

Senate Finance and Public Administration Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE
Supplementary Budget Estimates 2024-2025

Prime Minister and Cabinet Portfolio

Department/Agency: National Indigenous Australians Agency
Topic: ALC

Senator: David Pocock

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Type of question: Written

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Question:

As you are aware, an extensive list of issues related to the ALC have been highlighted over the past 12 months, including but not limited to:

- The recent dismissal of the ALC's CEO, Mr Hewitt, by the new Board of the ALC;
- The deficiencies of the ALC's governance, operations and decision making for the past 15 months or longer, including the operations of the ALC Audit Committee, as identified in the ANAO and Bellchambers Barrett reports;
- Ongoing conflicts of interest identified in both the ANAO and Bellchambers Barrett reports;
- The prospect that the Aboriginal residents of Groote Eylandt have been the subject of predatory commercial behaviour and may bear subsequent financial losses;
- Questions regarding the viability of the proposed Winchelsea mine, along with the absence of transparency and accountability in relation to the funding and management of the Winchelsea Mining Company (underwritten in part by ALC resources);
- Questions regarding the payment of \$41m from the Anindilyakwa Mining Trust (AMT) to the Anindilyakwa Royalties Aboriginal Corporation (ARAC);
- Questions as to the legality and probity of the distribution, administration and expenditure of more than \$360m pursuant to s64(3) of the Aboriginal Land Rights (NT) Act (ALRA) by the ALC and associated Aboriginal Corporations on Groote Eylandt;

1. Will the Minister initiate an independent, comprehensive, forensic audit into the administration and operations of the ALC and of those Aboriginal Corporations that received funding determined by the ALC, so that the new Board of the ALC can move ahead in confidence to regain the trust of the Anindilyakwa community and other key stakeholders, and achieve the standard of governance that will ensure the ALC can properly represent its people and achieve its mission? If not, why not?
2. Can the Minister/NIAA confirm the advice contained in the response to QON NIAA 221 that during the period 2018-19 to 2023-24 the amount of \$1.5m was received by Mr Hewitt by way of remuneration and benefits as a director of the Winchelsea Mining Company while he was, at the same time, receiving remuneration and benefits totalling \$2.7m as the fulltime CEO of the ALC? Can the Minister also confirm that Mr Hewitt's spouse, Sophy Liu, received during that same period, total remuneration and benefits of \$1.6m while being employed simultaneously as the Finance Officer of the ALC, as an Executive Assistant by the Winchelsea Mining Company, and as the Chief Operating Officer of the Groote Holdings Aboriginal Corporation (GHAC)?
3. Can the Minister confirm that the conflicts of interest identified by the ANAO in May 2023 and again more recently in the Bellchambers Barrett review of August 2024, have now been addressed to the satisfaction of the Minister and NIAA? If not, what are the issues still outstanding?
4. Has the Minister/NIAA approved any arrangements for the management of the conflicts of interest that were identified in the ANAO and Bellchambers Barrett reports? If so, will the Minister please table those arrangements.
5. Can the Minister confirm that the Aboriginal residents of Groote Eylandt have not been subject to predatory commercial behaviour and financial losses arising from the actions of the former CEO, his spouse and the former Chairman of the ALC? If not, what action is she taking to ascertain the extent of the potential losses to the community?
6. According to the ALC website, in the period 2019 – 2023, the ALC distributed \$361m of s64(3) monies to various corporations and organisations on Groote Eylandt. Can the Minister/NIAA confirm that these distributions were determined by the ALC in compliance with the provisions of the ALRA, including s23(3) & s23 AA of the Act?
7. Has the Minister/NIAA obtained legal and/or policy advice regarding the functions and responsibilities of Land Councils in determining the distribution of s64(3) monies? If so, what was that advice and can it be shared with us? If not, how can the Minister be satisfied that the ALC is complying with the provisions of the ALRA when determining the distribution of s64(3) monies?
8. In an article dated 20 July 2024, The Saturday Paper referred to correspondence to your predecessor signed by dozens of Groote residents which alleged that an amount of \$41m was paid from the Anindilyakwa Mining Trust (AMT) to the Anindilyakwa Royalties Aboriginal Corporation (ARAC) but which has not been accounted for. A recent review of the relevant publicly available financial statements pertaining to ARAC appears to confirm this. There is also explicit evidence that the ALC effectively controls ARAC and has a direct role in managing ARAC finances. Is the Minister/NIAA aware of the \$41m payment and if so has the matter been investigated? If not, will the Minister instruct the NIAA or ORIC to advise her regarding the \$41m payment and the circumstances of its payment by the AMT and receipt/utilisation by ARAC?

9. Can the Minister confirm that the NIAA Integrity Unit met with the new Board of the ALC immediately prior to the Board dismissing Mr Hewitt as CEO? When and where did that meeting take place, was the meeting recorded, what legal and/or policy advice was given to the new Board, did the Minister authorise that advice, who represented the NIAA Integrity Unit, how was that advice communicated (e.g. face to face presentation, written material, Zoom, PowerPoint, in language?), who attended the meeting from the ALC and can the legal and/or policy advice given by the NIAA, along with the minutes of the meeting, be made available?
10. Was the position of Mr Hewitt as CEO raised with the new Board and if so, what legal and /or policy advice was given by the NIAA Integrity Unit to the Board? Can that advice be made available along with any decisions taken by the Board?
11. Was the past performance of the ALC Audit Committee raised with the ALC Board by the NIAA Integrity Unit and if so, what legal and/or policy advice was given? In particular, did the NIAA provide advice regarding the role and performance of the former Chair of the ALC's Audit Committee, who was found by the ANAO to be remunerated at three times the amount of other NT Land Councils and who was identified as having a clear conflict of interest? If the matter was not raised, can the Minister indicate what action will be taken to ensure that those responsible for the maladministration of the ALC are held to account?

Answer: -

1. The former Minister for Indigenous Australians, the Hon Linda Burney MP referred concerns regarding Anindilyakwa Land Council (ALC) governance and operations to the National Indigenous Australians Agency (NIAA) for review and action as required. In response, the NIAA commissioned an independent review of the ALC's responses to the Australian National Audit Office (ANAO) governance audit and has subsequently been overseeing the ALC's actions to improve its governance, transparency and accountability.

The NIAA has and will continue to refer all relevant matters to law enforcement and other agencies as required.

2. Budget Estimates 2024-2025 Question on Notice (QoN) NIAA221 was directed to and answered by the ALC.
3. The ALC has developed a schedule of activity to address the ANAO and Bellchambers Barrett recommendations, including those associated with conflicts of interest management. The NIAA has been overseeing the ALC's performance of those activities and is satisfied that implementation of acceptable arrangements for conflict of interest management will be progressive over the forthcoming months. The conflicts of interest noted in relation to the former ALC Chief Executive Officer (CEO) have been resolved following the termination of Mr Hewitt and his removal from positions in all associated entities. The current ALC Board Chair does not hold any of the positions that gave rise to the conflict of interest concerns in relation to the former Board Chair.
4. Formal approval of the ALC's conflict of interest arrangements is the responsibility of the ALC Board in consultation with the ALC Audit Committee and ALC management.

5. As previously noted, the former Minister referred concerns regarding ALC to the NIAA for review and action as required. The NIAA has and will continue to refer all relevant matters to law enforcement and other agencies as required.
6. Distributions were determined by the ALC in compliance with the provisions of the Aboriginal Land Rights (Northern Territory) Act 1976 (ALRA).
7. Any legal advice about the distribution of s64 (3) monies by Land Councils is unable to be circulated. All Land Councils have requirements to distribute funds in accordance with the ALRA, and the NIAA works to ensure Land Councils are aware of those requirements.
8. The NIAA has made enquiries regarding the recognition of payments made from the Anindilyakwa Mining Trust (AMT) to the Anindilyakwa Royalties Aboriginal Corporation (ARAC) and has been informed that reporting differences arose because of the entities recognising these transactions in different financial years. The NIAA notes that the accounting records of both entities are subject to independent audit. Detailed questions regarding the recognition of financial transactions of the ALC and associated entities should be directed to the ALC.
9. On 16 October 2024, NIAA's Group Manager, Integrity Group attended a meeting of the ALC Board held on Groote Eylandt in person to support Board discussion regarding Mr Hewitt's employment arrangements. Requests for minutes of ALC Board meetings should be made to the ALC.
10. The ALC Board meeting held on 16 October 2024, included an item to consider Mr Hewitt's employment arrangements. Requests for papers and minutes of ALC Board meetings should be made to the ALC.
11. The ANAO audit of ALC governance arrangements noted concerns regarding the independence of the ALC Audit Committee Chair and recommended the ALC Accountable Authority "ensure the Audit Committee Chair is independent" (Recommendation 15 a). The independent review commissioned by the NIAA (issued 29 August 2024) noted that this had not been actioned at that time. The NIAA supported the ALC's action on this recommendation by providing a shortlist of potential suitable candidates for the role. The ALC Board subsequently appointed a new, independent Audit Committee Chair at their meeting on 17 October 2024.