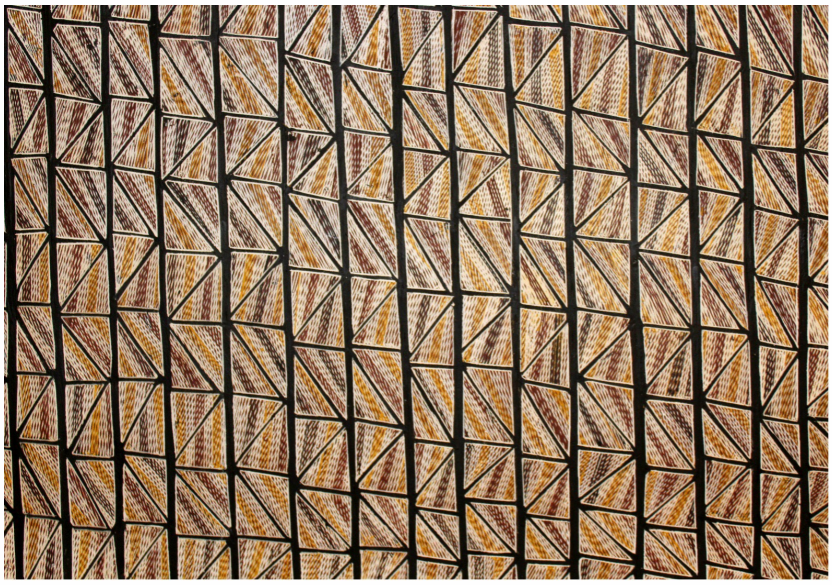
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LAND RIGHTS AT RISK

PATHWAYS TO REFORM IN THE NORTHERN TERRITORY

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WORKING PAPER NO. 6/2026

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Land Rights at Risk: Pathways to reform in the Northern Territory

Jon C Altman and Michael C Dillon

Abstract

In a companion and earlier paper, we traced fifty years of deferred reform in the financial architecture of the Aboriginals Benefit Account (ABA) under the ***Aboriginal Land Rights (Northern Territory) Act 1976*** (ALRA) and the recent statutory creation in 2021 of Aboriginal Investment NT (AINT). This paper turns from diagnosis to prognosis. It sets out the principal sources of uncertainty now facing ALRA — financial, political and governance-related — and considers three broad strategic responses available to government and First Nations interests: inaction, further commissioned or parliamentary review, or First Nations interests taking the initiative themselves. We examine the continuing coherence of the four policy logics underpinning ALRA and argue that while the land restoration and land council functions remain broadly fit for purpose, the compensatory and financial mechanisms are the least coherent element of the current settlement. We propose that the underlying financial model be reconceived as a perpetual endowment, controlled by Aboriginal Territorians, in place of the current volatile and ministerially controlled arrangements. Finally, we set out one possible model — a First Nations-led collaborative governance process — for building a reform agenda over the coming years. The paper does not offer definitive recommendations; rather, it aims to equip those who must ultimately decide on the future of ALRA with a clearer view of the choices before them, and to make the case that, if self-determination is to mean anything in practice, First Nations interests should not simply wait for government to set the agenda.

Keywords: ***Aboriginal Land Rights (NT) Act 1976***; institutional reform; collaborative governance; self-determination; Aboriginals Benefit Account; Northern Territory land councils

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Acronyms

ABA	Aboriginals Benefit Account
AINT	Aboriginal Investment NT
ALRA	Aboriginal Land Rights (Northern Territory) Act 1976
ANU	Australian National University
APONT	Aboriginal Peak Organisations of the Northern Territory
ATSIC	Aboriginal and Torres Strait Islander Commission
CAEPR	Centre for Aboriginal Economic Policy Research
IPA	Indigenous Protected Area
MRE	mining royalty equivalent
NT	Northern Territory
NTA	Native Title Act 1993
PBC	Prescribed Body Corporate

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1. Introduction

In a companion paper (Altman and Dillon 2026), we set out the financial history of the Aboriginals Benefit Account (ABA) since its establishment under the ***Aboriginal Land Rights (Northern Territory) Act 1976*** (ALRA) and assessed the 2021 reforms that created Aboriginal Investment NT (AINT). We concluded that those reforms were a beginning, not a conclusion: the residual and substantial ABA reserve remains under ministerial rather than Aboriginal control, the seriously problematic mining withholding tax remains in place, and the structural tension between AINT's investment mandate and its grant-making obligations remains unresolved. That paper was, in the main, a work of diagnosis, tracing four decades of reviews that reached broadly consistent conclusions without producing commensurate reform.

This paper turns from the past to the present and future. It asks a different question: given the risks and uncertainties now facing ALRA, what pathways are realistically available to First Nations interests and to government for building a durable reform agenda? We do not propose to make definitive recommendations, especially as to the merits and relative priority of particular policy logics. Our views will become apparent in what follows, but we acknowledge that in such a fluid and complex policy environment there is no single pathway forward that will guarantee improvement. We consider, however, that what we propose will assist those who must make decisions about the future of ALRA as we unpick ALRA's constituent policy logics, set out the principal sources of uncertainty, and sketch one possible process — a collaborative governance model — for building a reform agenda.

The paper is structured as follows. Section 2 restates our interpretation of the underlying policy logic of ALRA as originally conceived. Section 3 identifies three principal sources of uncertainty confronting ALRA in the medium term. Section 4 sets out three broad strategic responses available to government and First Nations interests. Section 5 notes some wider contextual considerations. Section 6 offers our assessment of the continuing coherence of each policy logic and canvasses possible reform directions. Section 7 sets out one model — a collaborative governance approach — for building a First Nations-led reform agenda.

2. The policy logics of ALRA

ALRA was, and remains, underpinned by four related policy logics. Setting them out explicitly is a necessary first step in our view for assessing which continue to serve their purpose, and which require reform.

Logic A: Restoration of land. To provide a response to the dispossession of Aboriginal people in the NT by creating a mechanism in 1976 to restore vacant Crown land in the NT to its previous Aboriginal traditional owners, where they could demonstrate that Aboriginal custom recognised that ownership. In 1976 ALRA was enacted in response to the failure of the applicants in the 1971 Gove land rights case. In a sense, while not explicitly stated, the political decision by the Whitlam government to launch an Aboriginal land rights commission with clear instructions (letters patent) to examine the best means to return available unalienated land to their rightful (traditional) owners[1]

[1] The Letters Patent included the request to ascertain 'The appropriate means to recognise and establish the traditional rights and interests of the Aborigines in and in relation to land, and to satisfy in other ways the reasonable aspirations of the Aborigines to rights in or in relation to land…' See Woodward (1974: 1).

constituted an implicit acknowledgement that Justice Blackburn's decision in ***Milirrpum***[2] which had upheld the notion of ***terra nullius*** and rejected the legal possibility of 'native title' was no longer politically acceptable and was unjust. Milirrpum was overturned in 1992 by the High Court in Mabo No.2, and the subsequent native title law created a legislative framework to facilitate its implementation nationally (including in the NT).

Logic B: Land councils and land trusts. To create Indigenous-controlled organisations (land councils) whose purpose was to: prepare and make claims in support of the grant of inalienable Aboriginal title; support the management of lands returned to Aboriginal ownership; create an arrangement that protected traditional owners from unmediated external pressures to provide access to their lands (that is, land trusts to hold title, land councils to consult the relevant traditional owners and affected communities and instruct the land trusts to act in accordance with their wishes); and negotiate with third parties on behalf of traditional owners in relation to access requests over Aboriginal land. The establishment of land councils in 1973, even before ALRA was passed in 1976, constituted a realistic assessment by Justice Woodward (1974) that those with the primary interest in unalienated Crown land that was to be claimed and then managed required political and legal representation before the Commission.

Logic C: Compensation. To establish mechanisms that guaranteed levels of compensation to Aboriginal people in the NT impacted by mining on their land as well as a right to negotiate additional monetary and non-monetary benefits. This possibility was a direct result of the vesting of a right to veto commercial development (including disjunctively mineral exploration or extraction) to traditional owners of land trusts. This leverage constituted a de facto mineral right (Industry Commission 1991) included in ALRA even as a de jure mineral right was denied traditional landowners with mineral ownership remaining with the Crown. A further tranche of funding from mining on Aboriginal-owned land was to be made available to or for the benefit of Aboriginal people in the NT who might not be landowners and who might not be directly affected by mining. This was, we suggest, in part a means of acknowledging that some Aboriginal people had been dispossessed of their land and would, in many cases, have no or limited opportunity under ALRA to obtain recompense for that dispossession. It is noteworthy that this compensatory mechanism was put in place prior to the passage of the Native Title Act in 1993 that opened new avenues to claim rights and interests in land that had been alienated and that extended beyond the unalienated Crown land claimable under ALRA.[3]

Logic D: The financial mechanism. To establish an ongoing financial mechanism — initially called the Aboriginals Benefit Trust Account and then the Aboriginals Benefit Account (ABA) — to underwrite the implementations of Logics A, B and C. Logic D was linked directly to government revenues from mining on Aboriginal land and provided for the hypothecation of Commonwealth appropriations broadly equivalent to the mining royalties received by government (mining royalty equivalents, or MREs). This was intended to fund the operations of land councils at arm's length from the annual budget process (s.64 (1)); to fund traditional owners and communities directly affected by mining on their land (s.64 (3)); and to fund the wider Aboriginal community in the NT (s.64 (4)). This financial mechanism is broadly redistributive, initially looking to allocate royalties

[2] Milirrpum and Others v Nabalco Pty Ltd and Commonwealth of Australia, Supreme Court of the Northern Territory.
[3] The NTA was formulated on the assumption that the grant of pastoral leases had extinguished native title. In the 1996 Wik decision, the High Court held that the grant of pastoral leases over native title only extinguished that native title to the extent of inconsistency with the lease, thus opening the prospect of nonexclusive native title determination.

received by the Commonwealth to Aboriginal interests; and then looking to allocate the equivalents of such royalties (now received by the Commonwealth and the NT government) to Aboriginal interests in the NT.

In the interests of weaving a path between historicism (using the lenses of the past to look at the present) and presentism (using the lenses of the present to analyse the past) we make two high level observations.

First, the passage of ALRA was a social justice legislated measure that combined recognition, representation and redistribution, the three elements that are woven together into the fabric of Nancy Fraser's 'Scales of Justice' (2010): recognition of rights in land, political representation for landowners in all dealings in reclaimed lands and redistribution of some of the financial resources generated from that land both to landowners but also to people negatively affected by commercial developments on the land; and as compensation for Aboriginal people whose lands have been alienated and so are unavailable for claim under ALRA (although since 1993 some of these lands have had native title rights and interests over them recognised).

Second, deploying the language of 'policy logic' prior to the emergence of the 'Scales of Justice' framework, Altman and Pollack (1999) analysed the various logics and illogics of ALRA's financial mechanism (Logic D above). This research sought to consider options for a more workable financial framework for ALRA in the aftermath of the comprehensive Reeves (1998) review of ALRA. We will not rehearse that paper here, many of the issues it raised have been canvassed in our recent paper (Altman and Dillon 2026). What we seek to do briefly is to highlight the problematic logics that Altman and Pollack (1999) identified in ALRA's financial framework, some linked to history, some to political compromises, and how these in turn heightened the vulnerability of ALRA to criticism from both within the NT Aboriginal polity and beyond.

In relation to our ***Logic B Land Councils and Land Trusts***, Altman and Pollack argued that the innovative use of mining royalty equivalents to fund these new institutions had no history. It was unprecedented to fund statutory entities in this way in Australia; and the estimation that this would require 40 per cent of the ABA's MRE income lacked a persuasive rationale: it was an estimate disconnected from either workload that was obviously difficult to predict or from the subsequent expansion of Aboriginal land holdings after successful claim. Initially land councils consistently needed more than 40 per cent (see Altman and Pollack 1999: 6) which created a tension with others with a claim on ABA income; and then since legislative change in 2006 the nexus between the 40 per cent earmarked and ministerially approved budgets of land councils has been eliminated. The intention of funding land councils from MREs in 1976 was to give them guaranteed budget allocations and a high degree of political independence, a sound intention. The absence of a practical rationale for this political measure has compounded especially after the 2006 amendments to ALRA.

In relation to ***Logic C Compensation***, Altman and Pollack (1999) found too much history undermining clear logic. In relation to payments to corporations in areas affected by mining, prior to land rights on Aboriginal reserves, the allocation was limited to 10 per cent of mining royalties. Woodward (1974) recommended this amount be increased to 30 per cent, but this was an arbitrary percentage that still saw up to 70 per cent of MREs generated in a particular area potentially allocated elsewhere. We say 'potentially' because there is nothing in ALRA that excludes the possibility of s.64 (1) land council costs or s. 64 (4) grants being allocated back to a corporation in an area

affected by mining and receiving s.64 (3) payments. Conversely, Woodward recommended that the 90 per cent of mining royalties that were potentially available for granting to Aboriginal people throughout the NT prior to land rights be reduced to a maximum of 30 per cent of the ABA's MRE income. Here again we say potentially because an absence of clear ABA expenditure and financial policies (what to spend and what to invest) rarely saw 30 per cent of MREs allocated to or for the benefit of Aboriginal people in the NT. We note that 'benefit' was also undefined, it at once was left for an all-Aboriginal Advisory Committee to decide on what constituted benefit and who were to be the beneficiaries in what appeared to be a self-determining manner, except that allocations were subject to both ministerial approval and overturning (see Altman and Dillon 2026). The logic of pegging Aboriginal benefit to a proportion of MREs rather than to equitable needs-based funding from governments was and remains unclear.

Altman and Pollack (1999) lamented that these questions of logic have never been resolved. Twenty-seven years ago, they called for their resolution to provide a clearer framework for the appropriate usage of the mining royalty equivalents derived from Aboriginal land and to provide a clearer framework to construct appropriate accountability mechanisms for Aboriginal interests and governments. Otherwise, the financial framework of ALRA and possibly ALRA itself would be 'at risk'. It is to such issues of uncertainty beyond the mere absence of 'logics' that we now turn.

3. An uncertain future

We identify future uncertainty emanating from three broad quarters: financial uncertainty, political uncertainty and governance risk.

3.1 Financial uncertainty

ALRA was a new statutory framework for a brand-new policy era post-1972: self-determination. But it was built on an edifice that was linked to resources extraction at least in relation to Logics A and B. For the first fifty years of its existence ALRA has been underwritten by a fluctuating, but rapidly increasing, MRE revenue stream. But that might be about to change with the most immediate uncertainty being financial, something that was predicted long ago (Rowland 1980, Altman 1983) that is now coming to possible fruition. The medium-term royalty revenue stream from mining on Aboriginal land in the NT is, on present indications, projected to fall significantly (Altman and Dillon 2026). While a future expansion of resource development is possible, so too is the possibility that current forecasts will eventuate. This would precipitate a major financial crisis for ALRA and its constituent elements; and generate a need for fundamental rethinking about its financial edifice. As we noted earlier, with the expansion of the Indigenous land base in the NT following successful exclusive and non-exclusive native title determinations, the greater negotiation leverage that traditional owners of ALRA land hold might prove a disincentive to developers. They might look elsewhere where the right to veto exploration, a de facto mineral right (Industry Commission 1991), does not exist and where only a right to negotiate is guaranteed. Benefit sharing agreements on native title lands that now cover approximately 28 per cent of the NT will benefit those with rights and interests and their institutions, but not the beneficiaries of ALRA or its MRE-funded institutions.

3.2 Political uncertainty

A second source of uncertainty derives from the possibility of a shift towards the populist right in Australian politics. Opposition to land rights has been an emblematic rallying point for the more conservative side of Australian politics. While the Liberal/National Coalition under Prime Minister Malcolm Fraser enacted ALRA in 1976, by the mid-1980s, the national debate over National Land Rights saw the emergence of a strong partisan divide on land rights. Combined with the strident opposition of successive NT Governments to individual land claims, these developments led to a deep partisan and political divide over land rights that has endured through to the present. This makes it likely that a future government, under pressure from conservative or populist interests, will look critically at ALRA which, unlike the Native Title Act, creates statutory rights and obligations that are open to legislative amendment as evidenced in the past — albeit constrained by implicit constitutional protections — rather than rights embedded in the common law. While there is no immediate threat, the potential for a future government to leverage the necessity for major reform of ALRA (whether based on a governance or financial crisis) to drive a regressive or even discriminatory reform agenda is real. Key issues that would be vulnerable in such an eventuality include the high-water mark 'free prior and informed consent' provisions in relation to mineral exploration or extraction, and the communal and inalienable nature of Aboriginal title. In these matters, the devil lies in the detail. While economic and social development is clearly highly desirable for Aboriginal landowners, the terms of that development are never straightforward nor unequivocally non-problematic. The implementation of rhetorical slogans such as 'economic empowerment' or 'leveraging the Indigenous estate' are not necessarily the risk-free pathways into the future inferred by their advocates.

3.3 Governance risk

A third, and under-rated, source of risk relates to the potential for governance standards within ALRA's key institutions — particularly the land councils — to weaken or fail. This is not a risk peculiar to ALRA: governance standards across public-sector-linked entities generally appear to be under strain. What is distinctive to the ALRA context is the way the broader society tends to respond when such failures occur or are perceived to occur. Whereas no one would seriously advocate as an initial response the abolition of a significant mainstream political or administrative institution found or alleged to have engaged in corrupt conduct, the treatment within the Indigenous policy domain has demonstrably differed. This domain is replete with examples of mainstream political actors citing alleged governance failure as a reason to curtail or abolish Indigenous institutions, rather than to implement remedial reform. Examples that come to mind include the earlier abolition of the National Aboriginal Consultative Committee in 1977, the National Aboriginal Conference in 1985 and most egregiously the Aboriginal and Torres Strait Islander Commission (ATSIC) in 2005. Each abolition was precipitated in part by governance controversies without any consideration of performance compared to mainstream institutions.

While there is no certainty that any of these risks will eventuate over the next fifty years, it would be remiss of First Nations interests and their leadership not to give serious thought to how to minimise and/or manage any such adverse eventuality.

4. Three possible responses

There are three possible responses to these risks. The first two are the predisposition of government. The third outlines a pathway forward available to First Nations should they choose to be proactive.

4.1 Do nothing

Government and First Nations interests might decide to do nothing. There are strong short-term incentives favouring just allowing the status quo to persist for as long as possible. Reform is hard; it creates winners and losers; it requires political and policy skill combined with vision — a combination in short supply — and the outcome is itself never certain. In this response, the inevitable outcome in the event that any of the risks we have identified eventuate will be for the government of the day to initiate major changes to the ALRA and while it seems inconceivable at present, in the worst-case scenario to effectively abolish ALRA as an institutional foundation for Aboriginal land rights in the NT.

4.2 Commission a review

Government might instead set in train a process to consider and lay out a recommended way forward. This is often a more sophisticated version of the first response, but it has the benefit of identifying options and opportunities, and of building the political momentum required for substantive reform. The obvious mechanism is to commission a review or parliamentary inquiry. To be effective, such a process must identify the crucial issues requiring reform and attract the political support necessary for its recommendations to be implemented. As we documented in our companion paper (Altman and Dillon 2026), the history of ALRA is replete with reviews that led to minimal substantive reform. A related, more modest, option available to government is to select a single salient issue and propose targeted legislative or policy adjustments — sufficient to demonstrate action while avoiding or minimising the risks and costs of wholesale reform. Arguably, this is what we saw with the passage of the ***Aboriginal Land Rights Amendment (Economic Empowerment) Act, 2021***: the creation of a new statutory institution and a redivision of ABA MRE reserves without substantive engagement with the questionable logics we identify.

4.3 First Nations interests take the initiative

First Nations interests might instead take the initiative and implement a process designed to identify and develop a reform agenda and an implementation strategy, thus creating the basis for a sustained advocacy strategy. Governments are increasingly adopting the language of codesign and did so in developing the amendments to ALRA in 2021 to establish what is now called Aboriginal Investment Northern Territory (AINT). In our view, however, that process more closely resembled a transactional negotiation than one grounded in genuine codesign (Altman 2021, Dillon 2021a). On one hand, substantial resources of $680 million were transferred to Indigenous interests in the NT; on the other concessions were made to developmental interests looking for access to Aboriginal-owned land.

In the following sections we set out and consider the possibilities available to First Nations interests — though these are also relevant to government — in designing and implementing this third pathway.

5. Wider contextual considerations

Several contextual considerations bear on how this reform agenda should be framed.

First, while our focus here is on ALRA, we note the ***Native Title Act 1993*** (NTA) is both an institutional presence in the NT and, increasingly, an institutional presence nationally, and will inevitably influence how policymakers and First Nations Territorians think about land rights. At present, it is estimated that ALRA land trusts cover 48 per cent of terrestrial NT, while successful native title determinations, almost all non-exclusive and over the pastoral estate, cover an estimated 28 per cent to date, with likely successful claims under ALRA and the NTA in the NT nearing exhaustion. One obvious contrast is between the way Land Trusts are constrained and, in effect, protected under ALRA, compared with Prescribed Bodies Corporate (PBC) holding native title. Land Trusts are directed by land councils that are currently relatively well resourced from the ABA though their geographic jurisdictions at nearly 700,000 sq kms are massive[4]; PBCs that are currently under-resourced can act directly on behalf of native title interests to negotiate and engage with third parties regarding the use of their land. Hence our observation above about the relative attractiveness of these native title land tenures for resource developers.

Second, since the passage of ALRA in 1976 unanticipated transformations in actual and potential uses of Aboriginal-owned lands have emerged. In 1976, much of the focus was on the mineral potential of unalienated Crown lands and Aboriginal reserves, almost all of which are now land trusts. Mineral extraction was assessed as these lands' main commercial potential. But since then, there has been what geographer John Holmes (2008, 2010) has termed a 'multifunctional transition' in land use, especially in the tropical north. More recently, one of us has written about economic possibilities beyond mineral extraction on Aboriginal titled lands in the north (Altman 2022). Of particular relevance here is a growing national recognition of the biodiversity and carbon abatement and sequestration values of ALRA land. So today there are more than 20 Indigenous Protected Areas in the NT covering an estimated 340,000 sq kms; and there are savanna burning projects over much of the Top End. These conservation land uses generate income for landowners but provide nothing of the scale of income streams from MREs for representative land councils. Land use on native title lands, almost invariably over pastoral stations where cattle raising is afforded priority, is very different.

Finally, we note as background context that the focus on traditional law in ALRA is potentially constrained as the ongoing changes and challenges of late modernity sweep across northern Australia. We subscribe to the anthropological view that cultures are not static or amenable to precolonial reproduction and can and do change. But here there is a risk that institutional structures will lag behind changes on the ground, creating points of pressure and tension. There is a strong case for ensuring that ALRA is institutionally flexible enough to accommodate the

[4] Many years ago, we argued (Altman and Dillon 1988) that the Land Councils were fulfilling paragovernmental roles in their management of ALRA lands. Arguably this was done on the cheap, at least from the perspective of the NT government as the administrative costs of land councils was met from the CRF and MREs. But it also cast the NT government and Aboriginal land councils as political adversaries jousting over land use authorisation and for representation of Aboriginal people both as traditional landowners and NT citizens.

inevitable changes to communities' and landowners' norms, values, orientations and practices over time. One arena where this is highly relevant relates to decision making processes related to commercial activities on Aboriginal-owned land.

We do not consider the first two responses set out in Section 4 above to be viable options for laying the groundwork for the future. We also note that First Nations interests in the NT have, for most of the past fifty years, adopted a strategy of robust defence of established land rights gains rather than proactive tactical engagement in the face of proposals to change ALRA. The balance sheet on that strategy is mixed, but it has largely been successful in resisting most major proposals to overhaul the ALRA regime perhaps most evident when provisions in ALRA were facing dilution to accommodate a national land rights agenda in the early 1980s; and then ongoing conservative pressures to align the relatively strong property rights embedded in ALRA with weaker 'negotiation' rights in the NTA. It strikes us as highly likely, however, that over the next fifty years the ALRA regime will not be as stable as it has been over the past fifty as it gets more distant from the originating Aboriginal Land Rights Commission of 1973 and 1974 and the subsequent incorporation of its major recommendations in legislation and it may well face a series of existential threats. In these circumstances, the policy approaches of the past will not necessarily serve effectively in dealing with future challenges.

6. Re-assessing the currency of the policy logics

Having examined some risks and some broader contextual issues let us now revisit the policy logics we identified and re-assess them for the present and future.

6.1 Logic A: Restoration of land

Policy Logic A has largely been achieved. The challenge going forward is to ensure that the Indigenous estate created in the NT because of ALRA (and the NTA) can be managed effectively to ensure benefits accrue to landowners. We say this knowing well that under the Closing the Gap policy umbrella, Aboriginal people living on Aboriginal owned land in the NT are among the nation's poorest Indigenous people at least as measured by comparative standard social indicators (not land holdings).

6.2 Logic B: Land councils and land trusts

The land claims process is largely completed. Loose ends remain, but they are, in the scheme of things, negligible. There is however a strong, but contested, case for land councils to continue their oversight role in relation to land management policy, but consideration ought to be given to providing traditional owners of Land Trusts with direct managerial responsibility for their country, and to ensuring they have a reliable and sufficient revenue stream — noting that PBCs established under the NTA currently lack one (Woods et al. 2021).

In relation to negotiating with third parties, there is a case for land councils to retain a role (at least for a transition period of say a decade) as a default provider of legal assistance to traditional owners of Land Trusts, especially in mining and other commercial land-use negotiations. The ***quid pro quo*** for greater traditional owner autonomy must be greater transparency over Land Trust decisions as a protection against the inevitable pressures that will be applied — including the provision of monetary inducements to landowners to allow access to their country for mineral

exploration. There will likely be an emerging political tension between extractive and conservation interests, especially within IPA jurisdictions.

We note, finally, that there is a strong argument for funding land councils directly from Commonwealth appropriations rather than from MREs via the ABA. Land councils are Commonwealth entities established by legislation and are increasingly focused on land management programs rather than land claims. We acknowledge there are counterarguments, but the issue should, in our view, be on the table in shaping the future of ALRA: changed circumstances likely demand recalibration of policy logics.

6.3 Logics C and D: Compensation and the financial mechanism

Logics C and D are the least coherent of the current ALRA arrangements. We discuss the flawed design of AINT's establishment in 2021 in our companion paper (Altman and Dillon 2026). We strongly support the underlying rationale of providing a hypothecated revenue stream to the ABA but note that reliance on mining resource development is simultaneously high-value, short-term and inherently volatile.

In our view, there would be merit in shifting from the under-conceptualised model currently in operation to one built around a perpetual endowment fund with some legislatively built-in growth capability (as proposed for PBCs by Woods et al. 2021). Ideally, such a fund would be controlled by Aboriginal Territorians and would make payments based on a five- or ten-year strategy built around ensuring that its benefits are widely distributed, are not directed to immediate consumption, and yet do not undercut the responsibilities of governments — both NT and federal — to deliver services to Aboriginal citizens in the NT. Under such a framework, the ongoing requirement for s.64 (3) payments limited to those communities 'affected' by mining could be dispensed with, noting that those communities could recalibrate their current access to a proportion of MREs to negotiate benefit sharing agreements with resource developers with their extant right of veto as a powerful lever. Similarly, the Minister's current control of the ABA — and, in particular, of the residual reserve — could be dispensed with.

The crucial issue in this proposal is the size of the endowment fund, an issue that we have already raised in relation to AINT (Altman and Dillon 2026). Unless it can be established in such a way as to progressively reach a point where it is self-sustaining, while allowing for adequate annual disbursement, it will not solve the financial challenges facing ALRA now and into the future. Determining the quantum of funds that would be ‘adequate’ and thus the size of the endowment required to deliver such an outcome would be an inherently subjective exercise, although we suggest the parameters of such a solution might be laid out were a rigorous research analysis to be undertaken. The underlying assumptions necessary to undertake such an analysis would be informed by a collaborative governance process.

6.4 Aboriginal control and governance standards

Finally, we support the shift to greater Aboriginal control of the key institutions related to land rights in the NT. We note, however, that without a proactive focus on incorporating the most rigorous levels of effective governance — accountability to Aboriginal constituents and accountability to the taxpayers who are the ultimate source of Commonwealth appropriations — reform proposals of this kind will struggle to gain the widely based support from mainstream

institutions and politicians necessary for their implementation and sustained viability. We note however that the Commonwealth too is vulnerable to the emergence of a growing trust deficit which potentially undercuts its capacity to pursue reforms in the public interest. The long decline in the transparency applied to the revenue and investments of the ABA discussed in our companion paper is one of the most obvious examples of this wider emerging issue in the Indigenous policy domain.

7. A collaborative governance model for building a reform agenda

Our suggestion is that, in the face of the risks and uncertainties outlined above, there would be merit in Aboriginal interests in the NT developing a collaborative governance approach to addressing them. Perhaps most immediately, the forecasts of a potential — though not certain — significant decline in MRE appropriations in the next decade (Altman and Dillon 2026), have the potential to upend the financial and hence institutional underpinnings of ALRA.

One approach worth considering is for the land councils in conjunction with AINT and the Aboriginal Peak Organisations of the Northern Territory (APONT) to collectively take the initiative and establish a multi-year process — inspired by collaborative governance principles — designed to develop options for a reform strategy that would manage and minimise the risks on the horizon.

This might involve the establishment of a small panel comprising senior Aboriginal leaders drawn from both the land councils and the wider Aboriginal polity in the NT, together with eminent and independent policy practitioners, to oversee what we term a ***pathway forward process***, guided by principles loosely based on deliberative democracy, or what is sometimes referred to as collaborative governance (Dillon 2021b).

In our thinking, the pathway process should aim to engage all major stakeholders: the Commonwealth, the NT Government, major Aboriginal groups across the NT, and the mineral, pastoral, carbon industry, conservation, tourism and renewable energy sectors. The process should be conducted as far as possible in public, since one of its objectives would be to raise the profile of ALRA — and land rights more generally — in the NT: its benefits, its challenges and its opportunities; and, just as importantly, to shape the views and thinking of the various interests involved, not least the two governments currently responsible for administering the ALRA regime.

The process would work best if it commissioned issues papers from a diversity of sources — academia, think tanks and others — and convened a series of open-ended workshops and discussion forums. It should have a finite term, which we suggest should be limited to three years, and should aim to identify around three to five reform options built around a re-imagined institutional architecture for ALRA and the ABA.

Such a process would shift the debate about the future of ALRA and the ABA to a new plateau and would create the preconditions for First Nations interests in the NT to focus on, and advocate for, changes that best align with their emerging and longer-term aspirations in all their diversity. Whether or not governments act proactively or in response to necessity, and whether or not First Nations interests take the initiative, there will be key interest groups beyond the land councils and other Aboriginal organisations whose views will influence any government seeking to reform ALRA

in the future. There are, accordingly, real benefits in engaging publicly with those interests about alternative scenarios before governments take control of the legislative reform process themselves.

This last point is, in our view, the crux of the matter. Self-determination is frequently invoked in Indigenous policy debate as a principle of government conduct — a constraint on how governments should act towards First Nations people. But self-determination, if it is to mean anything substantive, must also be proactively exercised, not merely received. A reform process that waits for government to identify problems, commission a review and propose solutions is, almost by definition, not a self-determined process, however consultative its methods. The strategy of robust defence of the status quo that has served First Nations interests well for most of the past fifty years is a defensive posture; it does not, of itself, constitute the exercise of agenda-setting power. If First Nations interests in the NT wish to shape the next fifty years of ALRA on their own terms, rather than respond to terms set by others, the more promising course is to develop and advance their own reform agenda — publicly, to their own timetable, and grounded in their own institutions — before government, of whatever political complexion, does so for them.

8. Conclusion

ALRA has achieved a great deal over the past 50 years in restoring land to Aboriginal ownership in the NT and in establishing durable institutions to manage a massively expanded terrestrial estate that now covers about half of this geographic jurisdiction. But the compensatory and financial architecture built around the ABA is, as we argued in our companion paper, the least coherent and most exposed element of the current institutional framework. It is exposed to financial risk from a potentially declining mining revenue base to political risk from a resurgent conservative critique of statutory land rights, and to governance risks that if not effectively managed would create the preconditions for a political response framed around abolition rather reform.

We have made clear our view which of the three strategic responses set out in Section 4 ought to be pursued. But we do not offer any blueprint for reform of the ABA and its associated institutions. What we have sought to do is set out, as clearly as we can, the policy logics at stake, the risks on the horizon, and the one plausible process — grounded in collaborative governance and led by First Nations interests themselves — by which a viable reform agenda might be built. The alternative, on the evidence of the past fifty years, is more of the same: reviews that diagnose the problems often accurately, and are then, for want of political will, left largely unimplemented. This will result in the ever-present possibility that an existential risk will become real and either hollow out or deconstruct the institutional foundations of land rights in the Northern Territory.

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