NGURRATJUTA/PMARA NTJARRA ABORIGINAL CORPORATION

SUBMISSION BY THE NGURRATJUTA/PMARA NTJARRA ABORIGINAL CORPORATION TO THE SENATE INQUIRY INTO THE ABORIGINAL LAND RIGHTS (NORTHERN TERRITORY) AMENDMENT (ECONOMIC EMPOWERMENT) BILL 2021

Who we are

Ngurratjuta/Pmara Ntjarra Aboriginal Corporation was incorporated in August 1985 under the original Aboriginal Corporations Act of 1976. It was formed to benefit all those communities deemed to be "affected" by the oil and gas mining operations at Mereenie and Palm Valley, and provided a body to receive and distribute the statutory royalties payable to the affected communities and groups under the Aboriginal Land Rights (Northern Territory) Act 1976 (the Land Right Act).

Ngurratjuta's purpose has always been to achieve financially independent Aboriginal communities through inter-community corporations and utilise royalty funds to build an active investment base to protect accumulated royalty funds. It has provided a growing income base for the member communities and stimulated job opportunities and venture activities for members, while actively supporting community development activities and infrastructure improvements in member communities.

Through investing a substantial portion of royalty funding, Ngurratjuta has been able to build several commercial enterprises, as well as acquire both businesses and investment properties. These investments were made as Ngurratjuta's governing members agreed that in order to ensure continuity of community development and social enterprise, it had to be financially self-sustaining, which has meant that in times of very limited royalty funding, Ngurratjuta has been able to continue to grow its service base and gain real return on investment.

Further, Ngurratjuta has delivered services to its member and other communities over the past 30 years such as accounting, business management and advice, and through delivering of various Government contracts including the Commonwealth's Community Development Programme (CDP). Ngurratjuta purchased the Tilmouth Well Roadhouse in 2016 using its own resources.

There are a large number of member communities, many of which are small outstations. The member communities are Ntaria, Wallace Rockhole, Areyonga, Haasts Bluff, Papunya, Mt Liebig and all the outstations attached to these communities, including those in the Kings Canyon area.

The Ngurratjuta Board currently consists of 10 members, four of which are Executive representatives. The Chair is Douglas Multa, the Deputy Chair is Alison Anderson and its CEO is Cameron Miller and all three have approved this submission.

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Shop 10, 7 Leichhardt Terrace, Alice Springs 0870 | PO Box 8573, Alice Springs NT 0871 | Phone: 08 8951 1911

Key Issues with the Bill

1. ***Developing the Bill secretly without engaging Aboriginal people in their communities and their organisations***

The Bill has been hailed by the Minister and Land Councils as the most significant reform to land rights since the Land Rights Act was passed in 1976. We are told by the Government that the Bill was informed by an extensive co-design process with Aboriginal Territorians through their Land Councils. That so called extensive co-design process occurred primarily through an ABA Reform Working Group, including representatives from the Commonwealth, Land Councils and the ABA Advisory Committee and another Working Group set up to review the exploration and mining provisions comprising representatives from the Land Councils, the NT Government and the Commonwealth.

This so called co-design process needs to be investigated by the Senate Committee. We were never aware of it and we think that is the case for most if not all community organisations across the Northern Territory. There were no public announcements by the Coalition Government that such a process was underway. Unlike with the co-design process that was led by the Coalition Government to develop the National Agreement on Closing the Gap, there was no agreement negotiated or published beforehand as to how the co-design process was to be conducted and more importantly there wasn't any formal engagement process with communities and their organisations. We and many other communities and their organisations had no input which is unfair and unjust and meanwhile the Government which is proposing that Parliament agree to this Bill has not involved us.

In contrast, the co-design process for the National Agreement on Closing the Gap included a national engagement process led by the Coalition of Peaks and governments in partnership including meetings across Australia with community members and their organisations, publishing a discussion paper for comment, conducting a national survey to elicit views, releasing a report on the engagements before any decisions were made and organising an independent review of the engagements to make sure they were genuine.

Nothing like this has occurred with respect to this Bill which amends legislation that goes to the national interest and is considered the high water mark for land rights legislation in Australia if not the world. Clearly there have been meetings of Land Council staff with government officials and it is assumed, although the Government has not provided any details, that Land Council staff briefed their Councils on the proposals at meetings of Councillors. Whether the Land Councils conducted formal consultations across their areas and have records of meetings including the outcomes is not known to us but we think the Committee should investigate this and ask that documentation be provided.

Ngurratjuta only became aware that the Land Rights Act was to be amended after the Minister made an announcement. Our member communities and their residents have not been asked about the amendments and they do not have any knowledge of what is being proposed let alone support them. We think that is the case throughout the Northern Territory. Communities are each able to choose one or two traditional owners to be Land Council members but that does not constitute a fully representative body. Moreover, many traditional owners do not engage with the Land Councils and have chosen to establish their own organisations to advance their interests which is their human right. This is no different to non-Indigenous people choosing if they want to engage with

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government bodies and deciding to make a choice about who should represent them. We should not be forced to be represented by Land Councils only.

We think that the so called co-design process should have been built on a transparent engagement process with communities as has occurred in the past before amendments of this magnitude were contemplated. An independent review of the Land Rights Act should also have occurred to provide a vehicle for engagement with communities. It is vital the Committee remember that the Land Rights Act was set up for the benefit of Aboriginal people of the Northern Territory and consistent with that, they should make decisions about changes. We are astonished that a Coalition Government has delegated full responsibility to make decisions for us to Land Councils and we don't think this is consistent with the principles of the Land Rights Act.

Finally, the Coalition Government says that the amendments were requested by the Land Councils. The Northern Land Council has issued a media release confirming its support. However, we are not aware of any public statements made by the other Land Councils supporting the Bill. The Committee ought to be satisfied of this given that the Senate is being asked to agree to significant changes to the Land Rights Act on the basis of the support of all Land Councils and seek evidence of when decisions were taken by their members.

2. Establishing a new statutory body for economic development dominated by Land Councils not set up for that purpose

The centrepiece of the legislation is establishing the so called Northern Territory Aboriginal Investment Corporation (NTAIC). We agree that increasing the opportunity to empower Aboriginal people to activate the economic potential of their land is desirable and particularly as we have moved into a post land claim environment. However, communities have other significant social and cultural needs including support for their homelands which ABA should be able to support also. Moreover, no evidence has been provided that supports a policy of establishing another Commonwealth statutory authority in Indigenous Affairs to meet the need for economic development. It is incredible that a conservative Coalition Government is imposing a solution like this instead of considering ways to empower communities and traditional owners to lead their own economic development.

There are other options which should have been tested through an independent review. The build-up of funds in the ABA reserve should have already been used to support the establishment of regional economic development bodies led by Aboriginal people that partner with Governments and industry. This has been where results have been achieved but we do not consider there is any evidence that either the Northern or Central Land Councils have achieved any significant community economic development outcomes.

Setting up another statutory body is high risk. It is likely to take a considerable amount of time and will involve creating another bureaucracy controlled by the Commonwealth which is neither sympathetic nor accountable to Aboriginal people. There is no doubt that investing in Aboriginal community controlled organisations has improved service delivery to our people, particularly in health, and we think the same should apply to economic development. The Committee needs to investigate this further including why other options were not considered and how duplication is to be avoided between the NTAIC and Commonwealth statutory bodies already established to support Indigenous business development such as Indigenous Business Australia and the Indigenous Land

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and Sea Corporation. Will Aboriginal Territorians no longer have access to their services because of the establishment of another statutory body made up of public servants who report to a powerful CEO and Board instead of to communities? The legislation needs to clarify the relationship of the NTAIC with other statutory bodies that have similar roles.

Not surprisingly, as they were the only ones consulted, Land Councils dominate the membership of the new statutory body. No provision has been made for any other Aboriginal bodies to automatically be able to nominate Board members. We see no reason why nominations are not called for in a public manner that allows any Aboriginal Territorian to be considered who has demonstrable experience and outcomes related to achieving the objectives of the new body. The Committee also ought to be aware that the Australian National Audit Office is conducting performance audits of the four Land Councils to assess the effectiveness of their governance. For some reason, which we think the Committee should explore, these audits have been paused. In the meantime, Aboriginal people are entitled to be concerned that new powers are to be given to the Land Councils through the NTAIC in the absence of knowing if their governance meets public standards.

Our biggest concern with this Bill is that it gives Land Councils even more control than what they already have over our land by allowing their representatives to also control access by communities to the ABA. We accept that Aboriginal people in communities and their own organisations should have more say in ABA grants and forming partnerships with Governments and industry to do this. The model of representation for the NTAIC that has been chosen by the Coalition Government, however, is likely to alienate our people and meanwhile Land Councils which are also funded by the ABA and control distributions of its mining royalty equivalents to affected communities, will now control payments to communities. There is a significant conflict of interest in these arrangements and it was never intended to occur. The Senate Committee needs to propose changes to the Bill to rectify these serious problems with the Bill including allowing other representatives of Aboriginal organisations in the Northern Territory to be elected for Board roles without having to be appointed by a Board dominated by the Land Councils.

It is not clear to Ngurratjuta if the NTAIC will be able to make grants to Land Councils or to other entities in which Land Councils have a stake. Should this be the case, we think that that this is an unacceptable conflict of interest and risks misuse of public funds. It will not be sufficient for the usual arrangements for declaring conflicts to be used noting that substantial amounts are involved and that the constituency is relatively small. Declaring a conflict of interest or leaving the room when a decision is made will not resolve this. Deals can be struck between Board members before meetings in private negotiations without any transparency or scrutiny and entities can be established which have land council interests without any prior knowledge. A perception of a conflict of interest is just as serious as an actual conflict of interest and for that reason the Committee must ask questions about this in its inquiry and in our view the NTAIC should not be able to make grants to Land Councils or to entities in which Land Councils have any interest.

Achieving better economic outcomes will be a challenging task in many regions of the Territory because there isn't a market economy. Accordingly, if Land Councils are to be allowed to nominate members, they should be required to nominate persons who they are satisfied have demonstrable experience and outcomes that go to achieving the objectives of the NTAIC, and this should be provided to the Minister and publicly. Moreover, they should be able to nominate persons from

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outside the Land Council who are Aboriginal Territorians and have relevant experience and qualifications, particularly from other bodies such as royalty associations.

We also assume from this legislation that the ABA will no longer provide grants for purposes outside business and economic development. We ask the Committee to confirm if this is the case and to explore the implications of no longer providing access to grants for benefits outside economic development. There are many community controlled Aboriginal organisations providing important services to our communities who are not able to access sufficient funding from governments including for capital which ABA can provide and we would find it extraordinary if they are to be cut off without any opportunity for input into the Bill.

3. Streamlining the exploration and mining provisions of the Land Rights Act for the benefit of governments and the miners while weakening the veto

These provisions are complex and impossible to comprehend in such a short time frame. Many traditional owners including those in the Ngurratjuta region have never seen them or been asked. Their impact and implications are uncertain. The Coalition Government says that they will make the processes more efficient for the Minister, NIAA and miners without impacting on the rights of traditional owners. It is not clear, however, whether there is any benefit to Aboriginal people from these amendments. More importantly, there is no independent evidence produced that assesses the impact for traditional owners and the valuable right they have to consent to exploration on their land.

The amendments are being rushed through without any opportunity for our people to have the benefit of independent experts including legal advice about what the consequences of the changes will be. We are concerned that they by reducing some of the checks and balances in the approval process, in fact the veto is being weakened. There must have been good reason for why the steps to be repealed through the amendments were originally included in the Land Rights Act. If they are to be taken out now, we need to know why the original reason for their inclusion is no longer valid. Citing benefits for other stakeholders is not sufficient on its own to make these changes which could hurt us.

The Committee is asked to explore with the Government what the original reason was for including the provisions to be repealed in the Land Rights Act and what the consequences of their removal will be for traditional owners and the impact on the veto. These provisions should not commence without the benefit of independent legal advice made public.

4. ***Using invalid reasons to remove a vehicle for empowering traditional owner organisations***

The Explanatory Memorandum states that unused provisions that allow for the delegation of Land Council functions to CATSI corporations will be repealed by the Bill.

This is very misleading. We know of at least two instances where Land Councils have been asked to delegate Land Council functions and avoided acting in the way envisaged by the Land Rights Act. One of those was with respect to an application by Ngurratjuta to the Central Land Council which has never been acted upon and still does not have a final response after at least three years. In respect to our application, the Central Land Council did not engage properly with our traditional owners with a view to a decision being made. Nor did the Commonwealth Government enforce compliance with these provisions.

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In the meantime, the Explanatory Memorandum also says that Land Councils remain best placed – in terms of resourcing capacity and institutional knowledge, including through regional networks – to exercise the functions that can presently be delegated under section 28A. This has not been the position of previous Coalition Governments which are responsible for inserting and defending section 28A. To the extent the Land Councils have the resources, it is because they are well funded to perform their functions by the Minister from the ABA. Those funds could be directed to regional bodies instead to perform the same functions. Moreover, Ngurratjuta has existed for as nearly as long as the Central Land Council and has staff and directors who have considerable experience and knowledge, often more than staff of the Central Land Council who control the processes for engaging with us. Nor does the Central Land Council have a regional network.

Finally, the Memorandum of Understanding states that the repeal of sections 28A to 28F is consistent with the objectives of this Bill to enhance Aboriginal control over land management and simplify the land administration system under the Act. Enhancing Aboriginal control was the original reason for inserting these provisions into the Land Rights Act. Repealing them without asking those affected is wrong and unjust. The Senate should not agree to these amendments until it is satisfied that that the reasons are valid.

Where to from here

Ngurratjuta is distressed that both major parties support the Bill while Aboriginal Territorians who are the beneficiaries of the Land Rights Act have not been engaged properly in what is a major overhaul with significant implications.

We also know that the only reason why the Senate has agreed to this inquiry is because of the intervention of the Australian Greens. As it stands, the inquiry has very compressed timeframes and is much shorter than what would usually be the case.

It is shocking to think that for such important legislation as this that the Coalition Government and the ALP Opposition had agreed with one another not to take the matter to an inquiry in the Senate. We consider that to be unheard of with respect to legislation that is for the benefit of Indigenous Australians and who the Federal Parliament has an obligation to protect.

One of the results will be to leave Aboriginal people in the NT divided, confused and angry. They have been disempowered by the process to develop this Bill, which is both very complex and difficult to understand.

Ngurratjuta does not oppose co-design processes and agrees that Land Councils need to be at the table. However, many of our community organisations which work with our people on a day to day basis on economic development should also have had the opportunity to be at the table. Moreover, to work properly, co-design needs to include full engagement with those affected to inform those who have been entrusted to negotiate on their behalf.

As that has not occurred, we propose that the Committee recommend that the Bill not be passed at this stage and that it not be considered until next year. The Government and Land Councils have not stated any reason why its passage is urgent. In the meantime, this would give an opportunity for the Government in partnership with the Land Councils to launch a proper engagement process which allows all Aboriginal people and their organisations to participate and express their views about the proposals in the Bill. That should include an independent report on the outcome of that

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engagement and with a view to informing decisions about the Bill. This should include the proposed regulations and the Committee should definitely insist that regulations are not brought to Parliament until a transparent and accountable process for engaging our people has occurred.

To proceed now would be establishing an unacceptable precedent based on an unsound design process without knowing the views of communities and their organisations. The Land Rights Act, an outstanding bi-partisan achievement of the Australian Parliament, deserves much more than this.

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