



**Uniting Aboriginal & Islander Christian
Congress
With the
Northern Regional Council of
Uniting Aboriginal and Islander Christian
Congress
Uniting Church in Australia**

**Submission - Senate Standing Committee on Finance and
Public Administration**

**Regarding - Aboriginal Land Rights (Northern Territory)
Amendment (Economic Empowerment) Bill 2021**

Introduction

The Uniting Aboriginal and Islander Christian Congress (UAICC) is the national First Nations body within the Uniting Church in Australia (UCA). Formally recognised in 1985 the UAICC encourages culturally contextual spirituality of First Nations members throughout Australia. We advocate for issues of justice for First Nations Peoples and seek to develop and run community programs to enhance the lives of First Nations Peoples.

The Northern Regional Council of Congress (NRCC) represents First Nations members throughout the Northern Territory, the Kimberley's of Western Australia and the Anangu Pitjantjatjara Yankunytjatjara Lands of SA. NRCC like the national body works holistically through spirituality and towards social justice for First Nations members.

This submission expresses our concerns and has been jointly prepared recognising the proposed Bill affects the lives of many NRCC members, for which the National UAICC is deeply concerned.

Summary

In August 1999, the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs released its final report 'Unlocking the Future' based on extensive community-based consultations.

The Lieberman Report's first recommendation was: The Aboriginal Land Rights (Northern Territory) Act 1976 (the Act) not be amended without:

- Traditional Aboriginal owners in the Northern Territory first understanding the nature and purpose of any amendments and as a group give their consent; and
- Any Aboriginal communities or groups that may be affected having been consulted and given adequate opportunity to express their views.

These recommendations continue to hold true and are the foundation principles for 'informed consent'. It is our belief they have not been followed appropriately in developing and drafting the Bill that is before the Senate.

There is, in general, an overriding concern from Northern Territory Traditional Owners (TO's), that the land councils often have failed to hear and faithfully represent their wishes. We suggest there was too much power given to land councils in the co-design process. This gives rise to a proposed structure in the Bill, that if passed in its present form, would give to land councils greater control and usurp "local Indigenous control over decision making" (a stated aim of the Bill in the Second Reading).

First Nations Peoples of the Northern Territory generally are not aware of the amendments to the Act proposed under this Bill. The land councils' and Government engagement in co-design of the Bill has been through a narrow consultation process rather than the required consultation processes as stated in the Lieberman Report, with all who will be affected.

It is pleasing that the Senate has recognized the Bill must go to a committee for scrutiny; however, to only allow two weeks for submissions does not afford First Nations Territorians, including TO's, sufficient time to engage with the complexities of the Bill. Further should the Bill pass, the Australian Parliament will have failed to meet the standards of full, prior and informed consent that the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) mandates and to which we as a nation have agreed.

Finally, many of the Bill's proposed amendments appear to be inconsistent with the stated objective "to enhance Aboriginal control over land management." Accordingly, we note the following issues and trust your Committee will ensure a more robust engagement with all First Nations Territorians is able to occur before any amendments to the Land Rights (Northern Territory) Act 1976 are passed.

Particular Concerns

1. Under Item 36 - S 74AA of the Act regarding permits is proposed to be repealed. The stated reason suggests Land Councils are best placed to sort out disputes between groups and so they should have the power to revoke permits.

This Bill is to "maximise the opportunities to promote local Indigenous control over decision making" (Second Reading, 25-08-2021, at p.9). The repeal of S 74AA does the opposite and should be rejected.

2. Sections 19 (5) and 19 (6) of the Act should be amended. Traditional Owners remain frustrated with the outworking of S19 (5), which is intended to ensure that they understand any proposal before they consent to it. However, this section as it stands allows Land Councils to do what they like, consulting with whom they determine are Traditional Owners and indeed even if they don't consult any interest in land granted remains "valid".

These sections and the way they have been applied by Land Councils have caused much frustration and they disempower Traditional Owners.

3. We also express concern over the proposed repeal of sections 28 (3) and 28A-28F of the Act as being inconsistent with the Bill's stated objective to enhance Aboriginal control over land management.

The following matters should be addressed:

- A. Ensure that Northern Territory Aboriginal Investment Corporation (NTAIC) is independently reviewed three years after its establishment.
- B. The apparent bias in proposed NTAIC board membership in favour of the four land councils who have negotiated this reform package with the Australian government.
- C. Provide a guarantee of future transfers of all Aboriginal Benefits Account (ABA) reserves to NTAIC if it is assessed as successful after review [see A above], and there is a greater devolution of authority through broader Board membership.
- D. Statutorily clarify the expected trade-off between s 64 (4) grants and NTAIC investments, and whether there is any expectation that NTAIC retains any equity.
- E. Provide a clearer statutory framework that defines how Northern Territory (NT) wide consultations for the proposed Strategic Investment Plan are undertaken and how the Plan will mesh with initiatives by other Indigenous statutory authorities in the NT.
- F. Exclude those amendments for streamlining exploration and mining applications that will potentially empower land councils, exploration applicants and the Minister, and simultaneously dilute the negotiation powers of traditional landowners
- G. Streamline provisions for traditional owners to say 'no' to exploration and mining as well as to say 'yes'.
- H. Make a statutory commitment to an independent review of s 19A 99-year leasing arrangements first introduced as a government initiative in 2006.
- I. Ensure that any corporation that holds a township lease has majority traditional owner membership so as not to transfer rights from traditional owners to corporations.
- J. Ensure that limits are placed on drawdowns from ABA reserves for s19A leasing arrangements

- K. Abolish the unjustified mining withholding tax (MTW); and
- L. Legislate for an ABA Futures Fund to ensure that the poorest Australians are provided the best possible return on their sovereign wealth fund.

We wish to acknowledge the work of Professor Altmanⁱ and Brett Midenaiⁱⁱ in informing the preparation of this submission. We endorse all that Professor Altman has included in his published 'Critical Assessment' of the proposed amendment Bill.

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ⁱ Professor Jon Altman, School of Regulation and Global Governance, the Australian National University, Canberra, 13 October 2021.

ⁱⁱ Institute for Cultural Survival Inc. from Brett Midenai, Midenai Lawyers 15 October 2021.