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Inquiry into factors shaping social licence and economic development outcomes in critical minerals projects across Australia

This submission is made by the National Native Title Council (**NNTC**) in collaboration with the Mabo Centre. It will examine the current impact of critical minerals mining and projected activity on the rights of Australian First Nations communities. We support and adopt the nineteen recommendations made by the Central Land Council in their submission (*submission No 77*), highlighting the urgent need for adequate implementation of free, prior and informed consent (**FPIC**) and protections for cultural heritage.

These recommendations are reproduced at *Attachment 1* to this submission.

To commence however with a brief description of the organisations that bring forward this submission and their leading role in the First Nations sector.

National Native Title Council

Established in 2006, the NNTC is the peak body for Australia's Native Title and other Traditional Owner organisations. The NNTC represents Native Title Representative Bodies and Service Providers as well as Prescribed Bodies Corporate (**PBCs**) recognised under the *Native Title Act 1993* (Cth) (**NT Act**) and other equivalent Traditional Owner Representative Institutions (**TORIs**) established under Traditional Owner land rights legislation such as the *Traditional Owner Settlement Act 2010* (Vic) (**TOS Act**), the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) and the *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981* (SA).

The NNTC's work is guided by a rights-based approach rooted in best practice standards, such as the *United Nations Declaration on the Rights of Indigenous Peoples* (**UNDRIP**) and FPIC. It is a regular participant in a range of United Nations (**UN**) and regional international

fora for addressing issues associated with the interaction between the resources sector and Indigenous Peoples across the globe.

In addition to representing the interests of our members the NNTC is a signatory to the *National Agreement on Closing the Gap*, the secretariat for the First Nations Heritage Protection Alliance (**FNHPA**) and Sea Country Alliance (**SCA**), the PBC Steering Group, and a member of both the First Nations Economic Empowerment Alliance with the Australian National University and the Coalition of the Peaks. This national leadership role of the NNTC is recognised by the Australian Commonwealth, state governments, and by key resources sector peak bodies.

The Mabo Centre

Launched in February 2025, the Mabo Centre is a First Nations-led partnership between the NNTC and The University of Melbourne. The Mabo Centre builds on the extensive and ongoing engagement with Traditional Owners undertaken by the NNTC.

Based at the University's Parkville campus, and working closely with Traditional Owners and communities, the Mabo Centre undertakes research to identify best practices, deliver training to strengthen and share knowledge, and develop local leadership skills to maximise economic outcomes through leveraging land and sea rights. Overtime, this will ensure strong principles of self-determination are embedded into native title agreements, better supporting community aspirations and provide greater opportunities for economic development and entrepreneurship on Country. Through this work, the Mabo Centre will provide that the benefits of land and sea rights are fully realised.

The Mabo Centre aims to achieve these outcomes through four focus areas:

- **Research** informing national policy development that will support Traditional Owners achieving the best possible outcomes from the resources they control and influence.
- **Training** working with Traditional Owners and their leadership to strengthen their capacities in crucial policy areas and skills.
- **Exchange** sharing knowledge through networked learning to support stronger Traditional Owner connections and effective agreement making.
- **Acceleration** driving entrepreneurship and leadership for Traditional Owner developed economies.

The Mabo Centre is guided by a Board of First Nations leaders and economic experts, Co-Chair Jamie Lowe and alternate Co-Chairs Professor Marcia Langton and Professor Paul Kofman; and director, Enterprise Professor Rodney Carter.

1 Introduction

An analysis of current Australian policy positions on critical minerals shows them to very much reflect international attitudes. The **Future Made in Australia** agenda strives to place Australia at the forefront of the global net zero transformation through development of our existing assets and resources. Australia is home to some of the largest recoverable critical mineral deposits on earth, including high-quality cobalt, lithium, manganese, rare earth elements, tungsten and vanadium.

While critical minerals are necessary to avert a climate disaster, the manner and policy environment in which they are being extracted needs to better protect Traditional Owner rights and cultural responsibilities. In doing so, much of the social license to operate (SLO) responsibilities of proponent companies will be appeased.

The International Energy Agency undertakes projection modelling for future mineral demand based on the latest policy and technology developments. In its *Net Zero Emissions by 2050 Scenario*, demand for critical minerals grew by three-and-a-half times to 2030, reaching over 30 million tonnes. Electric vehicles and battery storage are the main drivers of demand growth, but there are also major contributions from low-emissions power generation and electricity networks.¹

At the current rate of mining, a shortfall in some critical minerals is forecast to appear as early as 2027. To meet demand for electric vehicles, we need 260 new lithium, cobalt, nickel and copper mines by 2030.²

Given that development timelines for new mines are 10 years on average, mining experts believe the current mining model needs to change. It is widely acknowledged that the timelines required to affect global targets do not align with these existing mine development models. As it stands, the current disjuncture poses a significant risk that the required transition to net zero will be hampered by a lack of the available resource, meaning that the worst impacts of climate change will not be avoided.

2 Internationally Recognised Traditional Owner Rights

Responsibilities for the care and management of Country continue to be held by Traditional Owner communities around the world. Their unique rights are expressed in UNDRIP.

Some rights are collectively held rights, such as the right to the management of traditional lands and to the enjoyment and protection of cultural heritage, and are managed by Traditional Owner communities' representatives. Article 18 of UNDRIP requires recognition of collective and representative decision-making through "representative institutions".³

¹ <https://www.iea.org/reports/critical-minerals-market-review-2023/implications>;
<https://www.iea.org/reports/global-critical-minerals-outlook-2025>

² Minerals Council of Australia, *Annual Report 2023*, 2023, p.13

³ United Nations Declaration on the Rights of Indigenous Peoples, 2007, p.15

This principle is given effect through the recognition of PBCs under the Australian NT Act. Similar Traditional Owner organisations exist under other legislation, including Registered Aboriginal Parties in Victoria, the Anangu Pitjantjatjara Yankunytjatjara Council in South Australia or the Noongar Regional Corporations in Western Australia, to name a few examples. Collectively, these bodies can be referred to as TORIs. It is representative institutions such as these that are the legitimate agreement-makers and hold statutory and cultural responsibilities.

Article 19 of UNDRIP goes to the requirement for FPIC in any relevant policy development process⁴.

The NT Act reflects Article 26 and the acknowledgement that Indigenous Peoples have rights in their traditional lands.⁵ In relation to minerals extraction, the impacts of mining can be addressed through recognition of Article 32, which also explores the concept of compensation, explored in Article 28⁶:

“Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.”⁷

Article 18: Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

⁴ Op. Cit., p.16

Article 19: States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

⁵ Op. Cit., p.19

Article 26: Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

⁶ Op. Cit., p.20

Article 28: Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

⁷ Op. Cit., p.23

2.1 FPIC and the Mining Sector

Respecting the rights of Traditional Owners to decide what happens on their Country in accordance with FPIC and building long-term constructive relationships is directly linked to a mine's long-term success. Significant financial costs can stem from project cancellations, delays, legal fees, reputational damage. Investors, including governments, need assurance the companies in which they invest are mitigating this risk.

As a result, the expectation to give effect to FPIC is seen in key documents such as the International Finance Corporation's *Performance Standards*, UN *Guiding Principles on Business and Human Rights* (United Nations Human Rights Committee, 2011) (UNGPs). Specifically in the resources industry context, the OECD *Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector* and the International Council on Mining and Metals (ICMM) *Position Statement on Indigenous Peoples* are both founded on the expectation that FPIC will be given effect to.

The Minerals Council of Australia's *Towards Sustainable Mining (TSM)* framework also encourages mining operations to achieve FPIC. The Australian minerals' industry adoption of TSM, makes minerals projects here accountable to a globally recognised framework which supports evaluation, management and disclosure of sustainability performance at the mine site level.

FPIC has four components:

- Free – Traditional Owners are not coerced into their decision making, this could be through unrealistic timeframes, gifts or other impacts.
- Prior – Traditional Owners are informed and included in the decision-making process in a timely fashion that is within their control
- Informed – Project proposals are provided in formats that can be understood by the Traditional Owner community and they are provided with the means to have their own experts assess those documents.
- Consent – Traditional Owners have their decisions respected, whether that be to agree to the project, in its entirety, in a modified form or to not have it progress in some areas at all.

2.2 FPIC and Indigenous Land Use Agreements

The relative geographic complexity of critical minerals mining largely relates to the mineral traces themselves. Deposits are smaller than conventional mineral and ore seams and across an area larger to the relative gross extraction amount. As critical mineral mining is quite different in terms of scale, impact and physical intervention, the manner in which Traditional Owner rights are upheld and consent granted must also be different.

The flexibility of an Indigenous Land Use Agreement (**ILUA**) in terms of area and type is a significant factor in the success of its application to this style of mining enterprise. An ILUA is a voluntary agreement between Traditional Owners and proponents about the use and management of areas of land and/or waters. They can be made over areas where native title has been determined, a native title claim has been made and also in those areas for which no claim has been made.

Whilst working within the existing (native title) rights framework in Australia, the ILUA mechanism can provide an approach which:

- Satisfies international human rights expectations,
- Can be more expeditious and less onerous than the alternative adversarial native title Future Act model; and,
- Can accommodate the particular physical and economic characteristics of critical minerals.

As a binding contract between parties, ILUAs are a robust form of agreement when applied to any native title matter including the exercise of native title rights and interests, land management, future development, mining, cultural heritage and access to an area.⁸

Research shows that the outcomes achieved by Traditional Owner groups (negotiating under the same legislative regime) varies significantly depending on factors such as capacity, financial and technical resources, and quality of governance. FPIC is only truly respected when communities are supported to engage fully with these processes, and when they have the ability to translate legal rights into concrete outcomes.

3 Benefit Sharing

The wealth creation generated by minerals extraction is enormous, breathtakingly so in contrast to the proportion of wealth returned to Traditional Owners.

The capacity of ILUAs to include a range of benefit-sharing provisions mean they are a robust vehicle to detail:

- Equity stakes for Traditional Owner groups in local mines and mining related projects, including refineries and manufacturing.
- Co-management (including participating in the decision-making) in mines and related projects
- Jobs and training for Traditional Owners in sustainable development of mines, and renewable energy technologies
- Rehabilitation of mines.
- Education and training in post-mine closure and post-mine transition planning (including the governance, operational, social and economic dimensions).

⁸ National Native Title Tribunal, *Indigenous Land Use Agreements Fact Sheet*, 2021.

3.1 Government Incentivisation and Regional Development

The growth of the critical minerals industry has the potential to create intergenerational social and economic benefits for Traditional Owners while also building the prosperity of regional communities.

To seize that opportunity, Commonwealth funding of critical minerals projects should only be provided to projects that demonstrate FPIC and benefit-sharing to Traditional Owner benefits in the form of an ILUA.

Through ILUAs, benefit sharing can be negotiated with TORIs in a manner that is tailored to their communities. It may include local business and procurement opportunities, community benefit funds, opportunities for co-design, and other initiatives in partnership with Traditional Owner groups. This will grow regional towns, bolster state economies and drive the building of regional infrastructure.

Mining critical minerals often requires small mines in regional areas which opens opportunities for local community capacity building and advancing the *National Agreement on Closing the Gap*⁹ with real and measurable improvement in socio-economic outcomes.

The Commonwealth Government Capacity Investment Scheme (CIS)¹⁰ must include, within eligibility for tender projects, that ILUAs have been negotiated with affected TORIs. The revenue underwriting of CIS tenders for renewable capacity and clean dispatchable capacity projects are based on access to critical minerals. Therefore, the extension of critical minerals frameworks to CIS tenders is a natural one.

Similarly, any processes and support that are provided through **the Future Made in Australia** agenda must include within eligibility criteria, that ILUAs have been negotiated with affected TORIs.

The ILUA model must include minimum requirements going to matters on process and outcomes, including resourcing for Traditional Owners to seek independent legal and technical advice, equity participation and other economic benefits, cultural heritage protections and operating and closure protocols to gain Commonwealth approval. This is essential for Traditional Owners to translate legal rights into concrete outcomes.

⁹ Government of Australia, *Closing the Gap*, 15 July 2024 <https://www.closingthegap.gov.au/national-agreement>

¹⁰ Department of Climate Change, Energy, the Environment and Water, Australian Government, Capacity Investment Scheme, 15 July 2024 <https://www.dcceew.gov.au/energy/renewable/capacity-investment-scheme>

4 Conclusion

The NNTC and Mabo Centre appreciate the significant pressures of balancing resources and rights. It is however essential that as we change the style and minerals of mining, First Nations communities are similarly prioritised.

We are pleased to provide an approach to such prioritisation and respect for rights, through implementation of FPIC and more broad utilisations of ILUAs; and look forward to discussing this with the Committee if required.

Yours sincerely,



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Recommendations from the Submission of the Central Land Council

Submission Number 77
Adopted in this Submission

Effective of engagement practices with Traditional Owners

Recommendation 1

Amend key laws to clearly embed Free, Prior and Informed Consent (FPIC).

Recommendation 2

Fast-track publication of best-practice guidance on FPIC and Traditional Owner engagement. This should set clear expectations on (among other things) information sharing with Traditional Owners and culturally appropriate engagement.

Recommendation 3

Government funding for a project should be contingent on a proponent demonstrating evidence of FPIC, including by way of a negotiated agreement.

Recommendation 4

Best practice FPIC and Traditional Owner engagement guidance should encourage proponents to include, as a base requirement, regular agreement reviews, the establishment of standing liaison committees, and the engagement of local ranger groups for relevant environmental management and compliance monitoring activities as appropriate.

Recommendation 5

Government funding for a critical minerals project should be contingent on the proponents providing evidence of a negotiated agreement that includes appropriate mechanisms for Traditional Owner involvement and participation in decision making for the life of the project.

Recommendation 6

All applicants for public funding should be required to submit an Aboriginal engagement plan, in addition to an agreement with Traditional Owners, as a pre-condition to accessing funding.

Recommendation 7

Amend the current provisions of the *Native Title Act 1993* (Cth) regarding mining-related infrastructure to ensure that native title holders have control to the standard of FPIC over their traditional lands.

Recommendation 8

The Australian Government must provide permanent and adequate resourcing to Native Title Representative Bodies (**NTRBs**) and Prescribed Bodies Corporate (**PBCs**) to support capacity building for community le-led development projects that can result from critical mineral developments.

Opportunities to Strengthen workforce participation

Recommendation 9

The Australian Government should follow through with the \$30 million remote training hubs (**RTH**) plan and therefore lift the availability of vocational education and training (**VET**) and provide opportunities for work readiness include development of foundational skill-building programs.

Recommendation 10

Proponents should be encouraged to work with the Desert Peoples Centre which has been contracted to lead a consortium of registered training organisations to support the delivery of training across the RTH and to develop further work readiness, workplace development and employment procurement programs that are tailored for their projects and the local Aboriginal community in question.

Recommendation 11

The Australian Government should ensure the new Remote Australia Employment Services (**RAES**) program is focused on supporting local people into real jobs and that providers of future remote employment services perform far better in engaging and adequately preparing people for job pathways in their community.

Recommendation 12

Government should facilitate proponents to set legally binding targets around local Aboriginal employment. Proponents should be required to report on their progress in meeting these *local* employment targets (and not only the *total* Aboriginal employment which is the current form).

Recommendation 13

Australian governments at all levels should conduct a review of and introduce any necessary reforms to environmental laws applicable to critical minerals projects to ensure robust protections are in place to mitigate the environmental, social and cultural impacts of these projects.

Recommendation 14

The *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**) should be further amended so that the “water trigger” applies to all high-water consuming projects such as critical minerals, and not just coal and fracking.

Recommendation 15

The Northern Territory Government must incorporate the cost of sustainable water planning and associated research into the price of water fees and charges so that the costs of sustainable water planning can be recovered from water users.

Recommendation 16

Environmental impact assessment of critical minerals projects should be required to include a hydrological assessment of the projected ground water draw down impacts across the life of the project with respect to impacts on groundwater dependent ecosystems and cultural values including sacred sites.

Recommendation 17

Streamlining of approvals processes should not be at the expense of robust environmental and cultural heritage protections.

Options for improved coordination between jurisdictions

Recommendation 18

The Commonwealth must retain decision making powers under the EPBC Act and revoke the current bilateral agreement that delegates assessment processes under the Act to the Northern Territory Environment Protection Authority.

Recommendation 19

Reform of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth) and any further reform to the EPBC Act should ensure best practice and consistent cultural heritage and environmental protections at both the Federal and Territory [State] level.