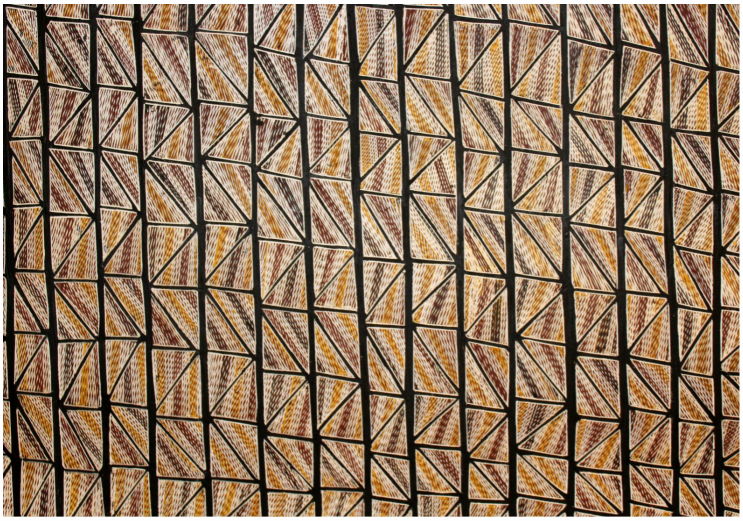
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The Mining Withholding Tax and the Aboriginals Benefit Account

THE CASE FOR TAX ABOLITION AND THE RESTORATION OF ABORIGINAL CAPITAL

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The Mining Withholding Tax and the Aboriginals Benefit Account: The case for tax abolition and the restoration of Aboriginal capital

Jon C Altman

Abstract

Since 1979 a Mining Withholding Tax (MWT) has been levied on payments made from the Aboriginals Benefit Account (ABA), the statutory account established under the ***Aboriginal Land Rights (Northern Territory) Act 1976*** (ALRA) to receive the equivalents of mining royalties generated on Aboriginal land. The tax has been questioned by successive reviews for more than four decades, and its abolition has been recommended on at least three occasions, without effect. This paper argues that the case for abolition has become materially stronger since the establishment of Aboriginal Investment NT (AINT) in 2021. Drawing on the audited financial statements of the ABA and AINT, it shows that the tax cost the ABA $101.3 million in the seven years to 2024–25; that the amount levied rose by 367 per cent while royalty equivalent receipts fell by 37 per cent; and that in 2024–25 two-thirds of it was levied on the capitalisation of AINT itself. Because the tax is met by the Account rather than deducted from what recipients receive, its incidence now falls wholly on accumulated Aboriginal capital. The paper sets out seven grounds for abolition, estimates the capital removed since 1979 at above $200 million in nominal terms and around $365 million when compounded at the minimal bond yields the ABA could lawfully have earned, and argues that restoration should be framed as an appropriation rather than a tax refund and directed to AINT's Future Fund. It concludes with recommendations on sequencing, advocacy and the legislative, administrative and legal avenues available. It is the third in a series of papers on the ABA and the future of ALRA.

Keywords: Mining withholding tax; Aboriginals Benefit Account; Aboriginal Investment NT; Aboriginal Land Rights (NT) Act 1976; mining royalty equivalents; Indigenous public finance; Northern Territory

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Acronyms

ABA	Aboriginals Benefit Account
ABTA	Aboriginals Benefit Trust Account
AINT	Aboriginal Investment NT
ALRA	Aboriginal Land Rights (Northern Territory) Act 1976
APONT	Aboriginal Peak Organisations of the Northern Territory
ATO	Australian Taxation Office
ATSIC	Aboriginal and Torres Strait Islander Commission
CAEPR	Centre for Aboriginal Economic Policy Research
DPMC	Department of the Prime Minister and Cabinet
GST	Goods and Services Tax
MRE	mining royalty equivalent
MWT	mining withholding tax
NIAA	National Indigenous Australians Agency
NLC	Northern Land Council
NT	Northern Territory
PBI	public benevolent institution
PGPA Act	Public Governance, Performance and Accountability Act 2013

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Preamble

In 1982, as a postdoctoral researcher examining how mining royalties were being distributed under the new land rights regime, I was surprised to come across a tax I had not expected to find. ALRA committed an amount equivalent to statutory royalties to the Aboriginals Benefit Trust Account (ABTA), as the ABA was then known, and it made no mention of taxation. Yet in June 1979 the Fraser Government, with John Howard as Treasurer, had passed the ***Income Tax Assessment Amendment Act*** (No. 27 of 1979) and the ***Income Tax (Mining Withholding Tax) Act*** (No. 28 of 1979), imposing a mining withholding tax (MWT) of 6.4 per cent on payments made from the Account on or after 1 July 1979. In ***Aborigines and Mining Royalties in the Northern Territory*** I described the rate as 'rather arbitrary', observed that 'withholding tax' was 'somewhat of a misnomer' for what was in fact a deduction at source and pointed to its inconsistencies: the double taxation of land council salaries, the taxation of grants analogous to Department of Aboriginal Affairs grants-in-aid that were not taxed, and the taxation of compensatory payments to communities affected by mining, contrary to Justice Woodward's recommendations incorporated in ALRA. I recommended that it be reviewed (Altman 1983: 53, 98, 155–156).

Forty-four years on, the tax remains. My interest in it has been revived by its application to the transfers from the ABA to AINT that followed the 2021 amendments; but the injustice did not begin in 2021. It has gone unaddressed since the tax law was amended in 1979 bypassing ALRA. There is a moral as well as a technical question here. Had the Treasurer set the rate at 64 per cent rather than 6.4 per cent, it is hard to imagine that it would have been tolerated for more than four decades. A modest rate has made an unprincipled impost easy to overlook, but the injustice of the MWT remains.

The tax is also replete with contradictions. Payments negotiated by traditional owners and affected communities with mining companies, over and above their statutory 30 per cent share of mining royalty equivalents (MREs), appear to fall within the tax in law; yet in practice they appear largely to escape it. MREs are public moneys, and payments from the ABA are closely scrutinised by government and the Australian National Audit Office. Negotiated benefits, whether in cash or in kind, are private and often commercial-in-confidence, and they are far more likely to reach individuals — the very recipients on whom the tax's rationale was originally premised. The MWT falls hardest where its own logic applies least.

These contradictions are part of the case, but they should not distract from my two central propositions. First, the MWT should be abolished. Second, the Australian Government should restore to Aboriginal control the MWT levied on MREs since 1979, with compound interest.

1. Introduction

The Mining Withholding Tax (MWT) is a small, technical and largely invisible feature of the financial architecture of the ***Aboriginal Land Rights (Northern Territory) Act 1976*** (ALRA). It is currently levied at 4 per cent on payments made from the Aboriginals Benefit Account (ABA) — the statutory account into which the Commonwealth pays mining royalty equivalents (MREs) generated by mining on Aboriginal land in the Northern Territory (NT). Since its introduction in 1979 it has been questioned by almost every reviewer who has examined the ABA, and its abolition has been recommended on at least three occasions: in the 1984 review of the Aboriginals Benefit Trust Account, which I chaired (Altman 1984); in the tax expenditure review undertaken by the Aboriginal

and Torres Strait Islander Commission (ATSIC) in 1996–97; and in the Reeves review of ALRA (Reeves 1998). None of these recommendations has been acted upon.[1]

This paper is the third in a series. In the first, Michael Dillon and I traced fifty years of deferred reform in the financial architecture of the ABA and assessed the 2021 reforms that created Aboriginal Investment NT (Altman and Dillon 2026a). The first of our recommendations in that paper was that the MWT be abolished: we described it as 'an anomaly with no defensible economic or ethical rationale' and argued that 'the case for retrospective repayment from the Consolidated Revenue Fund is in our view compelling'. In the second, we turned from diagnosis to prognosis, setting out the financial, political and governance risks now facing ALRA and arguing that First Nations interests in the NT should take the initiative in building a reform agenda rather than wait for government to set it (Altman and Dillon 2026b).

This paper follows up the first recommendation of Altman and Dillon (2026a) and develops it in detail. It also offers a worked example of the kind of First Nations-led reform advocated in Altman and Dillon (2026b): a bounded, costed and long-documented problem that Aboriginal institutions in the NT are now well placed to pursue on their own initiative. It does so now because the case has changed materially in recent years, and the change has come from an unexpected direction.

The 2021 amendments to ALRA established the Northern Territory Aboriginal Investment Corporation, since renamed Aboriginal Investment NT (AINT), as a corporate Commonwealth entity with an Aboriginal-majority Board, and provided for its capitalisation from the ABA. That capitalisation has been taxed. In 2024–25 the ABA paid $35.5 million in MWT, of which $23.8 million — two-thirds of the total — was levied on payments to AINT, including $20.8 million on a single $500 million endowment. The Commonwealth, in other words, has taxed the capital base of the very body Parliament created to place Aboriginal money under Aboriginal control. Whatever rationale the tax had in 1979, it has nothing to do with this transaction.

The paper advances two headline propositions: that the MWT should be abolished, and that the Australian Government should repay the MWT levied on MREs since 1979, compounded to the present, by restoring that capital to Aboriginal control. Everything else in the paper is directed to establishing why this is the case and how it might be implemented.

I make three principal arguments in support of these propositions. First, the MWT is no longer a tax on income in any meaningful sense. Because it is met by the Account rather than deducted from what recipients receive, its incidence falls entirely on the accumulated capital held for the benefit of Aboriginal people in the NT. Second, the tax has lost any connection with its own design logic: it rests on an assumption about distribution to individuals that was false in 1979, and its rate has exceeded its own formula in every year since 2000. Third, the appropriate remedy is not only prospective abolition but restoration of the capital the tax has removed — framed as an appropriation rather than a tax refund and directed to AINT's Future Fund.

The analysis draws principally on the audited financial statements of the ABA, published in the annual reports of the Department of the Prime Minister and Cabinet (DPMC) for 2018–19 and of the National Indigenous Australians Agency (NIAA) for 2019–20 to 2024–25, and on AINT's Annual

[1] Other critiques include Altman (1983), Altman and Pollack (1998, 1999), Lieberman (1999) and, after a long hiatus, the legal tax scholars Martin and Tran-Nam (2012). Pollack (2016: 244–246) provides a helpful summary of the critique.

Report 2024–25 and Corporate Plan 2025–29. Since 2023–24 the ABA's notes have disaggregated MWT by the provision of ALRA under which payments were made and have separately identified payments to AINT, which makes the recent series considerably more robust than any earlier attempt to reconstruct it. Figures for earlier years, and particularly for 1998–99 to 2017–18, remain estimates pending access to the full annual series held by the Commonwealth.

The paper is structured as follows. Section 2 outlines the origins and design of the tax. Section 3 sets out what it now costs. Section 4 presents seven grounds for its abolition. Section 5 examines an unreconciled inconsistency between the audited accounts of the ABA and AINT. Section 6 estimates the quantum of a restoration claim, and Section 7 considers where restored capital should be directed. Section 8 discusses the legislative, administrative and legal avenues for reform and the question of which institution is best placed to pursue them. Section 9 addresses the objections likely to be raised, and Section 10 concludes with recommendations.[2]

2. Origins and design of the tax

It is worth recalling what MREs are, because the design of the tax depends on it. Mining companies operating on Aboriginal land do not pay royalties to Aboriginal interests. Statutory royalties are paid to the NT Government or, for uranium, to the Commonwealth. Under s.63 of ALRA the Commonwealth appropriates from Consolidated Revenue an amount equivalent to those royalties and pays it into the ABA. From the Account, moneys are distributed under s.64: to fund the administration of the four NT land councils (s.64 (1)); to Aboriginal organisations in areas affected by mining (s.64 (3)); as beneficial grants (s.64 (4)); and, since the 2021 amendments, to AINT (s.64AA). The distributional architecture and its history are set out more fully in Altman and Dillon (2026a).

The MWT was introduced with effect from June 1979 by Division 11C of the ***Income Tax Assessment Act 1936*** not amendment to ALRA. It is imposed on 'mining payments' as defined in s.128U, a definition that captures payments made from the ABA in respect of MREs. The ABA acts as the withholder; on the face of the provisions the liability is that of the recipient of the mining payment. The Account has been required since the tax's inception to hold receipts in separate taxable and non-taxable accounts, so that investment income earned on the reserve, which is not an MRE, does not attract the MWT.

The rate was set at one-fifth of the lowest marginal rate of personal income tax, then 32 per cent, giving an initial rate of 6.4 per cent. That formula implies that Treasury and the Department of Finance assumed MREs would ultimately be distributed to individuals as personal income, and that a withholding at source, set at a concessional fraction of the base rate, was a reasonable proxy for the tax those individuals would otherwise pay. The formula was faithfully applied as the lowest marginal rate fell — to 6.0 per cent in November 1982, 5.0 per cent in November 1984 and 4.0 per cent in 1994 — and then, without any recorded decision, abandoned (see Section 4.6).

The premise was doubtful from the start. Justice Woodward's second report was explicit that royalty moneys should be applied to community purposes (Woodward 1974), and ALRA gave effect to that intention. Section 35 largely forecloses distribution to individuals, and grants under s.64 (4)

[2] I am not a lawyer and nothing in this paper constitutes legal advice. The doctrinal and litigation questions raised in Sections 5, 8 and 9 would require formal guidance from tax and public law counsel before any strategy is adopted.

are not made to individuals at all. From the outset the principal recipients of payments from the ABA were statutory land councils and incorporated Aboriginal organisations. Today they also include tax-exempt charities and a corporate Commonwealth entity. Their notional marginal rate of income tax is nil.

3. What the tax now costs

The audited financial statements of the ABA for the seven years to 30 June 2025 show the tax accelerating sharply while the MRE flows on which it is notionally levied have declined (Table 1).

Table 1. MRE receipts and MWT levied on the ABA, 2018–19 to 2024–25

Year	MRE receipts	MWT levied	MWT as % of receipts	MWT excluding AINT endowment*
2018–19	$426.1m	$7.6m	1.8%	$7.6m
2019–20	$402.7m	$8.3m	2.1%	$8.3m
2020–21	$391.4m	$10.7m	2.7%	$10.7m
2021–22	$349.6m	$12.2m	3.5%	$12.2m
2022–23	$379.0m	$13.9m	3.7%	$13.9m
2023–24	$315.6m	$13.0m	4.1%	$13.0m
2024–25	$269.7m	$35.5m	13.2%	$14.7m
Seven years	**$2,534.1m**	**$101.3m**	**4.0%**	**$80.5m**

* Excludes the $20.8 million levied on the $500 million s.64AA (1) endowment to AINT in 2024–25. Totals may not sum due to rounding. Source: ABA audited financial statements, DPMC Annual Report 2018–19 and NIAA Annual Reports 2019–20 to 2024–25.

MRE receipts fell by 37 per cent across the period; the MWT levied rose by 367 per cent. Even setting aside the one-off endowment in 2024–25, the tax nearly doubled on receipts that fell by more than a third. In 2023–24 it took the equivalent of 4.1 per cent of MRE receipts, more than its own nominal rate. In 2024–25 it took 13.2 per cent.

The explanation lies in the design of the tax, and it exposes what the tax has become. The MWT is levied on payments out of the ABA, not on receipts into it, and it is paid on top of those payments rather than deducted from them. As the ABA has drawn down its reserve — above all to capitalise AINT — the tax take has risen even as mining income has fallen. A tax introduced to capture a share of income derived from MREs now operates, in effect, as a levy on the drawdown of accumulated Aboriginal capital. That matters more, not less, as mining income declines. Current forecasts project a significant fall in MRE receipts over the next decade (Altman and Dillon 2026a), and as argued elsewhere (Altman and Dillon 2026b), financial uncertainty is the most immediate of the risks facing ALRA. In those circumstances the accumulated reserve, and the capital now held by AINT, become the principal buffer against that risk, and a tax that falls on their drawdown erodes it.

Disaggregating the two most recent years by the provision under which payments were made shows where the burden now falls (Table 2).

Table 2. MWT levied on ABA payments by provision of ALRA, 2023–24 and 2024–25

Payment attracting MWT	2023–24	2024–25
s.64 (1) — land council administration	$5.5m	$6.9m
s.64 (3) — distributions to areas affected by mining	$3.8m	$3.2m
s.64 (4) — beneficial grants	$0.9m	$1.6m
s.64AA — payments to Aboriginal Investment NT	$2.8m	$23.8m
Total	**$13.0m**	**$35.5m**

Source: ABA audited financial statements, NIAA Annual Reports 2023–24 and 2024–25.

In 2024–25, across all payments to AINT, the ABA outlaid $594.5 million to deliver $570.8 million. On the $500 million s.64AA (1) endowment alone, delivering the money cost the Account $520.8 million: the additional $20.8 million went to the Australian Taxation Office (ATO). AINT describes its founding capital as 'an initial corpus of $680 million' (AINT 2025a) — the $500 million endowment and three annual payments of $60 million under s.64AA (3). Delivering that corpus cost the ABA approximately $708 million, of which some $28 million was MWT.[3] Across 2023–24 and 2024–25 alone, the ABA paid $26.6 million in MWT in connection with payments to AINT — more than eighteen months of AINT's entire targeted annual grant-making under its Corporate Plan 2025–29 (AINT 2025b).

4. Seven grounds for abolition

Several of the arguments against the MWT are long-standing, and Pollack (2016) summarises them well. What is new is the evidence of the last two years, which sharpens the older arguments and adds new ones. Seven grounds are set out below.

4.1 The tax has been levied on the Commonwealth's own reform

AINT, established in 2022–23 to give Aboriginal Territorians control of their own capital, received its one-off endowment of $500 million under s.64AA (1) of ALRA on 21 August 2024. Delivering that $500 million cost the ABA $520.8 million. This was not a mining payment to an individual, nor to anyone in receipt of income. It was a transfer of Aboriginal money from an account administered by a Commonwealth agency to a corporate Commonwealth entity governed by an Aboriginal-majority Board — and the Aboriginal capital base was charged 4 per cent for the privilege. No policy rationale advanced for the MWT in 1979 anticipated this transaction. If the tax can reach the capitalisation of the very body Parliament created to give effect to Aboriginal control, it has lost any connection to its own purpose.

4.2 The tax rests on a premise that was false when it was made

As noted in Section 2, the rate formula assumed that MREs would be distributed to individuals as personal income. ALRA was designed to prevent precisely that, and the principal recipients of ABA payments today are statutory bodies, tax-exempt charities and a corporate Commonwealth entity. The defence that the MWT is 'concessional' holds only against a notional marginal liability that

[3] Two of the three $60 million tranches, and the endowment, fall within the two years shown in Table 2. The remaining tranche was paid in 2022–23; the associated MWT of about $2.5 million is estimated and should be confirmed against that year's financial statements.

does not exist. A withholding tax that stands in for no underlying liability is not a concession; it is simply a tax.

4.3 The tax falls on Aboriginal capital, not on anyone's income

The MWT does not reduce what recipients receive. The Minister approves land council budgets and AINT's funding based on their operational requirements, and both are paid those amounts in full; the tax is an additional charge met by the ABA. In 2024–25 the ABA outlaid $172.8 million on land council administration, of which $165.9 million reached the four councils and $6.9 million went to the ATO. The tax therefore burdens no recipient's income and reduces no approved budget. What it reduces is the ABA's accumulated reserve — the capital held for the benefit of Aboriginal people in the NT, which stood at $844.0 million on 30 June 2025, down from $1.4 billion a year earlier. Every dollar of MWT is a dollar permanently removed from that capital base, with no Aboriginal beneficiary and no relationship to any recipient's tax position.

This represents a silent migration in the incidence of the tax. The 1984 review found that the MWT was eroding land council funding, which it was while land council budgets were set by formula as a share of MRE income. At times it exacerbated the shortfall between that share and approved budgets, which then required supplementary funding. Since the 2006 amendments ended that nexus and the Minister began approving budgets on operational requirements, the incidence has shifted wholly onto the ABA corpus. As with the rate, the change occurred without any recorded policy decision and without the tax's justification ever being revisited.

There is, in addition, an element of double taxation. Land council and other staff whose salaries are paid from MRE-sourced funds pay personal income tax on those salaries in the ordinary way. The MWT is levied at an earlier point on the same flow of funds.[4]

4.4 The Commonwealth taxes a payment it makes to itself

What is taxed is not a mining royalty paid to an Aboriginal interest. As noted above, all statutory royalties are paid to the NT or the Commonwealth; what reaches the ABA is an equivalent amount appropriated from Consolidated Revenue. The tax legislation sidesteps this by taxing payments out of the Account rather than payments in respect of mining on Aboriginal land. By contrast, Commonwealth grants made from Consolidated Revenue for materially similar purposes — by the former Department of Aboriginal Affairs and Aboriginal Development Commission, and by NIAA today — have never attracted withholding tax.

4.5 The Commonwealth has already conceded the principle for native title

Since legislative amendments in 2013, and with retrospective effect to 1 July 2008, native title benefits have been non-assessable non-exempt income under Subdivision 59-50 of the ***Income Tax Assessment Act 1997***. A mining payment made to a native title holder is therefore tax-free. A

[4] Altman and Dillon (2026b) suggest that land councils, as Commonwealth entities increasingly focused on land management, might be funded directly by Commonwealth appropriation rather than from MREs via the ABA. Were that to occur, the largest continuing base of the MWT — payments under s.64 (1) — would disappear, which underlines how contingent the tax is on institutional arrangements that bear no relation to any taxpayer's income.

functionally identical payment routed through the ABA under ALRA bears 4 per cent. This is a horizontal inequity between two Commonwealth statutory regimes for the same class of benefit. It also establishes that the Commonwealth will legislate retrospective tax relief in this field when persuaded of the case.

The inequity is sharper than it first appears. AINT is a registered not-for-profit Public Benevolent Institution (PBI). A native title body corporate receiving comparable money under the Commonwealth's other land regime pays nothing. A prescribed body corporate, a charitable trust and a PBI are all outside the income tax base for these purposes; only the ALRA route attracts an impost, and it attracts it on capital rather than on income. It is also worth recalling that the one occasion on which an NT land council successfully litigated a tax question turned precisely on PBI status (see Section 8.2).

4.6 The tax has exceeded its own design formula in every year since 2000

The rate was set at one-fifth of the lowest marginal personal income tax rate and re-set on that formula three times, in 1982, 1984 and 1994. Periodic downward adjustment was the settled administrative practice for the tax's first fifteen years. It then stopped, with no recorded decision to stop it, and the rate has been frozen at 4 per cent for more than three decades while the base rate has fallen (Table 3).

Table 3. The MWT rate against its own design formula, 1979 to 2027

From	Lowest marginal rate	Formula rate (one-fifth)	MWT levied
June 1979	32%	6.4%	6.4%
1 November 1982	30%	6.0%	6.0%
1 November 1984	25%	5.0%	5.0%
1994	20%	4.0%	4.0%
2000–01	17%	3.4%	4.0%
2004–05	15%	3.0%	4.0%
2012–13	19%	3.8%	4.0%
2024–25	16%	3.2%	4.0%
1 July 2026	15%	3.0%	4.0%
1 July 2027	14% (legislated)	2.8%	4.0%

Source: Altman (1984); Altman and Pollack (1998); Australian Taxation Office individual income tax rates, various years.

The fall in the lowest marginal rate to 15 per cent on 1 July 2026, and the legislated fall to 14 per cent on 1 July 2027, force the question twice in two years.[5] The Commonwealth must either apply its own formula or defend a rate it has left untouched for more than thirty years. At the very least, the gap between the formula rate and the rate levied since 2000–01 constitutes an over-collection on the Commonwealth's own terms.

[5] The reductions were legislated in the ***Treasury Laws Amendment (More Cost of Living Relief) Act 2025***.

4.7 The tax bites on public moneys and appears to miss private ones

The MWT is not confined in law to payments from the ABA. Division 11C applies to 'mining payments' made to Aboriginal persons or distributing bodies under ALRA or other laws relating to mining on Aboriginal land, including payments for permission to enter, explore or mine; and where the payer is a mining company, the company is required to withhold (Martin 2010). In 1982 it was my understanding that mining companies were remitting the tax directly to the ATO on negotiated payments (Altman 1983: 53). Whether that practice continues is unclear; I have found no public evidence that it does.

The consequence, if this is right, is a second horizontal inequity, this time within ALRA itself. MREs are public moneys. They pass through a special account administered by a Commonwealth agency, are subject to ministerial approval and are audited by the Australian National Audit Office, and the MWT on them is reliably collected. The negotiated elements of benefit sharing agreements are private arrangements, in cash or in kind, that are often commercial-in-confidence and attract nothing like the same scrutiny. Yet it is these payments, rather than MREs, that are more likely to reach individuals — the recipients on whom the tax's rationale was premised. The tax is thus most rigorously applied where its logic is weakest, and least visibly applied where its logic, such as it is, might apply.

This ground is not needed to sustain the case for abolition, and the claim for restoration rests only on the MWT levied on MREs. But it underlines the point that runs through each of the preceding grounds: the MWT is not a coherent tax that has drifted from its purpose, but an impost that has never had a clear logic. How Division 11C is applied to negotiated payments in practice is a question the ATO should be asked to answer.

5. An unreconciled disclosure

The capitalisation of AINT has also exposed an inconsistency between two sets of audited accounts that has not, to my knowledge, been publicly reconciled. AINT's financial statements record that it 'is a registered not-for-profit Public Benevolent Institution and exempt from all forms of taxation except the Goods and Services Tax (GST) and Fringe Benefits Tax' (AINT 2024, 2025a). They make no mention of mining withholding tax, and the s.64AA statutory receivable was carried at $560.0 million at 30 June 2024 — the net sum AINT would receive, not the gross sum the ABA would pay. The ABA's statements for the same transactions record that 'a Mining Withholding Tax of 4% of the total amount paid to Aboriginal Investment NT is withheld and paid to the ATO'. Both sets of accounts are audited by the Australian National Audit Office.

On their face, the two disclosures cannot both be complete. The probable technical reconciliation is that Division 11C imposes a standalone impost that survives exemption from income tax. But that reconciliation does not resolve the substance; it states it. A registered PBI that Parliament has made exempt from income tax is nonetheless charged 4 per cent on its capital because the money reached it through the ABA.

The point has a practical dimension. If, as the provisions suggest, the liability under Division 11C is that of the recipient, then the tax on payments to AINT is AINT's liability, discharged on its behalf by the ABA. That would give AINT standing to object to an assessment, or to seek a private ruling

from the ATO. This should be confirmed by tax counsel; but if it holds, AINT is the only NT Aboriginal body able to put the question to the ATO directly rather than at one remove.

6. The quantum of a restoration claim

Three figures are relevant to any claim for the restoration of capital removed by the MWT, and they are best presented separately because they answer different objections.

Total MWT levied since 1979. A lifetime total materially above $200 million in nominal terms is the likely order of magnitude. The seven years to 2024–25 alone account for $101.3 million. Only $14.6 million was collected in the tax's first nineteen years.

Over-collection since 2000–01. The difference, year by year, between the 4 per cent levied and the tax's own formula rate. This is the narrowest and most defensible claim, because it rests on the Commonwealth's own abandoned design logic rather than on a general argument about fairness.

The capital position as it would now stand. Because the tax is met from the ABA reserve rather than from any recipient's funds, every dollar of MWT is a dollar that would otherwise have remained in the Account and been invested. The claim is what the corpus would be worth today had the money never left it. For a depleted fund, valuing the shortfall on a compounded investment income basis is the ordinary approach, and this is the figure that should anchor any claim.

Compounded to 30 June 2025, the shortfall is of a different order from the nominal sums. The ABA has always been confined by s.58 of the ***Public Governance, Performance and Accountability Act 2013*** (PGPA Act), and its predecessors, to bonds, term deposits and cash. The two middle rows of Table 4 therefore use returns the ABA could lawfully have earned: Australian government bond yields as they stood in each decade, running from about 13 per cent in the 1980s to 3.5 per cent in the 2010s. The Future Fund row is shown for comparison only.

Table 4. Estimated capital removed by the MWT under alternative counterfactuals, to 30 June 2025

Basis of the counterfactual	MWT 2018–19 to 2024–25	MWT since 1979–80	As % of the $844m ABA corpus
Nominal, uncompounded	$101.3m	~$201m	24%
Term deposits (bond path less 1.5%)	$106.7m	$289m	34%
Contemporaneous bond yields	$110.1m	$365m	43%
Future Fund 10-year return (8.3%)	$120.8m	$649m	77%

Note: Each year's MWT is compounded from the end of the year in which it was removed, which understates the position. The lifetime column rests on an interpolated profile for 1998–99 to 2017–18 and is illustrative pending the full series. Source: author's estimates from ABA financial statements and historical data in Altman (1984) and Altman and Pollack (1998).

Two things follow. First, the recent seven-year window understates the case badly, because $35.5 million of the $101.3 million was removed only in the final year and has not yet compounded at all. Second, the earliest money matters most. The $14.6 million taken in the tax's first nineteen years is alone worth some $103 million today on the bond path — more than the entire nominal cost of the

last seven years — because it has been out of the Account for three to four decades. The high bond yields of the 1980s coincide with the longest compounding periods, which is why a deliberately conservative counterfactual still produces a large number.

The scale is best understood against AINT's own balance sheet. On 30 June 2025 AINT held net assets of $693.3 million, comprising a Future Fund of $522.5 million and a Community Ready Fund of $120.6 million (AINT 2025a). A restoration of $365 million would be more than half of that again, and seven-tenths of the Future Fund as it now stands. Even the narrowest nominal lifetime figure of about $201 million is two-thirds larger than the entire Community Ready Fund and would fund AINT's targeted annual grant-making for more than a decade.

The published reporting is now good enough to build this series with confidence for recent years. The ABA's audited notes disaggregate MWT by ALRA provision, by land council and, since 2023–24, by payments to AINT. The commingling of untaxed investment income with taxable s.64 allocations, which obscured earlier attempts at a series, does not affect the post-2018 figures. For earlier years the Commonwealth holds the records even where the published series does not disclose them.

7. Where restored capital should go

If capital is to be restored, the question of where it should go is not a secondary one. I argue that it should be directed to AINT's Future Fund rather than credited back to the ABA, for five reasons, and that one drafting trap must be avoided.

First, the remedy must match the claim. The quantum in Section 6 is built on a counterfactual of money left in place and compounding. Crediting the restored sum to the ABA would not reproduce that counterfactual going forward: s.58 of the PGPA Act confines the Account to government and territory bonds, term deposits and negotiable cash deposits, and on 30 June 2025 it held $802.4 million in term deposits and $12.2 million in cash. AINT's Future Fund, by contrast, is mandated to earn CPI plus 3 per cent net of fees over rolling ten-year periods and is quarantined from distributions for its first ten years. It is, by design, a vehicle in which interrupted compounding can be resumed.[6]

Second, the first year of AINT's operations has now tested this counterfactual, and the evidence is AINT's own. In 2024–25 its Future Fund returned 5.8 per cent against a benchmark of 5.1 per cent, and its Community Ready Fund 4.9 per cent against 3.1 per cent.[7] The Future Fund achieved that while a quarter of its assets — $226.3 million — was still held in cash at the Reserve Bank awaiting staged deployment, and a further $100 million in term deposits. Over the same twelve months the ABA earned interest revenue of $43.4 million on balances that fell from $1.47 billion to $0.84 billion. The gap is not a projection; it is a result.

[6] AINT's Future Fund should be distinguished from the Commonwealth's Future Fund. In Altman and Dillon (2026a) we recommend that both the ABA residual reserve and the AINT investment corpus be managed by the Commonwealth's Future Fund Board of Guardians. That recommendation concerns the choice of investment manager; it is entirely consistent with the argument here that restored capital should form part of AINT's corpus.
[7] The Future Fund's first-year return is reported as 5.8 per cent in the Performance Summary of AINT's Annual Report 2024–25 and as 5.9 per cent in the performance statement for measure PM06. The lower figure is used throughout.

Third, AINT has already made the argument in its own name. Its Annual Report states that 'Where wealth in the ABA has historically sat idle with minimal returns, Aboriginal Investment NT is building intergenerational capital with discipline and care', and its performance statements present the first year's results as evidence 'that Aboriginal governance delivers stronger stewardship' (AINT 2025a). If that is right — and the first year's returns support this view — then the destination of restored capital is not a matter of institutional preference. It is the difference between a remedy that works and one that does not.

Fourth, the capital should end up under Aboriginal control. The ABA is a special account administered by a Commonwealth agency, with expenditure at ministerial discretion. AINT is governed by an Aboriginal-majority Board on which all four land councils are represented, subject to an Investment Committee required by ALRA and to its own Investment Governance Framework. If the objection to the tax is that Aboriginal capital was removed without any Aboriginal beneficiary, the remedy should return it to Aboriginal hands rather than to the account from which it was taken.

Fifth, the machinery already exists. The s.64AA (1) endowment establishes that Parliament will legislate a one-off capital transfer of this order to AINT. No new mechanism needs designing; the drafting precedent is four years old. A payment to AINT is also a capital injection to a corporate Commonwealth entity, not a refund to a taxpayer, which preserves the appropriation framing discussed in Section 8.

There is a further, longer-term consideration. In Altman and Dillon (2026b) we suggest that ALRA's volatile, ministerially controlled financial model might be replaced by a perpetual endowment controlled by Aboriginal Territorians, and we identify the size of such an endowment as the crucial issue. Restoration of the capital removed by the MWT, directed to AINT's Future Fund, is one of the few identifiable ways of adding materially to an Aboriginal-controlled endowment without asking the Commonwealth for new money. It would not, of itself, make the endowment self-sustaining; but it would move it in that direction, and it would do so based on a claim to Aboriginal capital rather than a request for a grant.

The trap is this. If restored capital were appropriated to the ABA and then paid on to AINT under s.64AA, the MWT would apply to that payment. On a $365 million restoration the gross-up would be a further $15.2 million paid to the ATO. There are two ways to avoid this: abolish the MWT first and make the restoration payment after abolition takes effect or make the restoration by direct appropriation to AINT outside the ABA. The preferable sequence is abolition with effect from 1 July 2027 at the latest, with restoration paid thereafter.

The destination question is nonetheless severable from the case for abolition and restoration and should not be allowed to delay it. Land councils that would prefer restored funds to be credited to the ABA are entitled to that view. The answer to it is that the Future Fund's ten-year quarantine and AINT's Board composition mean that capital directed there remains under the joint control of a body the land councils themselves substantially govern.

8. Pathways to reform

More than four decades of advocacy through policy channels have produced consistent recommendations for abolition and no action. The argument has not changed much in that time; what has changed is the institutional landscape. This section considers the legislative, administrative and legal avenues now available, and the question of who is best placed to pursue them.

8.1 The legislative track

Abolition requires only a short amendment, and the 1984 review drafted it two ways: by defining MREs as tax-free payments in s.63 of ALRA, or by excluding royalty equivalent payments made from Consolidated Revenue from the definition of 'mining payment' in s.128U of the ***Income Tax Amendment Act 1936*** (Altman 1984). Either would suffice. Restoration can be effected by a legislated capital injection to AINT on the model of the s.64AA (1) endowment, without any amendment to the tax law and without creating a refund precedent.

That last point is deliberate and important. The remedy sought is restoration of capital, not a refund of tax. A tax refund is a revenue question, and the Commonwealth's standing objection to retrospective tax relief is one of precedent: concede one class of wrongly levied withholding and others will follow. Restoring capital is an appropriation question. It concedes nothing about any taxpayer's entitlement to a refund, and Parliament appropriates capital as a matter of course. It has, moreover, just done so at scale for this very body.

8.2 The administrative and legal track

In parallel, the application of Division 11C to recent payments can be tested directly. An ATO private ruling request, or an objection to an assessment, could test whether a s.64AA (1) endowment to a corporate Commonwealth entity is a 'mining payment' within Division 11C at all, and whether payments to land councils under s.64 (1) and s.64 (3) are properly assessable. The 2024–25 endowment is a particularly clean test case: a single, large, well-documented transaction with no individual recipient anywhere in the chain.

The distinguishing feature of the one occasion on which an NT Aboriginal body did move a tax question successfully was that it litigated. ***Northern Land Council v Commissioner of Taxes*** [2002] NTCA 11 concerned the application of NT payroll tax to the Northern Land Council. The Court of Appeal found that the NLC had been a PBI since 1977 and so was not liable. The case is relevant less as a doctrinal template than as a demonstration of institutional capability: it shows that an NT Aboriginal statutory body can carry a tax classification question against a revenue authority over a two-decade retrospective period and can lose at trial and still win on appeal.[8] A similar argument could readily be made with respect to the MWT.

[8] I disclose that I was an expert witness commissioned by the NLC in the appeal.

A further avenue is a challenge under the ***Racial Discrimination Act 1975***. The argument is available, but it is complicated by the special measures exception in s.8 of that Act, and it should be developed only with specialist advice.

8.3 Who should carry the claim?

The land councils are the historical bearers of the grievance, but their budgets are approved by the Minister against operational requirements and are fully committed. AINT, I suggest, is now the institution best placed to promote the claim, for five reasons.

First, as discussed in Section 5, AINT may be the party on which the tax is imposed, and so may have standing.

Second, it has the largest and clearest financial interest: every dollar of MWT is a dollar removed from the corpus on which its future capital calls depend, and $26.6 million has been removed while capitalising AINT itself. Its Corporate Plan states that achievement of its objectives 'is predicated on timely availability of sufficient capital from the ABA' and identifies a need for 'capital in excess of what Aboriginal Investment NT is presently due to receive' (AINT 2025b).

Third, AINT is where a common position can be readily formed. Ten of its twelve Board members are appointed by the four land councils, two from each and two independent directors; it is the only forum in which all four sit together with a shared fiduciary duty to a common corpus. A resolution of the AINT Board is in substance a common land council position, and endorsement by the Aboriginal Peak Organisations NT (APONT) would make it a Territory-wide one.

Fourth, AINT has discretionary capacity that the land councils lack. It holds a Community Ready Fund of around $120 million, and its legislative functions extend to sector development and to activities that address structural barriers. Commissioning tax counsel, a private ruling request and the actuarial work to firm up the compounded series is well within that capacity and small relative to the sum in issue.

Fifth, pursuing the claim is consistent with what AINT has said it will do. Its Corporate Plan commits it to 'use our powers and influence to advocate for long-term change from governments and other partners' and to 'actively participate in policy reform efforts to create more enabling regulatory settings', and its Chief Executive has undertaken to 'continue to work with the Land Councils, [the] NIAA and the Minister for Indigenous Australians to achieve greater outcomes for the Aboriginal Benefits Account' (AINT 2025a, 2025b). A claim to recover Aboriginal capital removed by an obsolete tax sits squarely within those commitments, and it asks the Commonwealth for no new money.

The obvious counterweight should be stated plainly. AINT's own operational funding under s.64AA (4) is approved by the Minister, and investments above $100 million require ministerial approval. Pressing this claim carries relationship risk. That risk is reduced by framing the ask as restoration of Aboriginal capital rather than as a tax dispute; by advancing it jointly with the land councils and APONT rather than by AINT alone; and by directing it to the Parliament and the appropriation process rather than to the revenue portfolio. The MWT is, in these respects, well suited to be an early test of a First Nations-led approach to reform of the ALRA financial framework: it is bounded, quantifiable, long-documented, and there is a clear precedent for what success looks like.

It might be objected that pursuing the MWT in isolation is precisely the kind of response Altman and Dillon (2026b) caution against — the selection of 'a single salient issue' for targeted adjustment, sufficient to demonstrate action while avoiding the costs of wholesale reform. The distinction lies in who acts and to what end. That caution is directed at governments that use targeted fixes as a substitute for addressing the underlying logics of ALRA. The claim proposed here would be initiated and carried by First Nations institutions themselves, and it is advanced as 'repair and maintenance' that should proceed alongside, not instead of, the longer-term redesign of ALRA's financial architecture. It would also sit comfortably within the collaborative governance process proposed in Altman and Dillon (2026b), in which the land councils, APONT and AINT would jointly develop a reform agenda over several years. The MWT need not wait for that process to conclude. A successful claim would, however, demonstrate early that First Nations interests can set the terms of reform rather than merely respond to them, which is the central argument of that paper.

9. Anticipated objections

Several objections can be anticipated. Each can be answered.

'The MWT is concessionary.' Only against a notional marginal liability that assumes distribution to individuals — the assumption that s.35 and Woodward's design foreclose. The claim is untenable when the recipients are statutory bodies, tax-exempt charities and a corporate Commonwealth entity, and meaningless when the tax is borne not by the recipient at all but by the Account's capital.

'Retrospective relief is not available.' Nothing retrospective is being asked of the tax law. The tax stands for the period in which it was levied; what is sought is a forward-dated appropriation restoring the capital it removed. In any event, the Commonwealth legislated retrospective relief for native title benefits back to 1 July 2008, and the 1994 rate reduction was understood within government as correcting an error in the rate at which the ATO had been levying — a question of restitution raised then and never answered.

'The Account could never have earned those returns.' This is anticipated and accepted. The estimates in Section 6 are not built on a balanced-fund return; they use the yields that the instruments permitted by s.58 of the PGPA Act actually paid in each decade, and the lowest of them still produces $289 million against a nominal $201 million. The investment restriction is, in any case, a policy choice of the Commonwealth's own making, and it does not bind AINT.

'The revenue cost.' Even at the elevated 2024–25 level the sum is immaterial to the Commonwealth budget but highly material to Aboriginal interests in the NT. That asymmetry is itself an argument for abolition.

'Why should AINT receive restored capital rather than the ABA?' Because the claim is a claim about foregone compounding, the ABA is statutorily incapable of compounding at the rates the claim assumes, and AINT is mandated to do so (Section 7).

'Pursuing the claim will damage relationships with the Minister and the NIAA.' The risk is real, and the mitigations are set out in Section 8.3. It should be weighed against the cost of a further four decades of inaction.

10. Conclusions and recommendations

The MWT has outlived every rationale offered for it. It was premised on the distribution of MREs to individuals, which ALRA was designed to prevent. Its rate formula was abandoned without decision in the 1990s. Its incidence migrated, again without decision, from land council budgets to the ABA corpus. And since 2023 it has been levied on the capitalisation of AINT, the institution Parliament established to give Aboriginal people in the NT control of their own capital. What began as a withholding tax on income has become a 4 per cent levy on the movement of Aboriginal capital between two Commonwealth-created vehicles.

In the terms of the metaphor used in Altman and Dillon (2026a), abolition of the MWT belongs to the immediate 'repair and maintenance' task rather than to the longer-term redesign of ALRA's financial architecture canvassed in Altman and Dillon (2026b). It is a discrete amendment of taxation law that does not require a comprehensive review to implement. What this paper adds is the case that repair should include making good the damage already done: restoration of the capital the tax has removed since 1979, with compounded earnings as the opening position, directed to AINT's Future Fund.

Accordingly, I make the following recommendations.

First, the MWT on payments from the ABA should be abolished with effect from 1 July 2027 at the latest. In the interim, the Commonwealth should immediately re-apply the tax's own formula rate, which since 1 July 2026 has been 3.0 per cent.

Second, the capital removed by the MWT since 1979 should be restored, with compounded earnings as the opening negotiating position, by legislated appropriation on the model of the s.64AA (1) endowment and directed to AINT's Future Fund.

Third, abolition should take effect before any restoration payment is made, or restoration should be made by direct appropriation to AINT outside the ABA, so that the restoration is not itself taxed.

Fourth, AINT, the four NT land councils and APONT should form a common position on these matters, using the land council directors on the AINT Board in the first instance, and should jointly put that position to the Minister for Indigenous Australians and the Treasurer.

Fifth, the Minister and the ATO should explain the basis on which $20.8 million was withheld from AINT's $500 million endowment, and whether that liability was foreseen when the endowment was legislated. AINT's auditors and the ABA's should reconcile their respective disclosures on AINT's tax status.

Sixth, the ATO and the NIAA should make the annual series of MWT collected on ABA payments since 1979–80 available, disaggregated by the provision of ALRA under which payments were made. If it is not provided voluntarily, it should be sought under freedom of information law.

Seventh, AINT should obtain advice from tax counsel on whether the s.64AA (1) endowment and payments under s.64 (1) and s.64 (3) are properly assessable under Division 11C, on whether AINT is the taxpayer for those purposes, and on a private ruling request in its own name; and it should commission the actuarial work needed to place the restoration claim on an auditable footing once the full series is available.

Four decades of reviews have reached the same conclusion about this tax. The failure to act on them has not been analytical; it has been a matter of political will, reinforced by the structural weakness of Aboriginal interests in Australian politics. What has changed is that there is now an Aboriginal-controlled institution with the standing, the resources, the representative reach and the direct financial interest to press the case. Whether the MWT becomes the latest example of deferred reform, or the first instance of a successful First Nations-led repair of ALRA's financial framework, will depend on whether that institution, and the land councils that substantially govern it, choose to act. As Altman and Dillon (2026b) argue more generally, self-determination, if it is to mean anything substantive, must be proactively exercised, not merely received.

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