

SUBMISSION REGARDING THE ECONOMIC EMPOWERMENT BILL

I wish to submit some comments on the processes involved in the preparation of the Economic Empowerment Bill, and on the manner in which it has been referred to the Senate Committee for further consideration.

1. The whole process of preparing this Bill, over an undisclosed period of possibly several years, has lacked transparency. It is remarkable that an expert economist who has been in close contact with Northern Territory (NT) First Nations Peoples (FNP) over many decades, such as Professor Jon Altman, was taken by surprise when it was announced in June this year. And, even more tellingly, NT MLA Yingiya Mark Guyula who represents his people in government and is in constant close contact with them, stated in a recent speech in the Assembly that ‘people out on country don’t know that this Bill is in parliament’. How could it be fair that the people most affected have been sidelined and left in the dark?
2. The federal government has worked exclusively with the four land councils of the NT, as if this is adequate consultation. In my view, it is completely incorrect to assume that the land councils fully represent FNP and their true leaders who hold authority for country. The land councils, like any bureaucratic entity, can be subverted by arrangements that benefit them and increase their own power. The present processes of so called consultation are far too narrow, and have been too secretive to reassure even an outsider like myself that there have been no trade-offs, especially in view of para 1 above,
3. The Minister’s announcement in June referred to economic, cultural and social empowerment of FNP in the NT as aims of the proposed legislation. That sounds highly commendable, but in actual fact the title and substance of the Bill itself refers only to economic empowerment. And it is by no means certain that even the economic benefits will flow to the FNP. Who will really benefit? Developers and miners may be the principle beneficiaries of the plan to open up the north. And what of social and cultural development, and values far wider and deeper than the merely economic? Traditional Owners (TOs) have already been sidelined and severely disempowered by the effects of the Northern Territory Emergency Response legislation imposed in 2007, and its ongoing outsourced administration: this Bill, if enacted, may well prove to be yet another blow to the wellbeing of traditional society and especially to its troubled younger generations.
4. The financial arrangements are highly complex, requiring close scrutiny by experts. Why have the funds belonging by law to the FNP of the NT been withheld from them by the mechanism of the Mining Withholding Tax (MWT) in such a paternalistic and racist way, when they might have been used to good purpose to relieve the pervasive poverty experienced by FNP in our wealthy nation, and in promoting empowering business ventures? The interest raised annually on capital of over \$1b has been minimal at a rate of only 1%. The new arrangement may be an

improvement: I lack the ability to make any assessment of it. An arrangement like a Futures Fund, as suggested by Professor Altman would seem advisable. Time should be allowed for detailed scrutiny and to develop longterm empowering financial arrangements that include oversight by TO leaders. Genuine devolution of control should be the criterion to strengthen the will to self-determination and restore leadership to TO leaders. The statutory basis and functions of the Northern Territory Aboriginal Investment Corporation (NTAIC) should be carefully scrutinised by expert lawyers and economists.

5. The whole process has been too hasty since the announcement in June 2021. Although a Senate Committee review has been allowed, it is clearly impossible for people in remote communities impeded by poor connectivity, some of whom had not even heard of the Bill and its very significant proposed changes, to assess 88 pages of difficult terminology in a two week period without the necessary legal and economic advice. This Senate Committee process may be seen as ‘window-dressing’, a kind of reluctant, heartless farce with no real intention to enable true consultation. As MLA Yingiya Mark Guyula said in his recent speech to the Assembly ‘the majority have been excluded from the process’. And he adds that ‘we need to see the detail and we need to see if this model supports self-determination’. Even someone as intelligent and experienced with government and as up-to-date with what is going on as Mr Guyula said he does not understand the Bill, so how could people out on country do so? Is this fair? Is this democracy?

6. There seems to be little or no consideration given to the defining existential issue of our time, and arguably of all human history: the issue of the changing patterns of world climate and their effects on all life on earth. This Bill conforms with the push by the federal government to continue on a reckless path of relying on fossil fuel exploitation (especially the post pandemic ‘gas-led recovery’) in a world which is hurtling towards disaster. It should be understood that this is not a partisan ‘us-and-them’ issue, but one that affects all life on earth and will affect all of us equally in the long run; although it is generally conceded that Indigenous peoples everywhere are in the front line of the impending crises. We should be turning to them as the ancient successful custodians of country, with great respect for their knowledge and wisdom, in our attempts to deal with the very real dangers our profligate lifestyle has incurred.

7. The present Bill has no review process built into its terms of reference. What is needed is an undertaking to conduct a genuine review under the guidance of an eminent retired judge of the calibre of Mr Justice Woodwood – someone respected and trusted by FNP and those experts who understand the issues and have FNP interests at heart., However, if the review process were to resemble that applied to the NTER after 10 years, it would be a waste of time and money, and a mere pretence.

8. Government should show more respect for the original visionary Aboriginal Land Rights Act (1976), which established a just framework for the compensation

and future self-determination of dispossessed FNP in the NT. This attempt to weaken it and water down its provisions is, in my opinion, dishonourable and unethical. It is the only legislation in all Australian jurisdictions, to conform with the provisions of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

To sum up:

My main point in this submission is to call for more time for real consultation with FNP traditional leaders and their people generally, as requested by Mr Guyula. Theirs is a culture that truly honours consultative process and believes in consensus agreement. Such a process would need to be adequately funded to enable them to pay for the advice from trusted experts that they need. At the very least, a genuine review process should be built into the present Bill as a safety check for the people most affected, who have lacked the opportunity to scrutinise and amend it to serve their fundamental interests and rights. (1204 words)