Minister.

v. Reduced role for Chair

- (a) Board appointed Chair does not have a casting vote.

vi. Government and independent role in Quorum

- (a) At least one government appointed and one independent director must present for all Board decisions.

vii. Clear disclosure of interests

- (a) Directors need to disclose material personal interests to the Board.
- (b) Government-appointed directors must also disclose to their relevant Minister.
- (c) Land Council directors must also disclose to their relevant Land Council.

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- (d) CEO must disclose to the Board, and give a copy of any disclosures of interest to the Minister.

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BACKGROUND

s22(1)

Aboriginals Benefit Account (ABA) entity*Supporting best practice governance*

11. The following minor changes will further strengthen the ABA entity's governance, which reflects industry best practice and has been independently reviewed by KPMG:
- a. We recommend you seek to provide flexibility for Land Councils to appoint their representatives on the ABA entity Board from their membership, rather than prescribing that the Land Council Chairs and Deputy Chairs are on the Board.
 - b. We recommend that the ABA entity's Board appoint and terminate the Chief Executive Officer (CEO) with the agreement of the Minister for Indigenous Australians (the Minister). This will ensure the CEO's accountability to the Board is clear and maintain a role for Government in guiding the appointment.
 - c. We recommend you seek to enable the Minister to make rules relating to the operations of the ABA entity, including in relation to reporting and Board remuneration.

s34(3)

12. s34(3)

13. s34(3)

s34(3)

14. s34(3)

15. To manage financial risk, the ABA entity's Board will be required to consider the advice of a legislated Investment Committee to the Board. The Investment Committee will include the Board member appointed by the Minister for Finance and two independent financial experts, and will provide advice on financial and strategic investments.

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16. The Board will also be required to report to Parliament on its financial investment priorities and processes every 3 years through its Strategic Investment Plan, alongside its strategic investment and beneficial payment priorities. To further manage financial risk, we also propose to limit the entity's ability to acquire derivative financial products in legislation.

Reducing financial risk for strategic investments

17. ^{s34(3)} [REDACTED] To reduce financial risk to the ABA entity and the Commonwealth we recommend you seek to:
- a. Require the Minister's approval of any individual investment exceeding \$100 million, or a higher amount set by the Minister.
 - b. Enable the Finance Minister and the Minister to make rules governing the entity's ability to borrow, loan and issue guarantees.

Amendments to the ABA – ^{s22(1)} [REDACTED]

18. ^{s34(3)} [REDACTED] The proposed amendments will:
- a. Amend the ABA's debiting provisions to allow for debit of amounts from the ABA for the purposes of the ABA entity.
 - b. Address potential technical breaches of section 83 of the Constitution without changes to current policy or procedures.
 - c. Clarify that the purposes of the ABA for the Commonwealth financial framework are paying amounts required or permitted to be paid under section 64 and section 64A of the ALRA and the new payments to the ABA entity.

Land administration

19. ^{s34(3)} [REDACTED] We recommend that consistent with existing practice there be a requirement for Land Councils to nominate the community entities to hold township leases and the provisions that enable the NT Chief Minister to nominate approved entities be removed. The latter provisions have never been used and I do not expect any objections from the NT Government.
20. We also recommend two additional amendments to streamline and strengthen land administration arrangements:
- a. The first is to increase the amount above which Land Councils must seek approval from the Minister to enter into a contract. This amount is currently \$1 million. To reflect inflation, we recommend it be increased to \$5 million and enable the Minister to set a higher amount.

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- b. We recommend you seek to increase the penalty units for entering onto Aboriginal land without a permit from 10 penalty units to 50 penalty units (currently \$2,220 to \$11,100) with a 12 month delay on commencement to allow the NT Government time to increase related Territory penalty provisions. This amendment will provide disincentive for individuals to trespass and engage in unlawful activity on ALRA land.

s34(3)

21. s34(3)

a. s34(3)

b. s34(3)

22. s22(1)

s34(3)

a. s34(3)

b.

c.

d.

e.

23. We recommend you not to progress amendments requiring an applicant to pay all costs reasonably incurred by Land Councils for convening meetings to consider exploration applications. Provision already exists in the ALRA for making regulations enabling Land Councils to charge fees for services such as convening these meetings and proceeding with this amendment may introduce unnecessary legislative duplication and complexity.

s47E(d)

s47E(d)

Ryan Bulman
Group Manager, Economic Policy and Programs
22 July 2021

Policy Officer: s22(1)
Phone no: s22(1)
Consultation: Central, Legal Services
Branch, Department of the Prime Minister
and Cabinet, Department of Finance,
EDTL

s47E(d)

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ATTACHMENTS

s22(1)

**ATTACHMENT C FACTSHEET ON ABA ENTITY GOVERNANCE AND FINANCE
RISK MANAGEMENT**

s22(1)

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Governance and financial risk management factsheet

The Australian Government will have an ongoing role in the strong governance mechanisms for the new NT Aboriginal Investment body, which will be established as a corporate Commonwealth entity governed by the *Public Governance, Performance and Accountability Act 2013*. The following additional controls will be set out in the *Aboriginal Land Rights (Northern Territory) Act 1976*.

Best practice governance	Financial risk management
<p>Government and independent Board directors</p> <p>12 Board directors:</p> <ul style="list-style-type: none"> - 1 appointed by the Minister for Indigenous Australians - 1 appointed by the Minister for Finance <ul style="list-style-type: none"> o These directors will have expertise in financial, business or land, water or environment management. - 2 independent directors appointed by the Board <ul style="list-style-type: none"> o These directors will provide independent financial and business advice. - 8 directors appointed by the four NT Land Councils. <ul style="list-style-type: none"> o Strong accountability to Aboriginal Territorians <p>Codes of Conduct provide strong grounds for termination</p> <ul style="list-style-type: none"> - Board and CEO will have published Codes of Conduct. - CEO's Code of Conduct will be agreed by the Minister for Indigenous Australians. - Board members and CEO can be terminated for serious breaches – this is the strongest mechanism for termination of the Indigenous portfolio bodies. <p>Additional termination mechanisms</p> <ul style="list-style-type: none"> - Ministers can terminate their appointed directors for misbehaviour, incapacity or illness, bankruptcy, absence from 3 meetings without a leave, a serious breach of the Code of Conduct, or breach of PGPA Act duties of officials. - Land Councils can terminate their appointed directors for the same reasons. - Board can terminate independent director appointments for the reasons set out above and if they are no longer able to provide independent advice. <p>Government involvement in CEO appointment</p> <ul style="list-style-type: none"> - The Board can only appoint (or terminate) the CEO with the written agreement of the Minister. <p>Reduced role for Chair</p> <ul style="list-style-type: none"> - Board appointed Chair does not have a casting vote. <p>Government and independent role in Quorum</p> <ul style="list-style-type: none"> - At least one government appointed and one independent director must present for all Board decisions. <p>Clear disclosure of interests</p> <ul style="list-style-type: none"> - Directors need to disclose material personal interests to the Board. - Government-appointed directors must also disclose to their relevant Minister. - Land Council directors must also disclose to their relevant Land Council. - CEO must disclose to the Board, and give a copy of any disclosures of interest to the Minister. 	<p>Government sets ongoing funding from the ABA</p> <ul style="list-style-type: none"> - After the first three years, beneficial payment funding will be set by the Minister for Indigenous Australians on the advice of the Board and taking into consideration the balance of the ABA. - Minister will also determine administrative funding <p>Government approval of large investments</p> <ul style="list-style-type: none"> - The Board cannot authorise any investments over \$100 million without the agreement of the Minister. <p>Government makes rules for debt instruments</p> <ul style="list-style-type: none"> - The Finance Minister and the Minister for Indigenous Australians will make rules to govern the body's ability to make loans, borrow money, give guarantees and acquire derivatives. <p>Conditions before transfer of endowment</p> <ul style="list-style-type: none"> - The \$500 million endowment will not be transferred until the body's Strategic Investment Plan has been tabled in Parliament. The Board has to have regard to any advice provided by the Investment Committee. <p>Government on the Investment Committee</p> <ul style="list-style-type: none"> - An Investment Committee will provide advice to the Board on the entering into, management and disposal of investments, and the development and revisions of Strategic Investment Plans. - Membership will include the director appointed by the Finance Minister, an independent director and at least 2 other independent business or financial advisors. <p>Audit and Risk Committee</p> <ul style="list-style-type: none"> - As required by the PGPA Act. <p>Government guides content of Strategic Investment Plan</p> <ul style="list-style-type: none"> - Body will develop a 3-5 year Strategic Investment Plan (SIP) tabled in Parliament setting out the body's funding and investment priorities. - Minister will make rules about what is in the SIP - Body must have regard to advice provided by the Investment Committee and consult with Aboriginal people living in the NT on the SIP. - Board must have regard to the SIP in performing its functions. <p>Additional reporting requirements</p> <ul style="list-style-type: none"> - Minister can request progress reports during the first 3 years of the operations of the body and publish them. These may be published. - Minister can make rules specifying matters that must be included in the body's annual report.

NATIONAL INDIGENOUS AUSTRALIANS AGENCY
MINISTERIAL SUBMISSION

NIAA
CEO
Ms Mitchell
Ms Hope
Mr Bulman
Mr Jacomb

NIAA Executive
Coordination

MO
Mr Lomas
Ms s22(1)

To: Minister for Indigenous Australians s22(1)

s22(1)

ALRA REFORMS s22(1)

s22(1)

Recommendation - that you:

s22(1)

1.

KEN WYATT



Date: 20 August 2021

Comments:

Key Points:

1.

s22(1)

2.

s22(1)

3.

s22(1)

4.

s22(1)

a.

s22(1)

s47E(d)

- b. s22(1)
- c.
- d.

Background:Supporting best practice governance

5. The matters relating to procedures of the Board are consistent with your request in our meeting with you on 2 June 2021 that the governance and financial controls on the NTAI Corporation be strengthened. Specifically, they relate to the ability of the Board or responsible entity (the entity that appointed the relevant Board member) to suspend or terminate the CEO or directors for serious breaches of the code of conduct.
6. The rationale for each change (including sensitivities) is as follows:
 - a. *Providing the NTAI Corporation Board with the power to suspend directors that have been appointed to the Board by the NT Land Councils for a serious breach of the code of conduct* – this change enables the Board to remove a director from decision making whilst the relevant Land Council is considering their termination. This is a strong governance mechanism that is necessary for the functioning of the Board, and only applies to Land Council appointed members of the Board to enable the suspension to be considered by the Land Council for potential termination.
 - b. *Providing the responsible entity (the entity that appointed the relevant Board member) with the power to terminate a Board member for a serious breach of the code of conduct* – this change reduces the risk to Government and the Board by providing strong grounds for termination and elevating the importance of the Board code of conduct.
 - c. *Providing the NTAI Corporation Board, with the written agreement of the Minister, the power to terminate the CEO for a serious breach of the code of conduct* – this change reduces the risk to Government and the Board by providing strong grounds for termination and elevating the importance of the CEO code of conduct.

Ensuring responsible ongoing funding

7. The rationale for providing the NTAI Corporation with discretion to submit estimates of its expenditure for beneficial payments and strategic investments if and when additional funding is required primarily relates to its efficient, effective and economical operation.
 - a. The change will ensure the responsible ongoing funding of the NTAI Corporation, whilst maintaining efficiency and flexibility by not mandating annual submission of estimates where no further funding is required.
 - b. The change will not affect the NTAI Corporation's requirement to prepare estimates for Commonwealth Budget processes or to report on its expenditure.

s47E(d)

Rachel Kerrigan
Branch Manager
Land Branch
20 August 2021

Policy Officer: s22(1)
Phone no: s22(1)
Consultation: Office of Parliamentary
Counsel, Prime Minister and Cabinet,
Legal Services Branch

ATTACHMENTS

Section 22



**NATIONAL INDIGENOUS AUSTRALIANS AGENCY
MINISTERIAL SUBMISSION**

NIAA
CEO
Ms Hope
Ms Mitchell
Mr Fox
Mr Jeffries
Mr Mudaliar
Mr Matthews
Ms Johnston
Ms Hill
Mr Jacomb

To: Minister for Indigenous Australians for approval s47E(d)

s47E(d)

s22(1)

**ABORIGINAL LAND RIGHTS (NORTHERN
TERRITORY) AMENDMENT (ECONOMIC EMPOWERMENT) BILL**

NIAA Executive
Coordination

MO
Mr Lomas
Ms s22(1)

Recommendations - that you:

1.

s22(1)

2.

3.

4.

5.

6.

7.

8.

KEN WYATT

Date: 23 August 2021

Comments:

Key Points:

s22(1)

s22(1)

s47E(d)

s22(1)

Section 22(1)

s22(1)

Consultation

8. The NT Land Councils co-designed the new NT Aboriginal Investment Corporation and land administration reforms in a working group with the National Indigenous Australians Agency and the ABA Advisory Council over three and a half years since 2018.
9. The reforms to Part IV (mining) of the ALRA were designed by a Working Group comprising the four NT Land Councils, the NT Government, the Department of Industry, Science, Energy and Resources and the National Indigenous Australians Agency. Mining industry peak associations were also separately consulted on the reforms.

s22(1)

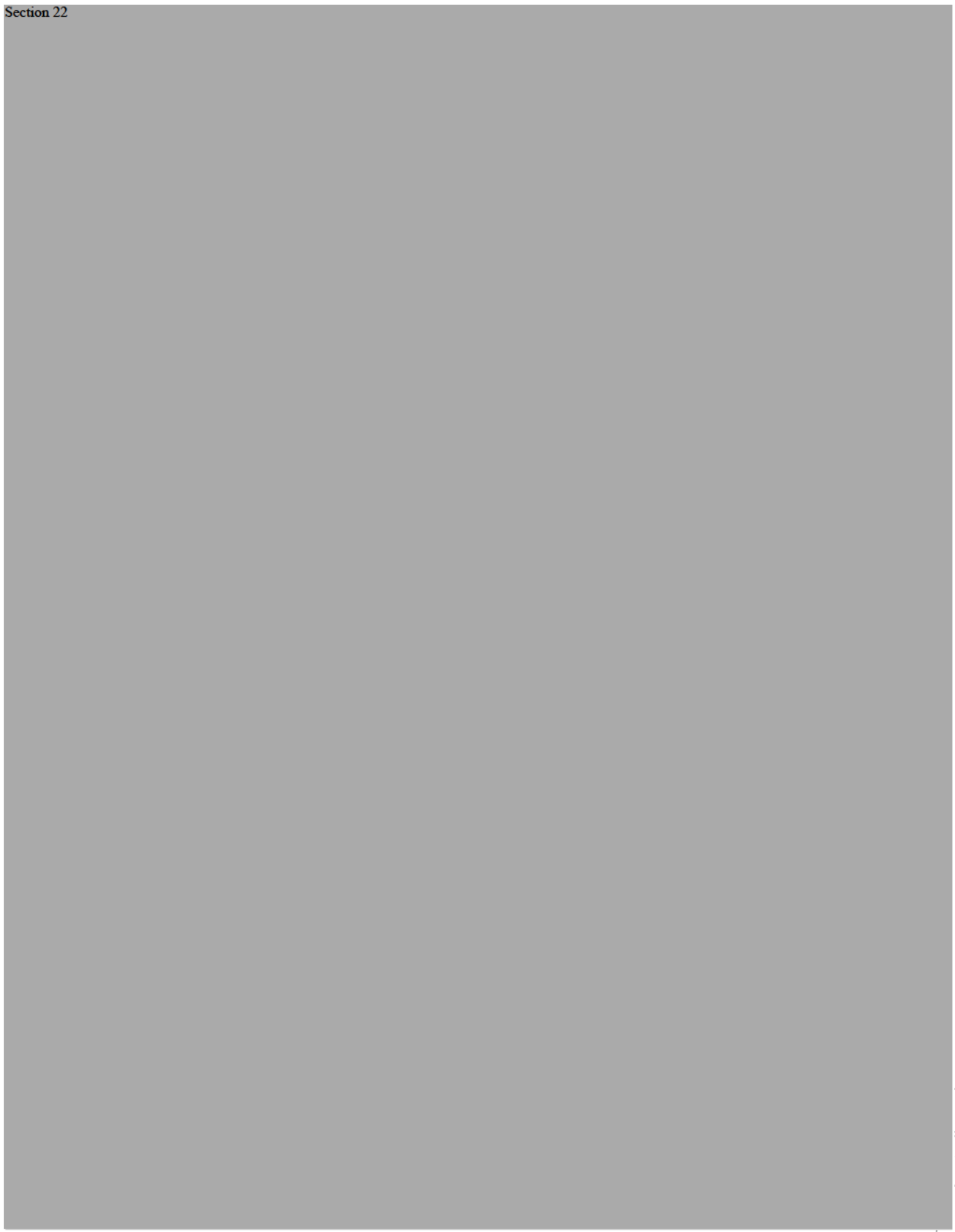
Ryan Bulman
Group Manager
Economic Policy and Programs
16 August 2021

Policy Officer: Rachel Kerrigan
Phone no: s22(1)
Consultation: Central, Legal Services

s47E(d)

ATTACHMENTS

Section 22



s47E(d)

PDR: s47E(d)

NATIONAL INDIGENOUS AUSTRALIANS AGENCY MINISTERIAL SUBMISSION

NIAA
CEO
Ms Hope
Ms Mitchell
Mr Jeffries
Mr Bulman
Mr Jacomb

NIAA Executive
Coordination

MO
Mr Lomas
Ms s22(1)

To: Minister for Indigenous Australians (for decision and signature by 1 October 2021 to meet committee deadline of 1 October 2021)

SENATE SCRUTINY OF BILLS COMMITTEE RESPONSE - ABORIGINAL LAND RIGHTS (NORTHERN TERRITORY) AMENDMENT (ECONOMIC EMPOWERMENT) BILL 2021

Recommendations - that you:

1. Note the key issues set out in this brief relating to matters raised by the Senate Standing Committee for the Scrutiny of Bills (the committee) in relation to the Aboriginal Land Rights (Northern Territory) Amendment (Economic Empowerment) Bill 2021 (the Bill).

 Noted / ~~Please Discuss~~

2. Agree to not make the amendments to the Bill suggested by the committee in *Scrutiny Digest 15/21* of 16 September 2021 Section 22

 Agreed / ~~Not Agreed~~

3. s22(1)

KEN WYATT 

Date:

29 September 2021

Comments:

Key Points:

1. On 25 August 2021, you introduced the Bill into the House of Representatives.
2. The committee commented on the Bill in its *Scrutiny Digest 15/21* of 16 September 2021 Section 22 and has invited you to respond to the following matters Section 22
 - a. inclusion of no-invalidity provisions for investment decisions of the new Northern Territory Aboriginal Investment Corporation (NTAI Corporation) and for agreements entered into by the Northern Territory (NT) Land Councils with proponents in relation to land that is the subject of a deed held in escrow;

s47E(d)

- b. use of delegated legislation in relation to the NTAI Corporation's investment limit and controls on financial instruments and in relation to the process for approving an entity to hold a township lease;
 - c. providing that the strategic investment plan is a legislative instrument; and
 - d. mandatory publishing and tabling of transitional progress reports in both Houses of Parliament.
3. The committee proposed amendments to the Bill in relation to all but the first of the matters set out in paragraph 2 above.

s22(1)

a.

Inclusion of no-invalidity clauses

4. The first aspect of the Bill raised by the committee relates to proposed amendments creating new no-invalidity clauses in relation to the new NTAI Corporation and land administration, specifically:
- a. proposed subsection 65BH(3), which provides that a failure to comply with the investment limit does not affect the validity of any transaction; and
 - b. proposed subsection 12D(7), which provides that where a Land Council fails to satisfy itself of the matters in proposed subsection 12D(4) before entering into an agreement to grant an estate or interest in land, the agreement is not invalidated.
5. The committee raised concerns that no-invalidity clauses may limit ability for administrative review of decisions on the grounds of jurisdictional error.
6. The committee has not proposed any change to the Bill and the attached letter sets out the reasons below in response to the committee's question.
7. The *Aboriginal Land Rights (Northern Territory) Act 1976* (the ALRA) already includes no-invalidity provisions to protect the rights of persons who have estates or interests granted to them.
8. The new no-invalidity provisions are needed to protect the business rights and interests and more specifically:
- a. in the case of 65BH(3), protect the rights of and provide business certainty for entities transacting with the new Northern Territory Aboriginal Investment Corporation (NTAI Corporation); and
 - b. in the case of 12D(7), protect the rights of persons who have estates or interests granted to them.

Use of delegated legislation in relation to the NTAI Corporation and township leasing approved entities

9. The committee notes that it generally considers that significant reliance on delegated legislation limits oversight by Parliament. In the case of the NTAI Corporation, the committee considers that "...significant matters, such as key details regarding how the

s47E(d)

s47E(d)

NTAI Corporation will operate, should be included in primary legislation unless a sound justification for the use of delegated legislation is provided.”

10. The committee raised similar issues in relation to the process for when a body will be an approved entity to hold a township lease.
11. The committee has requested an explanation of why it is necessary and appropriate for key details regarding the operation of the NTAI Corporation and township leasing entity approval to be addressed in delegated legislation, and asked whether the Bill can be amended to include additional guidance in the primary legislation.
12. The primary legislation already sets out the purposes for which the NTAI Corporation may invest and places limits on the types of instruments the NTAI Corporation may invest in, and existing section 19A contains comprehensive requirements in relation to township leases.
13. Delegated legislation has been used for more operational matters that are likely to require updating over time in response to changes in the NTAI Corporation’s operating environment and evolving operational needs, for example, in addressing changes to the NTAI Corporation’s risk profile, asset base, capital structure and organisational capability.

14. s22(1)

15. It is necessary and appropriate to provide the Minister with sufficient flexibility to determine, by legislative instrument, additional conditions, information, and matters that must or may be taken into account in the nomination and approval process for Aboriginal and Torres Strait Islander corporations as approved entities. It is not possible to predict all of the conditions, information and matters that will need to be the subject of ministerial determination in the future. This flexibility is a prudent mechanism that will ensure that the processes mature over time as more community entity township leases are granted.
16. In accordance with the requirements for making legislative instruments under the *Legislation Act 2003*, the Minister must be satisfied that appropriate consultation has been undertaken in relation to the proposed legislative instrument. In addition, the instrument is subject to Parliamentary scrutiny, disallowance and sunseting requirements.

17. s22(1)

Providing that the strategic investment plan is a legislative instrument

18. The committee notes that the strategic investment plan (SIP) is not specified to be a legislative instrument in the Bill, and as such will not be subject to the tabling, disallowance or sunseting requirements that apply to legislative instruments. The committee is of the opinion that this will negatively impact on Parliamentary scrutiny.
19. The committee makes reference to its recent review of the *Biosecurity Act 2015*, which identified a number of clauses creating rule-making powers and instruments, some of which impacted on human rights, exempt from disallowance.

s47E(d)

s47E(d)

20. The SIP is of a different character to the instruments about which the committee has previously raised concerns. The SIP is intended as a strategic document used to communicate strategies and priorities to a range of stakeholders, and does not determine the law or alter its content. As such, the strategic investment plan is similar to a corporate plan and does not have the character of a legislative instrument.
21. Rather than limiting a human right, paragraph 12 of the Statement of Compatibility with Human Rights identifies that the consultation processes for the development of a SIP in fact *advance* the right to self-determination by providing a mechanism for Aboriginal peoples and organisations in the Northern Territory (NT) to shape how payments and investments are made.
22. Defining the strategic investment plan as a legislative instrument subject to disallowance would reduce the opportunity for Aboriginal peoples and organisations in the NT to influence payments and would hamper progress toward the right to self-determination.
23. ^{s42}

24. We recommend you agree not to amend the Bill and instead explain to the committee why the Bill should remain unchanged. The attached letter sets out the above reasoning in response to the committee's question.

Progress reports on the strategic investment plan – mandatory tabling in both Houses of Parliament and mandatory publishing on the internet

25. The committee notes that there is no requirement for progress reports requested under Item 19, Part 2 of the Bill to be tabled in Parliament or published on the internet. The committee raises concerns that this reduces opportunities for parliamentary scrutiny.
26. Item 19 provides the Minister with the ability to request a progress report on the SIP. Of particular note is that this is a transitional provision that is only available to the Minister within three years of the commencement day. This mechanism will provide Government with supplementary information whilst the NTAI Corporation matures and may contain sensitive commercial information that is not suitable for publishing during the NTAI Corporation's early years.
27. In addition to the reporting and transparency requirements under the *Public Governance Performance and Accountability Act 2013* including corporate plans, annual reporting and annual performance statements, the proposed NTAI Corporation will be subject to legislative requirements for consultation and will be required to publish its strategic investment plans and table them in parliament. These mechanisms provide strong transparency and accountability to community and to Parliament.
28. Further, a requirement to publish and table progress reports may not be appropriate if the reports contain commercially sensitive material or other sensitive information. This creates a need for discretion to publish in order to protect any sensitive information, particularly where third parties are involved
29. Whilst there is merit in the additional parliamentary scrutiny that would come from a requirement to table progress reports, on balance we do not consider it necessary after taking into account the factors outlined above. We recommend you agree not to amend the Bill and instead explain to the committee why the Bill should remain unchanged. ^{s22(1)}

s22(1)

s47E(d)

s47E(d)

Ryan Bulman
Group Manager, Economic Policy and Programs
23 September 2021

Policy Officer: Rachel Kerrigan
Phone no: s22(1)
Consultation: Attorney-General's
Department, Legal Services Branch,
Central Group

s47E(d)

s47E(d)

ATTACHMENTS

Section 22



s47E(d)

From: [Kerrigan, Rachel](#)
To: s22(1)
Cc: [Exell, Blair](#); [Hope, Letitia](#); [Bulman, Ryan](#); s22(1)
Subject: FW: proposed changes to ALR Amendment Bill s47E(d)
Date: Wednesday, 24 November 2021 10:20:03 AM
Attachments: [image001.jpg](#)
 s42

s47E(d)

s22(1) and s22(1)
 Section 47C

Section 22(1)

Section 47C

a. Sheet 1449

i. Amendment 2: guarantee that the Minister must direct funding to the NTAIC every year after the first three years based on estimates provided by the NTAIC. s47C

s47C

ii. Amendment 8: shorten the statutory review of the Part of the ALRA that establishes the NTAIC from 7 to 3 years. A 7 year statutory review allows time for the NTAIC to be reviewed against a full Strategic Investment Plan period but a shorter time could be considered. Given the Strategic Investment Plan sets out the priorities for the Board, it would be most effective if there had been time for the Board to deliver against the Plan prior to the review – the development of the first Plan is undertaken in the first 18 months of the Corporation, and it then covers a 3-5 year period. The 7 year review period means the review is undertaken after the completion of the first period of the Plan.

iii. Amendments 14 and 15: set statutory review requirements after 5 years for the Land Administration and Part IV Mining changes. There is nothing prohibiting ongoing review/evaluation outside statutory reporting, and this could be a more efficient mechanism to review the amendments. Section 47C

iv. Amendment 9 and 10: require the NTAIC progress report during the transition period to be published on the internet and tabled in parliament. The progress report could contain commercially sensitive information. Note, the MINIA has not supported this amendment in his response to the Scrutiny of Bills Committee.

Section
 on

a. NTAIC – sheet 1449

- i. Amendments 3, 4, 5, 6: require Board members appointed by the government and independent members to be Aboriginal. The core aim of the government and independent member eligibility requirements is to ensure the best mix of technical and cultural expertise on the Board, with an Aboriginal controlled board. Section 47C

[REDACTED]

a. NTAIC – sheet 1449

- i. Amendments 7: require that the independent Board members are not traditional owners, native title holders or native title claimants and require that the independent Board members live in the NT. s47C

[REDACTED]

It's already open in the Bill for the Board to appoint Aboriginal people who are not land holders (ALRA or Native Title) to the independent and Land Council positions.

- ii. Amendments 11, 13: would legislate aspects of the day to day operations of Land Councils to an extent that would be unworkable and potentially problematic if reviewable. s47C

[REDACTED]

- iii. Amendment 12: proposes a meeting under s42(4)(a) is not required where consent has been provided by traditional owners in relation to the matter that is the subject of a variation. Meetings are convened under s 42(4)(a) for the purposes of considering exploration proposals and terms and conditions:

s47C [REDACTED]

b. Land administration and Part IV – sheet 1477

- i. In relation to Sheet 1477 (Consent of traditional Aboriginal owners) the existing Land Rights Act already includes the protections being sought and the proposals to omit the requirement for a Land Council to be 'satisfied' in relation to certain matters is contrary to the intended operation of the Act. Existing section 77A outlines the processes to be followed where traditional Aboriginal owners are required to have consented.
- ii. The no-invalidity provisions ensure that agreements can be relied on but do not derogate from the statutory obligations of the Land Councils concerning the consent of traditional Aboriginal owners. The provisions give certainty to proponents entering into arrangements with Land Councils and traditional Aboriginal owners. Certainty of tenure provides incentives for

investment in land and therefore an impetus for sustainable economic development.

From: s22(1)

Sent: Tuesday, 23 November 2021 2:36 PM

To: Kerrigan, Rachel s22(1)

Cc: s22(1) Bulman, Ryan s22(1)

Subject: FW: proposed changes to ALR Amendment Bill s47E(d)

s22(1)]

s47E(d)

Hi Rachel

s22(1)

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s22(1)

Senior Adviser

Office of the Hon Ken Wyatt AM, MP

Minister for Indigenous Australians

s22(1)

s22(1)

s22(1)

s22(1)

[Large redacted area]



Australian Government
National Indigenous
Australians Agency



NIAA

Reforms to the *Land Rights Act* (NT)

Land security is economic security

June 2021

Working with Aboriginal and Torres Strait Islander peoples

s47E(d)

Next steps

Section 22(1)

[Redacted]

[Redacted]

Section 22(1)

[Redacted]

Section 34(3)

[Redacted]



s22(1)

[Large redacted area]

Section 22(1)

[Redacted]

ALRA reforms

Activating the potential of Indigenous land in the NT



Aboriginals Benefit Account (ABA) Corporation

Section 34(3)



Improving exploration/mining for TOs & investors

Streamlining and modernising exploration and mining procedures, reducing costs and approval timeframes by 1 - 12+ months while maintaining protections for traditional owners.



Improving land administration

Building on the Jabiru Act by embedding community entity township leasing and repealing ineffective, unused provisions.

Generational reform
unlocking Aboriginal money
for Aboriginal communities,
led by Aboriginal people.

ABA Corporation: appointments

BOARD

Board member	Appointed By	Terminated by
2 x Government directors	1 by MINIA 1 by Finance Minister	1 by MINIA 1 by Finance Minister
2 x Independent directors	Board majority	Board majority
8 x elected Land Council members (Chairs and Deputy Chairs?)	Ex officio through Land Council election process	Board passes a resolution that they should be terminated and refers matter to the Land Council Land Council elects a new member on the Board

Board Termination grounds:

- Misbehaviour
- Physical or mental incapacity,
- Bankruptcy related grounds
- Absence for 3 consecutive meetings
- Breach of duties (Code of Conduct, PGPA)
- Independent directors no longer independent

CEO

Appointed by	Terminated by
Appointed by the Board but MUST have the agreement of MINIA	Terminated by the Board but MUST have the agreement of MINIA

CEO Termination grounds:

- Misbehaviour
- Physical or mental incapacity,
- Bankruptcy related grounds
- Absent for 14 consecutive days or 28 days in a year
- Engages in other paid work without Board approval
- Breach of s29 of the PGPA – duty to disclose interests
- Serious breach of Code of Conduct

Matters for additional minor policy authority

ABA Corporation

- CEO appointment/termination mechanism
 - CEO appointed/terminated by the Board with agreement of MINIA
- **Section 34(3)** [Redacted]
- Land Council Board representatives should be either:
 - elected members
 - Chairs and Deputy Chairs

Land administration

- **Increase penalty** for accessing Aboriginal land without a permit from 10 to **50 penalty units**
- **Increase threshold** at which Land Councils have to seek MINIA agreement to enter into contracts from \$1 million to **\$5 million**

Section 34(3)



Section 34(1)(c)

-



ABA Corporation transition arrangements

Document8

Board, CEO and Beneficial Payments

s22(1)

Stage 2:

s22(1)

Governance established

- Board establishment and governance capacity building
- MINIA and Finance Minister appoint 1 director each
 - Land Councils elect directors
 - Board appoints independent directors
 - Board to establish Audit and Risk Committee

Stage 4:

s22(1)

ABA payments commence

- Open beneficial payments round
- Supported by Community Advisory Committee

Implementation planning

- Establish Steering Committee
- Start consultancy
- Develop implementation plan

Stage 1:

s22(1)

Administration established

- CEO and senior staff recruitment, office and treasury establishment, and focus on process and priorities for beneficial payments
- Board appoints CEO with MINIA agreement
 - NIAA transfers beneficial payment funding from ABA
 - s22(1)

Stage 3:

s22(1)

First ABA payments approved

Stage 5:

s22(1)

Strategic investments capability

s22(1)

Stage 7:

s22(1)

Fully Operational

- ABA entity fully operational managing both beneficial payments and strategic investments

Foundations for Strategic Investments

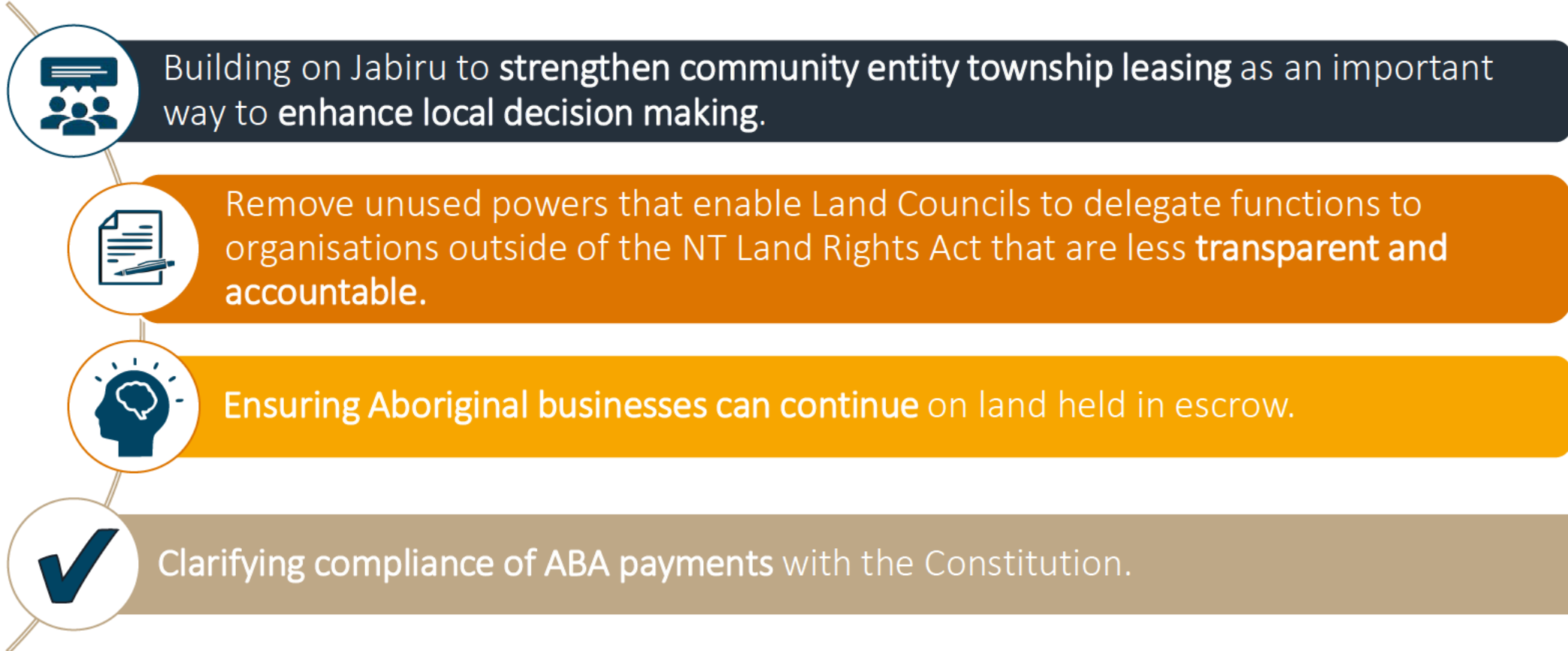
- Set up Investments Committee
- Procure portfolio manager for \$500m endowment
- Prepare Strategic Investments Plan and table in Parliament
- NIAA transfers \$500m endowment

Stage 6:

s22(1)

Clarifying land administration

Strengthening local decision making and improving business certainty



Part IV (Mining) Amendments

Building confidence and clarity for industry and investors



Reducing the length of time to amend or provide further information in support of an exploration license application



Reducing the length of time for an application to be granted once traditional owner consent has been provided



Saving industry and Land Councils money and time as a result of more flexible traditional owner consultations

Section 34(3)

Section 34(1)(c)



Australian Government
National Indigenous
Australians Agency



NIAA

Economic Empowerment Bill deep dive

Reforms to the Aboriginal Land Rights (Northern Territory) Act 1976

Working with Aboriginal and Torres Strait Islander peoples

s47E(d)

NT Aboriginal Investment Corporation

Document 9

Empowering Aboriginal Territorians to invest in their communities for generations to come


New Aboriginal-controlled entity to unlock the ABA for future generations:

- Co-designed over 3 years - strong support from Aboriginal stakeholders
- Invest in Aboriginal economies in the NT
- Decide upon and administer beneficial payments

Section 34(3)

- Externally reviewed best practice governance balances Aboriginal representation, government oversight and financial expertise

☑ As you requested, we have strengthened its governance:

- 
- CEO appointment and Government appoints 2 directors to Board
 - Strongest director and CEO termination grounds in the portfolio through Codes of Conduct
 - New \$100 million investment threshold manages risk
 - New Ministerial rules for additional financial risk management
 - New requirement for Government representation on its Investment Committee

Land administration and Part IV

Document 9

Strengthening local decision making & certainty for industry and investors

Land administration

- Prescribe the obligations of, and approval processes for, community entities holding township leases
- Update provisions for mining town transition and the permit system regulating access to Aboriginal land
- Repeal unused provisions enabling the delegation of Land Council functions

Part IV (Mining)

- Reduce timeframes in relation to exploration licence applications
- Enable more flexibility with respect to traditional owner consultations
- Section 34(3)**



Australian Government
National Indigenous
Australians Agency



NIAA

NT Land (ALRA) Reform Strategy

Land security is economic security

Land Branch, July 2020

Working with Aboriginal and Torres Strait Islander peoples

s47E(d)

ALRA Economic Empowerment Reforms

Land security is economic security



Improving ABA investment

Improving investment through current arrangements. Considering options for growing the ABA through new strategic investments.



Aboriginals Benefit Account (ABA) Entity

Current arrangements are red tape heavy, ad hoc, small scale and only grant funding. Aboriginal controlled entity could streamline process and support strategic investment at scale using grants, debt and equity

Section 34(3)



Improving exploration/mining for TOs & investors

Streamlining and modernising mining provisions, reducing regulation and red tape, giving traditional owners and investors greater certainty and faster approvals



Improving land administration

Building on the Jabiru bill by embedding community entity township leasing and repealing unused provisions opposed by Land Councils.

Reforming the ALRA will:

- empower Aboriginal peoples to strategically invest money generated on their land -> COVID19 stimulus

Section 34(3)

- embed local decision making

Key stakeholders:

- NT Land Councils
- ABA Advisory Committee
- NT Government (NTG)
- Mining industry

Co-design process:

- ABA Reform Working Group
- Part IV (Mining) Working Group

Section 47C

Section 22,
Section 47C

- Community entity township leasing heralds greater Aboriginal control of township leases and subleases

Section 22

Aboriginals Benefit Account (ABA) Entity

Empowering Aboriginal peoples to strategically invest money generated on their land

Land Councils

Elects and terminates non-government Board representatives.

Nominates CEO with entity Board.

Structure

- Corporate Commonwealth entity
- Board decides beneficial payments
 - voting reps: Land Councils elect
 - non-voting reps: Section 22
1 Commonwealth; 1 expert
- CEO runs entity
 - appointed/terminated/suspended by MINIA on Board & Land Council Chair's advice
- Staff administer payments
 - not APS.

Funding

- Fully funded from ABA
 - \$200m-\$500m establishment
- After 5 years, Minister sets 3-yearly budget on advice from Board.

ABA Entity

Functions and Powers

- **Functions:** decide on and make beneficial payments, invest surplus funds, promote Aboriginal self-management and prosperity
- **Powers:** enter into contracts, invest money, hold and sell property, enter joint-ventures, form subsidiaries.

Obligations

- PGPA Act: corporate plans, financial statements, annual reports
- Produce a 3-5 year Strategy about funding priorities, in consultation with NT communities.

Government

MINIA retains oversight by setting entity's budget, appointing/terminating CEO and government representative on Board, PGPA reporting and accountability.

