

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Indigenous Australians

Aboriginal Land Rights (Northern Territory) (Economic Empowerment) (Remuneration and Allowances—Interim Board of the NTAI Corporation) Determination 2022

Purpose

1. The Aboriginal Land Rights (Northern Territory) (Economic Empowerment) (Remuneration and Allowances—Interim Board of the NTAI Corporation) Determination 2022 (the Determination) sets the remuneration and allowances for the Interim Board of the Northern Territory Aboriginal Investment Corporation (the NTAI Corporation).

Background

2. Part 2 of Schedule 1 to the *Aboriginal Land Rights (Northern Territory) Amendment (Economic Empowerment) Act 2021* (the Economic Empowerment Act) commenced on 14 December 2021. The Economic Empowerment Act amends the *Aboriginal Land Rights (Northern Territory) Act 1976* (the Act) to establish the NTAI Corporation as a new Aboriginal-controlled corporate Commonwealth entity to strategically invest in Aboriginal businesses and commercial projects and make other payments for the benefit of Aboriginal peoples in the Northern Territory (the NT).
3. The NTAI Corporation's Board will consist of eight members elected by the NT Land Councils (the Northern Land Council, Central Land Council, Tiwi Land Council, and the Anindilyakwa Land Council), two members appointed by the Commonwealth (the Minister for Finance and the Minister for Indigenous Australians appoint one member each) and two independent members appointed by the Board.
4. Part 2 of Schedule 1 to the Economic Empowerment Act establishes an Interim Board to operate from the Interim Board commencement day until the NTAI Corporation commencement day. The Interim Board will make appointments to the NTAI Corporation's Board and investment committee and progress certain critical governance and management features of the NTAI Corporation to ensure that the Board is able to function effectively from its commencement day.
5. Item 13 in Part 2 of Schedule 1 to the Economic Empowerment Act provides that the Minister will appoint a presiding member to run the first meeting of the Interim Board, until the Interim Board elects the interim Chair at the first meeting. The interim Chair will convene, and preside at meetings as necessary. The interim Chair holds office until the NTAI Corporation's Board commences.
6. Item 17 in Part 2 of Schedule 1 to the Economic Empowerment Act provides that a member of the Board is to be paid the remuneration and allowances as determined by the

Minister, by legislative instrument. A person who is the Chair of a Land Council is not to be paid remuneration as a member of the Interim Board. The purposes of the Aboriginals Benefit Account (ABA) are taken to include paying amounts that are required or permitted to be paid.

7. The Determination attracts the machinery provisions of the *Remuneration Tribunal (Remuneration and Allowances for Holders of Part-time Public Office) Determination 2021* (Remuneration and Allowances Determination) and the *Remuneration Tribunal (Official Travel) Determination 2019* (Travel Determination) for members of the Interim Board (who are not the Chair of a Land Council). The Remuneration and Allowances Determination and Travel Determination set out the conditions of payment as well as permissions relating to entitlements. The Determination also outlines the daily fee and travel tier applied to members of the Interim Board.
8. If a person is both a member of the Interim Board and the Chair of a Land Council, they are eligible to be paid allowances but not remuneration when required to travel for official business away from their home base. The Travel Determination has been applied in this circumstance.
9. The Presiding Member appointed by the Minister under subitem 13(4) of Schedule 1 to the Economic Empowerment Act is to be paid the same remuneration and allowances as the interim Chair of the Interim Board until the interim Chair is elected at the first meeting of the Interim Board. If the Presiding Member is the Chair of a Land Council, they are not to be paid remuneration.

Commencement

10. The Determination commences on the day after it is registered on the Federal Register of Legislation.

Consultation

11. Aboriginal Territorians have been calling for Government to give them more control over ABA funding for decades. The latest call for reform came in 2018 from Aboriginal Territorians, through their Land Councils, to modernise and support contemporary Aboriginal economic, cultural and social aspirations. The Economic Empowerment Act is a result of this advocacy.
12. Since 2018, the National Indigenous Australians Agency (NIAA) has worked together with the Land Councils to develop the package of reforms that led to the Economic Empowerment Act and the on-going implementation of the legislation. The NIAA has also continued to consult closely with the ABA Advisory Committee, which currently provides advice to government on ABA beneficial payments.

13. The Land Councils are the appropriate bodies to consult with in the NT because they are core institutions established under the Land Rights Act. They represent traditional Aboriginal owners in the NT and one of their primary statutory roles is to have regard to the interests of, and consult with, the traditional Aboriginal owners (if any) of the land and any other Aboriginals interested in the land. In particular, a Land Council shall not take any action in any matter in connection with land held by a Land Trust, unless the Land Council is satisfied that: the traditional Aboriginal owners (if any) of that land understand the nature and purpose of the proposed action and, as a group, consent to it; and any Aboriginal community or group that may be affected by the proposed action has been consulted and has had adequate opportunity to express its view to the Land Council.
14. The NIAA co-designed this Determination with the NT Land Councils and the ABA Advisory Committee during its ongoing co-design of implementation of the NTAI Corporation.
15. The Remuneration Tribunal was consulted as the Tribunal will determine the remuneration and allowances for the NTAI Corporation's permanent Board under section 65EJ of the Act.

NOTES ON CLAUSES

Section 1 - Name

1. Section 1 provides for the Determination to be cited as the *Aboriginal Land Rights (Northern Territory) (Economic Empowerment) (Remuneration and Allowances—Interim Board of the NTAI Corporation) Determination 2022*.

Section 2 - Commencement

2. Section 2 provides for the whole of the Determination to commence the day after it is registered.

Section 3 - Authority

3. Section 3 specifies that the Determination is made under item 17 of Schedule 1 to the Economic Empowerment Act.

Section 4 - Definitions

4. Section 4 notes that a number of expressions used in the Determination are defined in the Act, including *Interim Board* of the NTAI Corporation and *NTAI Corporation commencement day*. Three definitions are set out for the purposes of the Determination:
 - i. *Act* means the *Aboriginal Land Rights (Northern Territory) Amendment (Economic Empowerment) Act 2021*.
 - ii. *Remuneration and Allowances Determination* means the *Remuneration Tribunal (Remuneration and Allowances for Holders of Part-time Public Office) Determination 2021*, as in force at the time of the commencement of the Determination.
 - iii. *Travel Determination* means the *Remuneration Tribunal (Official Travel) Determination 2019*, as in force at the commencement of the Determination.

Section 5 - Remuneration and allowances

5. Subsection 5(1) sets out that remuneration and allowances payable to a member of the Interim Board (who is not the Chair of a Land Council) are those that would be payable to the person under the Remuneration and Allowances Determination and the Travel Determination as if:
 - i. the person were an office holder to whom those determinations applied; and
 - ii. Table 4A in section 22 of the Remuneration and Allowances Determination included a reference in column 1 to the Interim Board of the NTAI Corporation, a reference in column 2 to the daily fee (Chair) of \$778, a reference in column 4 to the daily fee (Member) of \$506 and a reference in column 6 to travel tier 2.

6. Subsection 5(2) sets out that allowances determined for a person who is both a member of the Interim Board of the NTAI Corporation and the Chair of a Land Council are those that would be payable in relation to the person under the Travel Determination if:
 - i. the person, in their capacity as a member of the Interim Board, were an office holder to whom the Travel Determination applied;
 - ii. subsections 9(2) and (3) of the Travel Determination were disregarded; and
 - iii. for the purposes of the Travel Determination, the person's travel tier were tier 2.
7. Subsection 5(3) provides for the person appointed under subitem 13(4) of Schedule 1 to the Act to preside at the first meeting of the Interim Board of the NTAI Corporation to be remunerated as interim Chair until the interim Chair is elected. If the presiding Member is the Chair of a Land Council, they are not to be paid remuneration.
8. Subsection 5(4) says that the Remuneration Allowances Determination and Travel Determination apply to remuneration and allowances determined under subsections (1) and (2) as if they were payable under those determinations. The purpose of subsection 5(4) is to attract the machinery provisions of the Remuneration and Allowances Determination and Travel Determination, which set out conditions of payment as well as permissions relating to entitlements.

Section 6 - When Determination ceases to have effect

9. Section 6 provides that, unless sooner revoked, the Determination will cease to have effect:
 - i. in relation to a member of the Interim Board other than the interim Chair - at the start of the NTAI Corporation commencement day; or
 - ii. in relation to the interim Chair - when the interim Chair ceases to hold that office.
10. The inclusion of this time period is to create certainty about when Determination ceases and therefore remuneration and allowances cease to be payable to members of the Interim Board.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Aboriginal Land Rights (Northern Territory) (Economic Empowerment) (Remuneration and Allowances—Interim Board of the NTAI Corporation) Determination 2022

1. The Aboriginal Land Rights (Northern Territory) (Economic Empowerment) (Remuneration and Allowances—Interim Board of the NTAI Corporation) Determination 2022 (the Determination) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Background

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3. The NTAI Corporation's Board will consist of eight members elected by the NT Land Councils (the Northern Land Council, Central Land Council, Tiwi Land Council, and the Anindilyakwa Land Council), two members appointed by the Commonwealth (the Minister for Finance and the Minister for Indigenous Australians appoint one member each) and two independent members appointed by the Board.
4. Part 2 of Schedule 1 to the Economic Empowerment Act establishes an Interim Board to operate from the Interim Board commencement day until the NTAI Corporation commencement day. The Interim Board will make appointments to the NTAI Corporation's Board and investment committee and progress certain critical governance and management features of the NTAI Corporation to ensure that the Board is able to function effectively from its commencement day.
5. Item 13 in Part 2 of Schedule 1 to the Economic Empowerment Act allows the Minister to appoint a presiding member to run the first meeting of the Interim Board, until the Interim Board elects the interim Chair at the first meeting. The interim Chair will convene, and preside at meetings as necessary. The interim Chair holds office until the NTAI Corporation's Board commences.

6. Item 17 in Part 2 of Schedule 1 to the Economic Empowerment Act provides that a member of the Board is to be paid the remuneration and allowances determined by the Minister, by legislative instrument. A person who is the Chair of a Land Council is not to be paid remuneration as a member of the Interim Board. The purposes of the Aboriginals Benefit Account (ABA) are taken to include paying the remuneration and allowances of the Interim Board members.
7. The Determination attracts the machinery provisions of the *Remuneration Tribunal (Remuneration and Allowances for Holders of Part-time Public Office) Determination 2021* (Remuneration and Allowances Determination) and the *Remuneration Tribunal (Official Travel) Determination 2019* (Travel Determination) for members of the Interim Board (who are not the Chair of a Land Council). The Remuneration and Allowances Determination and Travel Determination set out the conditions of payment as well as permissions relating to entitlements. The Determination outlines the daily fee and travel tier applied to members of the Interim Board.
8. If a person is both a member of the Interim Board and the Chair of a Land Council, they are eligible to be paid allowances but not remuneration when required to travel for official business away from their home base. The Travel Determination has been applied in this circumstance.
9. The Presiding Member appointed by the Minister under subitem 13(4) of Schedule 1 to the Economic Empowerment Act is to be paid the same remuneration and allowances as the interim Chair of the Interim Board until the interim Chair is elected at the first meeting of the Interim Board. If the Presiding Member is the Chair of a Land Council, they are not to be paid remuneration.

Consultation

10. Aboriginal Territorians have been calling for Government to give them more control over ABA funding for decades. The latest call for reform came in 2018 from Aboriginal Territorians, through their Land Councils, to modernise and support contemporary Aboriginal economic, cultural and social aspirations. The Economic Empowerment Act is a result of this advocacy.
11. Since 2018, the National Indigenous Australians Agency (NIAA) has worked together with the Land Councils to develop the package of reforms that led to the Economic Empowerment Act and the on-going implementation of the legislation. The NIAA has also continued to consult closely with the ABA Advisory Committee, which currently provides advice to government on ABA beneficial payments.
12. The Land Councils are the appropriate bodies to consult with in the NT because they are core institutions established under the Land Rights Act. They represent traditional Aboriginal owners in the NT and one of their primary statutory roles is to have regard to the interests of, and consult with, the traditional Aboriginal owners (if any) of the land

and any other Aboriginals interested in the land. In particular, a Land Council shall not take any action in any matter in connection with land held by a Land Trust, unless the Land Council is satisfied that: the traditional Aboriginal owners (if any) of that land understand the nature and purpose of the proposed action and, as a group, consent to it; and any Aboriginal community or group that may be affected by the proposed action has been consulted and has had adequate opportunity to express its view to the Land Council.

13. The NIAA co-designed this Determination with the NT Land Councils and the ABA Advisory Committee during its ongoing co-design of implementation of the NTAI Corporation.
14. The Remuneration Tribunal was consulted as the Tribunal will determine the remuneration and allowances for the NTAI Corporation's permanent Board under section 65EJ of the Act.

Human Rights Implications

15. Articles 6 and 7 of the International Covenant on Economic Social and Cultural Rights (ICESCR) recognise and promote rights associated with employment. Article 6 recognises the right to work, which includes the right of every person to gain their living by work which they freely choose or accept. Article 7 promotes the right to choose an occupation and engage in work, operating under work conditions that are just and favourable and receiving fair and equal remuneration.
16. More specifically, Article 7(a)(i) provides that to achieve just and favourable working conditions, wages must be equal and remuneration must be fair for work of equal value without distinction of any kind. This specifically applies to women being guaranteed condition of work not inferior to those enjoyed by men.
17. The Determination engages Article 6 and 7 because the NTAI Corporation is a place of employment and election to the Interim Board provides members with an occupation. The Determination specifically engages Article 7(a)(i) in setting out the remuneration and allowances of the Interim Board of the NTAI Corporation.
18. This Determination promotes fair remuneration as it applies, and is informed by, two pre-existing legislative instruments; the Remuneration and Allowances Determination and the Travel Determination. The provisions dealing with conditions of work are specifically replicated for the particular context and are based on existing legislation.
19. The measures included in the Determination also ensure that the remuneration and allowances of the Interim Board are provided at rates comparable to those of the Central Land Council and Northern Land Council. This reinforces the principle in Article 7 of 'equal pay for equal work.'

Conclusion

20. The Determination promotes rights in relation to employment, including the provision of just and favourable conditions.