CENTRAL LAND COUNCIL

and

NORTHERN LAND COUNCIL

Joint feedback on the Mineral Royalty Scheme Review – Consultation
Paper dated 22 June 2023

18 August 2023

To: Territory Revenue Office Mineral Royalty Scheme Review By email: royalitiesandassurance.dtf@nt.gov.au

ACKNOWLEDGEMENT

The Central Land Council and Northern Land Council acknowledge the Territory's traditional owners, who were the first inhabitants in the Territory and remain the first and most important stewards of the Territory's resources.

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EXECUTIVE SUMMARY

1. This paper responds to the Northern Territory Government's (***NTG's)*** Mineral Royalty Scheme Review – Consultation Paper (***Consultation Paper***). The Consultation Paper relies on recommendations of the NTG Mineral Development Taskforce (the ***Taskforce***), set out in its April 2023 final report (the ***MDT Report***). The NTG has accepted, in principle, all recommendations made by the Taskforce, subject to consultation with stakeholders.
2. The Central Land Council and Northern Land Council cannot support reforms that will have adverse impacts on the value of statutory royalty equivalent payments to the Aboriginal Benefits Account (***ABA***). There are 4 key messages to this submission. They are:
    a. Land Councils and their constituents will be significantly impacted by royalty reforms due to impacts on statutory royalty equivalent payments;
    b. The NTG must commit to ensuring royalty reforms do not adversely impact the ABA. Mitigating adverse impacts through policy changes is unacceptable.
    c. Land Councils must be actively engaged in the design and decision-making processes regarding the new royalty scheme. Their input and perspectives must be valued and considered a core part of any discussions, reflecting the requirements of the Closing the Gap Agreement.
    d. There are risks to royalty reform, including to industry's social licence to operate. The MDT Report does not make a convincing case for royalty reform, and has not adequately identified and analysed risks.
3. This submission relies on an expert analysis by Malthus Global. (***Malthus Global Report***). This is set out at Annexure 1 and should be read with this submission.

ABOUT THE LAND COUNCILS

4. The Central Land Council (***CLC***) and Northern Land Council (***NLC***) (jointly the ***Land Councils***) are Commonwealth corporate entities established under the *Aboriginal Land Rights (Northern Territory) Act* 1976 *(Cth)* (***ALRA***), with statutory responsibilities for approximately 1,385,000 square kilometres of land across the Northern Territory (***NT***). The Land Councils have the function of ascertaining and expressing the wishes and the opinion of Aboriginal people living in their regions including on legislative reforms.
5. For the purposes of this submission, the term traditional owner includes traditional Aboriginal owners (as defined in the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth), native title holders (as defined in the *Native Title Act 1993 (*Cth) and those with a traditional interest in lands and waters.

LIST OF RECOMMENDATIONS

The ABA must not be impacted

1: The NTG must commit to ensuring there are no adverse impacts on the ABA.

2: Independent modelling of the impacts of proposed changes, whether the type of royalty, rate of royalty, methodology or change in administration, must be provided to Land Councils for their analysis and comment.

3: The NTG must not rely on policy and administrative changes to offset adverse impacts on the ABA. Instead, the NTG must commit to avoiding adverse impacts to the ABA in any new royalty regime.

Land Councils must be involved in design

4: The NTG and Land Councils must work together to design a new royalty scheme, as per the Closing the Gap principles.

The NT has not made a case for reforming royalties

5: Due to the serious risks associated with changing the royalty regime, before committing to reform, the NTG must establish that reform is justified. No decision to undertake royalty reform should be undertaken without a thorough consideration of risks and alternatives.

6: Strategic risks to the sector associated with changes to the mineral royalty scheme must be carefully identified and assessed.

7: To determine whether conclusions derived from assumptions in the MDT Report are correct and hold true over a long period (rather than just specific instances) the NTG must consider adequate data, including financial statements and mining scenarios.

8: Comprehensive evaluation must be undertaken of perceived administrative complexities with the current royalty scheme, and any administrative complexities with a replacement ad valorem scheme.

Design features

9: In designing a royalty regime the NTG must model any proposed free periods, progressive royalty rates and low ad valorem rates, and ensure that they will not adversely impact the ABA. All modelling must be shared with Land Councils.

10: In designing a new royalty regime the Territory needs to be mindful of strategies used by companies to minimise royalty payments, and ensure that these are actively contemplated in design so as to diminish their use.

1. NTG MUST COMMIT TO ENSURING THE ABA IS NOT ADVERSELY IMPACTED

1.1 Aboriginals Benefit Account must not be adversely impacted

1. Land Councils and their constituents will be significantly impacted by any change in statutory royalty equivalent payments to the ABA. Land Councils cannot support reform to the royalties scheme that will have negative impacts on the ABA.
2. Any changes, whether to the type of royalty, rate of royalty, methodology or change in administration, must be extensively modelled to ensure there will be no adverse impacts on the ABA. This modelling must be provided to the Land Councils. This reflects recommendations of the Closing the Gap Agreement[1], which states the following at item 69:

   > *Shared access to location specific data and information will support Aboriginal and Torres Strait Islander communities and organisations to support the achievement of the first three Priority Reforms through:*
   >
   > *Priority Reform One: Participating as equal partners with government, with equal access to all processes and information to support shared decision-making.*
   >
   > *Priority Reform Two: Driving their own development by making evidence-based decisions on the design, implementation and evaluation of policies and programs for their communities in order to develop local solutions for local issues.*
   >
   > *Priority Reform Three: Measuring the transformation of government organisations operating in their region to be more responsive and accountable for Closing the Gap.*

3. Key general aspects required to evaluate any new royalty scheme in the Territory are set out in the Malthus Global Report at table 5 (p 13). Ensuring that an ad valorem scheme does not leave the NTG and ABA worse off will require the setting of an ad valorem rate, and a cap on the maximum level of deductions. Further details and scenarios are set out in the Malthus Global Report at pp 14 – 16.

Recommendation 1: The NTG must commit to ensuring there are no adverse impacts on the ABA.

Recommendation 2: Independent modelling of the impacts of proposed changes, whether the type of royalty, rate of royalty, methodology or change in administration, must be provided to Land Councils for their analysis and comment.

1.2 Adverse impacts on the ABA cannot be mitigated by policy and administrative changes.

4. Adverse effects on the ABA cannot be mitigated by implementing policy and administrative changes. The Land Councils consider that such an approach may represent a significant risk to the ABA. Policy changes often require lengthy bureaucratic processes and political negotiations, which may compromise any potential benefits for traditional Aboriginal

[1] National Closing the Gap Agreement dated July 2020. Item 69.

owners and Aboriginal communities. This could exacerbate existing issues and represents an unacceptable risk to traditional Aboriginal owners, Land Councils, the ABA and to the industry that may lose its social licence to operate.

Recommendation 3: The NTG must not rely on policy and administrative changes to offset adverse impacts on the ABA. Instead, the NTG must commit to avoiding adverse impacts to the ABA in any new royalty regime.

2. LAND COUNCILS MUST BE INVOLVED IN DESIGN

5. Land Councils must be actively engaged in the design and decision-making processes regarding the new royalty scheme. Their input and perspectives must be valued and considered a core part of any discussions. This also reflects the requirements of the Closing the Gap Agreement. Paragraph 59(f) of the Closing the Gap Agreement states:

> Improve engagement with Aboriginal and Torres Strait Islander people – Ensure when governments are undertaking significant changes to policy and programs that primarily impact on Aboriginal and Torres Strait Islander people, they engage fully and transparently. Engagements should be done in a way where Aboriginal and Torres Strait Islander people: have a leadership role in the design and conduct of engagements; know the purpose and fully understand what is being proposed; know what feedback is provided and how that is being taken account of by governments in making decisions; and are able to assess whether the engagements have been fair, transparent and open. The engagements on the National Agreement, led by the Coalition of Peaks in partnership with Government parties, demonstrated the benefit of this approach.[2]

6. Land Councils and their constituents are important stakeholders. Any mining industry development and investment attraction strategy developed without Land Council's input in the design phase will be one sided and risk future damage to social licence to operate. As outlined in the MDT Report on page 6, this would be risky as the success of the mining industry relies on its ability to align with community expectations.
7. The political narrative of large global mining companies and the International Council on Mining and Metals (ICMM), focuses on concepts such as just transition, nature-based mining, and commitment to communities. It is not clear that these endeavours are aligned with the intention to change the royalty scheme in the NT, particularly given risks to social licence that arise with royalty reform.
8. Under the free, prior and informed consent (FPIC) framework, mining royalty reform would require engagement with Land Councils in a meaningful and informed manner. The FPIC framework applied to the Northern Territory is set out below.

[2] National Closing the Gap Agreement dated July 2020 paragraph 59.

Table 4 FPIC Framework elements applied to the Northern Territory[3]

1	Participation	Ensure the full and effective participation of Land Councils' in the assessment process.
2	Information sharing	Land Councils to be provided with comprehensive and accessible information on the potential impacts of mining royalties reform. This includes disclosure of benefits, risks, and mitigating measures related to royalties.
3	Informed decision-making	Ensure that Land Councils have sufficient time and resources to understand the potential impacts of mining royalties and make informed decisions. This may involve providing legal, technical, and financial support.
4	Consent	Obtain the free, prior, and informed consent / support of Land Councils, before implementing mining royalty reforms, consistent with Closing the Gap principles.
5	Monitoring and accountability	Establish mechanisms for monitoring and evaluating the impacts of the reformed mining royalty system on traditional owners, Aboriginal communities and Land Councils and on the ABA. This includes regular consultations with Land Councils, impact assessments, and the establishment of grievance redress mechanisms.

Recommendation 4: The NTG and Land Councils must work together to design a new royalty scheme, as per the Closing the Gap principles.

3. THE NT HAS NOT MADE A CASE FOR REFORMING ROYALTIES

9. The MDT Report concludes royalty reform is required. This is based on:
    a. incomplete consideration of the role of a royalty in terms of mining competitiveness and as an investment driver;
    b. inadequate data;
    c. limited participation of traditional owners and Land Councils, which is a methodological issue and contradictory to the corporate values established by reputable mining companies; and
    d. concluding that the current royalty system is complex in accounting and administration without any analysis.
10. The NTG has not attempted to identify other mechanisms that could play a crucial role in attracting, promoting, and materialising investments in the mining industry in the NT. Set out in the Malthus Global Report at table 4 (p. 11) is a table showing common mechanisms

[3] References: Adapted from (Seck, 2016) (Hohmann and Weller, 2018) as cited in Attachment 1, Malthus Global Report *Analysis of the New Mining Royalty Scheme for the NT*, table 17 p 33.

to increase or promote mining investment. Given the serious risks to the industry (social licence) and the ABA presented by royalty reform, these must be properly considered. In addition, the competitive factors set out in the Malthus Global Report at table 3 (p. 9) must be considered.

Recommendation 5: Due to the serious risks associated with changing the royalty regime, before committing to reform, the NTG must establish that reforms is justified. No decision to undertake royalty reform should be undertaken without a thorough consideration of risks and alternatives.

3.1. Strategic risks have not been identified or assessed

11. Strategic risks to the sector that may arise from royalty reform have not been identified or assessed.

Recommendation 6: Strategic risks to the sector associated with changes to the mineral royalty scheme must be carefully identified and assessed.

3.2. Inadequate data

12. Assumptions made in the MDT Report to justify reforms to the royalty system rely on inadequate data. Financial statements can provide important financial indicators such as revenue, profitability, and liquidity. Mining scenarios provide a comprehensive outlook on potential variables that may impact royalty payments in the future. This additional information enables a more accurate evaluation, contributing to a holistic understanding of whether the assumptions are justified or flawed and whether they hold true not only for a specific instance but also over a longer period, accurately representing the mining industry's overall situation. There is also an inadequate comparative analysis with other jurisdictions to establish that the current royalty regime is uncompetitive and that the NT needs 'a modern' royalty.
13. Assumptions in the MDT Report that are based on inadequate data are identified in the Malthus Global Report at table 19 (p. 36).

Recommendation 7: To determine whether conclusions derived from assumptions in the MDT Report are correct and hold true over a long period (rather than just specific instances) the NTG must consider adequate data, including financial statements and mining scenarios.

3.3. Reducing administrative complexity

14. One of the key arguments used for a new royalty scheme is the accounting and administrative complexities of the current profit-based royalty. More comprehensive evaluation is necessary because the ad valorem regime could also involve administrative complexities. In addition, mining companies should be capable of applying a high level of accounting standards. It is relatively easy to identify those accounting items that can be considered as deductions and submit an audited report.

Recommendation 8: Comprehensive evaluation must be undertaken of perceived administrative complexities with the current royalty scheme, and any administrative complexities with a replacement ad valorem scheme.

4. DESIGN FEATURES

4.1. Type of Royalty Rate

Questions 1 to 8

15. Negative effects from changing the scheme could arise due to free / holiday periods and progressive royalty rates if the result is a low ad valorem rate. Risks to be considered include:
    a. Free period – These can lead to loss of revenue for governments and the ABA, especially if the mine is particularly profitable. It could lead to companies having an initial focus on high grade deposits to minimise royalty payments, with later mining being uneconomic and mines being forced to enter long term care and maintenance. Also, some mines have a short profitability period making them unsuitable for free periods.
    b. Progressive royalty rates - Some royalty schemes use a progressive rate, which means that the rate increases as the value of the minerals extracted increases. This can be beneficial for governments and communities in the long term, as it ensures that they receive a larger share of the profits from mining. However, it can also have a negative impact in the short term through reduced remittances.
    c. Low ad valorem rates - Ad valorem rates are often set very low, which means that governments and communities receive a small share of the profits from mining. This would have a significant adverse impact on the ABA.

Recommendation 9: In designing a royalty regime the NTG must model any proposed free periods, progressive royalty rates and low ad valorem rates, and ensure that they will not adversely impact the ABA. All modelling must be shared with Land Councils.

16. The current profit-based royalty incentivises mining companies to increase deductions to avoid paying royalties. The value of deductions is unpredictable, which significantly impacts the NTG and the ABA.
17. Additional mechanisms may be used by companies to avoid royalty payments. These are set out in the Malthus Global Report table 8 (p.17).

Recommendation 10: In designing a new royalty regime the Territory needs to be mindful of strategies used by companies to minimise royalty payments, and ensure that these are actively contemplated in design so as to diminish their use.

Question 9: The valuation of minerals extracted and sold under a new mineral royalty scheme will form part of subsequent consultation. However, are there any preliminary issues or technical matters that government should consider?

18. Preliminary issues and technical matters that the NTG should consider in the valuation of minerals may involve a prospective analysis of future mining scenarios by 2050 as a public monitoring tool.
19. In addition, when a government decides to establish a system for ad valorem royalty it is important to consider robust methodologies for determining mineral values, auditing processes, and transparency in reporting. Ensuring the accuracy and reliability of data on mineral production, sales, and prices is crucial for effective valuation of minerals extracted and sold.
20. Transparency is vital in maintaining public trust. The NTG should establish clear guidelines and regulations for collecting ad valorem royalty, ensuring that the process is transparent and visible to all stakeholders (as other states in Australia). This includes clearly defining the methodology for determining the value of mineral resources and regularly publishing relevant data, such as production volumes, prices, and royalty payments. By keeping this information accessible and open to scrutiny, the NTG can prevent any suspicion of corruption or arbitrary decision-making.
21. Geological accountability is another important aspect to consider. This involves conducting geological surveys and assessments to accurately evaluate the value of mineral resources. The NTG should invest in the necessary expertise and infrastructure to conduct comprehensive and reliable geological studies, ensuring that royalties are calculated based on accurate assessments of resource quantity and quality. Implementing a robust and rigorous geological accountability system will prevent instances of overvaluing or undervaluing resources, protecting the interests of both the NTG and mining companies.
22. Additionally, adopting international best practices for reporting is crucial. Many countries already follow international reporting standards, such as those set by the International Financial Reporting Standards (IFRS) or the Extractive Industries Transparency Initiative (EITI). These standards ensure consistency, enhance comparability, and promote good governance in reporting ad valorem royalties. By aligning its reporting practices with international standards, a government can attract foreign investments, encourage economic growth, and establish itself as a credible and reliable partner in the global mining industry.

4.2 Deductions and thresholds

Question 10: Should deductions feature in any new mineral royalty scheme? If so, why and what should they be?

23. Deductions should be transparent and monitored closely to prevent abuse or excessive reduction of royalty payments.

Question 11: Should thresholds be included? If so, why and at what level?

24. If a mine is not profitable, it is likely due to factors such as inefficient extraction methods or an unsuitable location. It would be counterproductive to provide financial protection for such operations through a threshold, at the expense of other more viable and profitable mining projects.
25. The notion of including a threshold in the mining royalty to accommodate small-scale or unprofitable mines should be rejected. Instead, it is essential to prioritize responsible and

sustainable mining practices that focus on maximizing profitability while minimizing environmental impact and safeguarding the well-being of local communities.

Question 12: Should a standard threshold apply to all minerals regardless of type, or should specific minerals have their own thresholds, and if so for which, and why?

26. The Land Councils reject the inclusion of any thresholds in a royalty regime as these encourage inefficient unprofitable mines and distort the market. If despite these good reasons for not having thresholds, the NT is considering their inclusion, a standard threshold that applies to all minerals is preferable. Mining development and performance responses to a composite formula of different factors such as technology, geology, price of the commodities, or financial formula, among other important considerations. The implementation of thresholds to specific minerals is an ineffective approach to ensure that the tax burden is accurately aligned with each mineral's performance.
27. One of the main arguments used by the Taskforce to justify a new royalty scheme was the accounting complexity of the current profit-base regime. Incorporating different threshold rates would significantly add to complexity.

Question 13: Are there other factors that you believe should be considered when determining deduction and threshold settings?

28. An ad valorem mining royalty scheme should not consider deductions or threshold by type of minerals.

Question 14: What factors should be taken into account by government when considering the appropriateness or application of these options?

29. Ad valorem mining royalty should not consider deductions or threshold by type of minerals. Factors requiring consideration:
    - Market distortion: if deductions or thresholds are allowed, miners have an incentive to focus on producing minerals that qualify for the deductions or thresholds, even if those minerals are not as valuable as other minerals. This distorts the market and leads to inefficient allocation of resources.
    - Additional administrative complexity: it is difficult to define and enforce deductions and thresholds for different types of minerals.
    - Unfairness within industry: mining projects would be treated differently depending on the type of mineral they produce. This could lead to the disincentivising of mining investment.
    - Reduction of NTG and community revenue: if deductions or thresholds were allowed, the NTG would collect less revenue from mining royalties.

Question 15: If considered appropriate, how many years should a lower rate or repayment holiday apply for and why? What considerations are important in deciding the length of time?

30. See discussion at section 5.4. above. There are several reasons why it is not appropriate to consider a lower rate or repayment holiday for mining royalty ad valorem:
    - It would reduce community revenues and could set a bad precedent.
    - If the NTG was to grant a lower royalty rate or a repayment holiday to miners, it would be more likely to do so in the future, thus leading to a situation where the NTG is

constantly granting concessions to miners. This could ultimately undermine the royalty system and its essential aims.

Question 16: If early year royalty discounts are considered appropriate, what should government consider in deciding how much the royalty rate is to be lowered in the early years?

31. The Land Councils do not consider early year royalty discounts appropriate. In the event that the NTG is to consider discounts, some of the factors that the NTG should consider in deciding and assessing how much the royalty rate should be lowered in the early years of mining activities are the following:
    - Cost: The NTG should consider a comprehensive evaluation of the upfront costs of the mining project, such as the cost of exploration, drilling, and development.
    - Lifespan of the mining project: The NTG should consider the expected lifespan of the mining project. If the project is expected to be short-lived, the NTG may be less willing to lower the royalty rate in the early years.
    - Risk assessment: If the project is risky (e.g., from an environmental perspective or community wellbeing), then the NTG may be less willing to lower the royalty rate in the early years. This is because of the greater environmental and social risks of the mine to the Territory, which may also mean that the miner may be less likely to be successful. In those circumstances the NTG may want to ensure a maximum royalty is paid.
    - The impact on community revenue. If the royalty rate is lowered in the early years, the NTG will collect less revenue in total from the project. The communities will need to weigh the potential benefits of lowering the royalty rate against the potential loss of revenue.

Question 17: If early year royalty discounts are considered appropriate, what benchmark would be appropriate for delayed royalty payments to be indexed to?

32. The Land Councils do not consider early year royalty discounts appropriate. In the event that the NTG is to consider discounts, the choice of benchmark will depend on the specific circumstances of the mining project. The NTG will need to consider the factors that are most important to it and the community, such as the miner's profitability, the volatility of the commodity market, and the need to ensure that the NTG collects a fair amount of revenue.
33. The NTG could consider:
    - The price of the commodity. This is the most common benchmark used for delayed royalty payments. If the price of the commodity goes up, the miner will be able to afford to pay a higher royalty rate.
    - The cost of production. This benchmark can be used in cases where the commodity price is not a good indicator of the miner's profitability. For example, if the cost of production is high, the miner may not be able to afford to pay a high royalty rate even if the price of the commodity is high.
    - Hybrid approach. A combination of the price of the commodity and the cost of production. This approach can be used to consider both the miner's profitability and the volatility of the commodity market.

- The inflation rate. This benchmark is used to protect the NTG from inflation. The NTG could use the Consumer Price Index (CPI) or the Producer Price Index (PPI) to index delayed royalty payments. If the inflation rate increases, the NTG could collect more in royalties. If the inflation rate decreases, the NTG would collect less in royalties.
- A basket of minerals. The royalty rate could be indexed to a basket of minerals. This would mean that the royalty rate would be based on the average price of a basket of minerals. This would help to protect the NTG from fluctuations in the price of a single mineral.

Question 18: Should there be a limitation or a cap on the amount of royalty that can be delayed or discounted under a potential repayment holiday? What would be appropriate and why?

34. The Land Councils do not consider delays or discounts to be appropriate. In the event that the NTG is to consider some delays or discounts to be appropriate, it is necessary to establish certain limitations or a cap. Reasons include:
    - To protect NTG/community revenue.
    - To prevent unfair advantage. If some miners can delay or discount their royalty payments more than others, this could give them an unfair advantage. This could make it more difficult for new miners to enter the industry and could also lead to distortions in the market.
    - To ensure transparency and accountability. If there are no limitations or caps on the amount of royalty that can be delayed or discounted, it will be difficult to track and monitor royalty payments. This could lead to abuse of the system.
    - To avoid setting a bad precedent. If the NTG allows miners to delay or discount their royalty payments too much, it could set a bad precedent for future mining projects. This could make it more difficult for the NTG to collect royalties in the future.
    - Social conflicts and Social Licence to Operate. If communities feel that they are not getting a fair share of the benefits from mining, this could lead to social disruption.

Question 19: Are there other ways a royalty scheme can be designed to support a new mine, and what are they?

35. The Land Councils reject the notion that the royalty rate is likely to drive investment decisions, compared with the factors referred to at [10]. However, in addition to these factors, when designing a royalty scheme, the NTG should focus on:
    - Attracting the best mining companies with real financial capacity and commitment with the NT to invest in large-scale mining projects. These companies are also more likely to have the experience and expertise to operate mines in a safe and environmentally responsible manner.
    - Avoiding mining speculation. Speculation occurs when companies invest in mining projects with the expectation of making a quick profit, without a clear plan for extracting the minerals or selling them on the market (which is a common practise among junior exploration companies). This can lead to environmental damage and social disruption, as well as lost revenue for the NTG.
    - Guaranteeing social licence to operate. The NTG should demonstrate to local communities that it is committed to using mineral resources for the benefit of their

people. This would help to build trust between the NTG and communities and would make it more likely that mining companies would be granted a social licence to operate.
- Generating significant revenue that could be used to fund essential services such as education, healthcare, and infrastructure. It could also be used to invest in sustainable development projects, such as renewable energy and environmental and cultural protection.

Question 20: Should the new mineral royalty scheme provide a quantity-based royalty calculation for some mineral types such as extractives in those circumstances when they are subject to royalty?

36. A new ad valorem mineral royalty scheme should avoid a quantity-based royalty calculation, other than for extractive minerals.

4.3. Administration

Question 21: Are there reasons why administration of a new mineral royalty scheme should not come under the *Taxation Administration Act 2007* (TAA)?

37. Any proposal to move the administration of a new mineral royalty scheme to the TAA would require careful analysis from the point of view of the *Aboriginal Land Rights (Northern Territory) Act (ALRA)* and not only from the perspective of the *Mineral Royalties Act 1982* as the paper indicates. Before the Land Councils can answer this question the NTG should clarify its objectives and the exact meaning and intention of the term "administrative provisions."

Question 23: What payment and return frequencies should a new royalty scheme allow for - monthly, quarterly, six-monthly, annual? Under what circumstances should each of these payment periods apply?

38. Payment and return frequencies for a new royalty scheme should be based on the collection efficiency, administrative burden, and reporting capabilities of both the NTG and the mining companies. Monthly or quarterly payments could be appropriate for mining operations within the NT.

Question 24: Should payment and return periods be based on the quantum of royalties paid by mining companies, i.e., more frequent returns for large payers?

39. The quantum of royalty should not be a factor in determining payment frequency. Instead, a regular payment schedule should be established for all mining companies, regardless of size. This will ensure that the NTG can track the activities of these companies and ensure that they are complying with the law. It also mitigates risk of significant non-payments where mines are marginal or may become insolvent.
40. If this represents an excessive administrative burden for smaller mining companies, then they should not be operating. Mining companies should be able to comply with the law without requiring this (implicit) 'financial assistance' from the NTG.

ATTACHMENT 1 (Malthus Global Report)

Final Report ■ MG-FR-09-Aug2023

ANALYSIS OF THE NEW ROYALTY SCHEME PROPOSAL FOR THE NORTHERN TERRITORY

Prepared by MALTHUS GLOBAL for the Central Land Council (CLC) in the Northern Territory, Australia, as supplementary advice.

MALTHUS GLOBAL

Shaun OConnor
MANAGER - MINERAL AND ENERGY
Central Land Council
27 Stuart Highway, Alice Springs NT 0870

Subject: Response to Mineral Royalty Scheme Review Consultation Paper

Dear Shaun,

I am writing to you today to present our analysis and findings in response to the Mineral Royalty Scheme Review Consultation Paper. Our report examines different assumptions and perspectives that the government has utilized to advocate for the implementation of the new ad valorem scheme.

We also have critically evaluated the considerations of transitioning to the ad valorem scheme from the perspective of the benefits it offers to the Aboriginals Benefit Account (ABA).

We are confident that our findings and recommendations, based on our global experience providing strategic advice for the extractive industry, will serve as a valuable resource for further deliberations and policy decisions regarding the Mineral Royalty Scheme in the Northern Territory.

We would greatly appreciate the opportunity to present our report and engage in further discussions on its implications and potential recommendations.

Thank you for your time and consideration.

Sincerely,

Cristian Parra

Economist & Extractive Industry Advisor

MALTHUS GLOBAL

Contents

Tables

Figures

Summary

1. The Government of the Northern Territory is starting a policy discussion to replace the current profit-based system with a new ad valorem-based scheme. This new scheme should facilitate and promote future mining investment.

2. The Government established its points of view, conclusions and recommendations based on several factors:
   - Incomplete perceptions regarding the role of a royalty in terms of mining competitiveness and as an investment driver.
   - A limited analysis regarding future mining development scenarios for estimating royalty payments.
   - So far, limited participation of Aboriginal groups and other relevant affected stakeholders, which is a methodological issue and contradictory to the corporate values established by the mining companies.
   - Indicating that the current royalty system is complex in accounting and administration.

3. The NT government supports this policy initiative without presenting basic aspects to evaluate the potential new regime, such as objectives, equity and distributional impacts, economic impact at the NT level, and most importantly, the aim in terms of revenue generation.

4. The evaluation of the new ad valorem royalty scheme should include:
   - Mining scenarios for the period 2030–2050
   - Reviewing the relevant royalty regimes of other mining countries
   - Conducting a cost-benefit Analysis (CBA) and/or distributional analysis of the two options: Ad Valorem and Profit-based, to clearly identify future royalty payments by beneficiaries,
   - Development of an engagement plan for consultation with Aboriginal communities following FPIC recommendations and international best practises

Royalty negotiation and boundaries

5. In order to ensure fair royalties are paid to the ABA and to obtain certainty regarding future payments, the new proposal for an ad valorem royalty scheme should establish clear boundaries for the new royalty rate and its equivalent to the current rate of 20% in an early stage of this process. Setting boundaries provides a crucial starting point for conducting informed, meaningful, and respectful consultations with Aboriginal communities.

6. While future mining market dynamics could generate significant opportunities and challenges for the NT, it will be necessary to build a value proposition to ensure the transformation of these opportunities and challenges into development, socioeconomic progress, and prosperity.

7. A future royalty system should be negotiated between affected parties, including Land Councils and Aboriginal traditional owners. The parties should develop a tailored negotiation strategy based on international best practices.

About this Report

The Northern Territory Government aims to become a $40 billion economy by 2030 (Government, 2020) and recognises the mining sector as a key contributor to this growth. To accelerate investment in new mining projects and maximise the economic value of mineral resources, in November 2021, the Territory Government wants to introduce a reform of the Territory's mineral royalty scheme to replace the current profit-based system with an ad valorem-based scheme. Currently, the government seeks input from stakeholders to shape and improve the new royalty scheme.

This document directly responds to the **Mineral Royalty Scheme Review Consultation Paper** (Government, 2023) and analyses some of its assumptions and perspectives used by the government to promote the new ad valorem scheme. The report also analyses the convenience of the change from the point of view of the beneficiaries of the Aboriginals Benefit Account (ABA).

The report has been structured considering the following sections:

A. Will changing the royalty regime spur increased investment in the Territory?

B. What kind of regime is best for maximising royalties to the Territory, and therefore benefits to the ABA?

C. Consultation and due process

D. Analysis of assumptions and methodologies

E. Final Reflection

F. References

All tables and graphs presented in this document have been prepared by Malthus Global.

A. Will changing the royalty regime spur increased investment in the Territory?

The current Royalty Regime in the NT is assessed as uncompetitive and a deterrent to mining investment. As a result, the authorities seek to redesign and replace it with an ad valorem scheme. This argument also suggests that an ad valorem Royalty scheme is a driver of competitiveness and investment in the Territory, which will lead to increased investment. Considering the implications of this position, it is important to question and recall fundamental and conceptual considerations regarding the meaning of a Mining Royalty, its role as an investment driver, and the overall drivers for mining development in the Territory.

Mining investment and development are influenced by a wide range of factors and challenges, including technological, economic, social, and political. Additionally, mining companies need to build a strong value proposition to address these challenges. Thus, focusing solely on royalty reduction in this debate without a balanced and comprehensive evaluation of mining development drivers is biased. It could potentially mislead informed decisions made by authorities and mining stakeholders.

Furthermore, the proposed changes cannot be solely evaluated based on their potential positive implications for investment growth. It is necessary to analyse the potential negative impacts on the ABA.

This section also highlights other mechanisms that the Territory could utilise to spur investment.

A.1 Analysing competitiveness for mining development in the Territory.

It is important to highlight that mining competitiveness responds to different and diverse factors: mineral titles, access to land, regulatory reform, skill, and workforce, enabling infrastructure, social licence, and capital markets among others. It is necessary a comprehensive evaluation of these factors and how they are interconnected.

At the NT level, an analysis of the competitive factors should also consider mineral/geological resources; economic, social, and cultural characteristics of the NT; and ecosystem, environment, and sustainable landscape. At a national and global level, the analysis of competitiveness for mining development should also include: the tax framework; political and macroeconomic stability; global market dynamics, including prices and demand and supply growth; global industry best practices; and the quality and capacities of the mining operators, owners, and shareholders. (Dieppe et al., 2021) (Karadimitropoulou, 2018) (Rapp and Udoieva, 2018) (Bonatti, 2017) (Fernald, 2018) (2017) (Hannon, 2019)

If these factors are not analysed as a whole, they can easily generate biased and partial views among the stakeholders and mislead the design of public policies for mining development.

Table 1 Competitive factors that could be considered in the analysis (In general)

	Competitiveness factors
1	Regulatory regimes, legal framework for mining activities, mineral titles, access to land (from exploration to closure).
2	Labour force capacities and skills.
3	Domestic market of direct suppliers and services.
4	Domestic financial services and capital market
5	Productive and social infrastructure
6	Social Licence to operate
	Missing factors in the MDT Report
	■ Northen Territory
7	Mineral/geological resources
8	Economic, social, and cultural characteristics in NT and specially at local level.
11	Ecosystem, environmental and sustainable landscape.
	■ Other Factors
12	Tax framework
13	Political and macroeconomic stability.
14	Global market dynamics (prices)
15	Incorporation of global industry best practices.
16	Operator, owner and shareholders experience and capacities.
17	Technology and Innovation

A.2 ‘Can Mining Royalty reduction increase investment and spur mining development in the NT?

See section B.

A.3 Mechanisms to significantly increase and materialize mining investment.

A change in the royalty scheme does not ensure that mining investment will significantly increase in the NT. This could be a strategic mistake for the sector itself. It could also have a profound impact on the social licence to operate in the NT. As mentioned earlier, the competitiveness of the sector relies on multiple factors, and while each factor can be assessed individually, their interconnectedness must also be considered.

In this context, it is crucial to identify other mechanisms that could play a crucial role in attracting, promoting, and materialising investments in the mining industry in the NT.

Table 2 Common mechanisms to increase/promote and materialize mining investment.

1	Promoting NT as Mining destination	Governments can promote Australia as a mining destination by highlighting the country's strengths, such as its rich mineral resources, stable political environment, and low social conflicts.
2	Attract new investors and mining players.	This can be done through a variety of channels, such as trade missions, conferences, and online marketing.
2	Streamlined approval processes	Implement measures to simplify and expedite the approval processes for mining projects, reducing bureaucracy and administrative burdens while ensuring environmental and social compliance.
3	Stable regulatory framework	Create a stable and transparent regulatory environment that create confidence in investors by providing clear guidelines for mining operations, including permits, licenses, and approvals processes.
4	Infrastructure development:	Invest in infrastructure development, including roads, railways, ports, and energy supply, to facilitate efficient transportation and supply chains for mining operations, thereby reducing costs, and attracting investors.
6	Skills development:	Support the mining sector by investing in education and training programs to develop a skilled workforce, providing vocational training, and promoting collaboration between industry and educational institutions.
7	Research and development incentives:	Offer incentives or grants for research and development activities related to mining technologies, which can enhance the sector's productivity and competitiveness.
8	Exploration funding:	Allocate funding for geoscience research and exploration initiatives to identify new mineral resources and encourage exploration, enabling potential investors to understand the potential of untapped resources.

References: (Vasquez Cordano and Priale Zevallos, 2021) (Mazzocchini and Lucarelli, 2023) (Hodgkinson and Smith, 2021) (Ellis, 2018)

B. What kind of regime is best for maximising royalties to the Territory, and therefore benefits to the ABA?

B.1 Designing a new ad valorem mineral royalty scheme: What are the aims?

Although the government has clarified its intention to change the royalty scheme in the **Mineral Royalty Scheme Review-Consultation Paper**, the paper fails to provide a comprehensive evaluation of the proposed change's implications. It also lacks sufficient information to assess policy implications such as expectations of royalty payments, transparency, and efficiency.

During the design and implementation phases of a new mining royalty scheme, it is essential to evaluate its effectiveness and prevent unintended consequences. Table 6 presents some aspects that should be evaluated during the design process:

Table 3 Key general aspects to evaluate the new royalty scheme in NT

1	Objective	The first step is to clearly define the objectives of the new scheme. Is the aim to generate revenue, reduce the payment burden for mining companies, promote mining economic growth, or address specific social issues? By identifying the desired outcomes, policymakers can shape and evaluate the implementation process accordingly.
2	Equity and distributional impacts.	An essential aspect is assessing the fairness and equity of the proposed scheme. Is it progressive, and based on which criteria? Will it have or be expected to have regressive effects on aboriginal communities or other groups in the NT? Policymakers need to clearly present whether the new scheme could lead to increased income disparities among groups within the NT and evaluate the distributional impact of the new scheme. Policymakers must ensure that communities receive fair compensation for the extraction of valuable resources from their land.
3	Administrative feasibility	It is important to assess the administrative feasibility of the royalty scheme. Does the new royalty require the creation of a new administrative system, or can it be integrated into an existing framework? Determining the necessary resources, infrastructure, and compliance mechanisms is vital to ensuring efficient administration and minimising the risk of royalty evasion. It is not clear that the new scheme could reduce administrative complexities; this is something that should be properly evaluated.
4	Economic impact at NT level.	The new royalty scheme is presented as a core aspect to facilitate mining investment, development, and growth in the NT. It is important to know under which external scenarios and other internal conditions this could happen. Assessing the potential consequences for different sectors, industries, and business models is crucial to managing realistic expectations.
5	Revenue generation:	Finally, the expected revenue generation or losses from the new royalty regime should be assessed under different economic and social scenarios. It is important to evaluate whether the revenue generated or expected losses align with the desired outcomes and if they will contribute to ABA's income sustainability. We specifically suggest CBA analysis to evaluate future revenues.

References: (Sanders, 2016) (Pamela and Joselyn, 2020) (Barnes, 2009) (Conrad et al., 2018) (Akinseye and Cawood, 2021)

B.2 Comparative analysis of royalty return: Profit-based vs Ad Valorem

Both royalty schemes can be equally beneficial from the perspective of the amounts paid to the Northern Territory, and therefore the ABA. The current profit-based royalty, set at 20%, has an equivalent Ad Valorem rate. Therefore, it is crucial to know the proposed Ad Valorem rate under the new regime.

This analysis aims to compare the breakeven points of the proposed Ad Valorem scheme, providing a comparative assessment of which system may be more optimal.

Breakeven formula

Assuming a profit-based rate of 20%, it is possible to establish a breakeven formula that ensures equal royalty payments for both the ad valorem and profit-based royalty schemes. Alternatively, the breakeven formula can be used to determine the combination of the Ad Valorem Royalty Rate (R2) and mining deductions (D) expressed as a proportion of the mineral value, that would result in equal royalty payments to the current profit-based regime.

For instance, if the mining deductions are set at 50% (or 0.5) of the value of the mineral, the corresponding Ad Valorem royalty rate that would yield payments equivalent to a profit-based rate of 20% (PAV = PB) would be 10% or 0.1 calculated as (1-0.5) x 0.2.

The breakeven formula provides a reasonable starting point for evaluating the impacts of the proposed ad valorem scheme.

Mineral value = V
Profit-based Payment = PB
Profit-base Royalty rate = R1 = 20% = 0.2
Mining Deductions = D
Ad Valorem Payment = PAV
Ad Valorem Royalty rate = R2

Table 4 Breakeven formula for the Ad Valorem Royalty

AV Royalty Payment (PAV)	=	PB Royalty Payment (PB)
V x R2	=	(V – D) x R1

If V = 1 and R1 = 0.2, then the breakeven formula for Ad Valorem Royalty rate (R2) and deductions (D) is the following

R2	=	(1 – D) x 0.2

B.3 Equivalent Ad Valorem rate and Mining Deductions

Based on the breakeven formula R2 = (1-D) x 0.2, it is possible to identify which Ad Valorem Royalty rates are equivalent to the current profit-based rate, according to different levels of Mining Deductions.

In the example (Figure 1 and Table 8):

Point A:

If Mining Deductions are 50% of the mineral value, then the equivalent Ad Valorem royalty rate is 10% (equivalent to 20% of profit-based royalty).

Point B:

If Mining Deductions are 30% of the mineral value, then the equivalent Ad Valorem royalty rate is 14% (equivalent to 20% of profit-based royalty).

Point C:

If Mining Deductions are 80% of the mineral value, then the equivalent Ad Valorem royalty rate is 4% (equivalent to 20% of profit-based royalty).

Point D: A better scenario

If Mining Deductions are 70% of the mineral value, then the equivalent Ad Valorem royalty rate is 6% (equivalent to 20% of profit-based royalty), but if the applied Ad Valorem royalty rate is 12%, this represents a better scenario in terms of Royalty payments.

Point E: A worse scenario

If Mining Deductions are 40% of the mineral value, then the equivalent Ad Valorem royalty rate is 12% (equivalent to 20% of profit-based royalty), but if the applied Ad Valorem royalty rate is 5%, this represents a worse scenario in terms of Royalty payments.

Figure 1 Equivalent Ad Valorem Royalty Rates

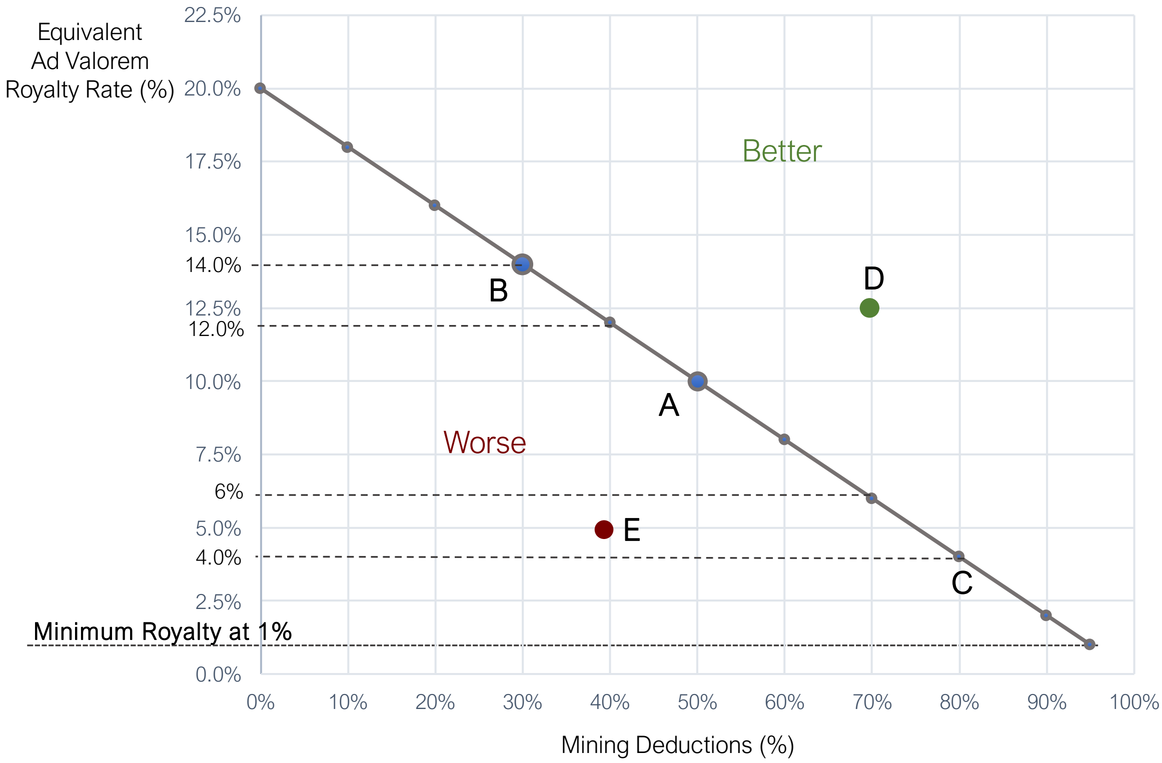

Table 5 Policy Scenarios – Comparative Analysis

	Profit-based Royalty Rate (%)	Mining Deductions	Ad Valorem Royalty Rate (%)	Royalty Payment	Policy Result
Point A	20%	50%	10%	PB = PAV	Equal
Point B	20%	30%	14%	PB = PAV	Equal
Point C	20%	80%	4%	PB = PAV	Equal
Point D	20%	70%	12.5%	PB < PAV	Better
Point E	20%	40%	5%	PB > PAV	Worse

B.4 Deduction and Tax Avoidance within the current profit-based scheme.

The current profit-based royalty regime creates a 'negative' incentive for mining companies to increase Deductions to avoid paying royalties (tax avoidance). It is expected that these Deductions will be predictable and related to the different phases of the mining operation's lifecycle. However, the reality is that the Deductions, despite they are set in the regulations, are unpredictable, which significantly impacts the beneficiaries of royalties.

The reason for this is that the Deductions not only consider operating expenses, but also deductions for amortization/depreciation of investments and capital expenditures, which may be related to the initial stages of exploration and construction, as well as sustaining investments for operational needs. As a result, the net value of a mining company used to calculate royalty payments is reduced regardless of the mining phase.

At a global level, it is also important to consider common mechanisms that help avoid royalty payments.

Table 6 Common mechanisms and strategies of royalty avoidance with the mining sector (Not necessarily for the Mining sector in the NT)

1	Transfer pricing.	This involves setting prices for goods and services exchanged between related companies in a way that minimizes the amount of royalties paid. For example, a mining company might set a high price for services provided by its parent company, which would reduce the amount of profit that is subject to royalties.
2	Thin capitalization and debt restructuring.	This involves using debt to finance a mining project, rather than equity. This can reduce the amount of royalties paid because interest payments are tax-deductible, while dividends are not.
3	Lease arrangements.	Mining companies can sometimes avoid royalties by leasing mining rights from a related company. This is because royalties are typically only paid on the profits from mining activities, not on the profits from leasing mining rights
4	Offshore financing.	Mining companies can sometimes avoid royalties by financing their operations through offshore companies. This is because royalties are typically only paid on profits that are earned in the country where the mining takes place.
5	Free-royalty periods	Mining companies can sometimes avoid royalties by using free-royalty periods.

It is important to note that these strategies are not always illegal, but they can be used to reduce the amount of royalties that are paid. The strategies listed above can be used in combination with each other. For example, a mining company might use transfer pricing, thin capitalization, and offshore financing to minimize its royalty payments. The use of these strategies can have a significant impact on the amount of royalties that are paid by mining companies. This can have a negative impact on the governments and communities of countries where mining takes place.

References: (Mikler et al., 2019) (Tresnawati and Indriani, 2021) (Sari et al., 2021) (Murdijaningsih et al., 2020) (Tett et al., 2019) (Imfblog, 2021)

B.5 Issues that cannot be solved by changing the royalty scheme.

A policy change in the current mining royalty regime could not *stimulate mining investments in the NT.* and a more comprehensive evaluation is necessary because the ad valorem regime could also involve administrative complexities.

Table 7 Issues that cannot be solved by changing the royalty scheme

1	Volatility and market uncertainty	Ad-valorem and profit royalties are calculated based on the value of the mineral extracted, which can fluctuate significantly over time. Both regimes are dependent on the market price of the mineral which is beyond the control of the mining company. This volatility is a common issue to predict and plan royalty payments.
2	Non mining/operational costs	Ad-valorem and profit royalties do not consider non-mining costs incurred by mining companies.
3	Regulatory complexity	Calculating ad-valorem and profit royalty requires accurate and up-to-date information on mineral prices. This complexity can lead to disputes between mining companies and governments over the correct calculation of royalties.
4	Royalty stability	Royalty rates can change over time as the government decides to modify the royalty rates. This is a common issue for both regimes.
5	Investment attractiveness and royalty as competitive advantage.	Both regimes should have the same impact in terms of investment attractiveness.

References: (Otto, 2006) (Hancock, 2000) (Translated by ContentEngine, 2021) (Menaldo, 2016) (Silvia et al., 2021) (De Valck et al., 2021)

B.6 Considerations/risks of an Ad Valorem Royalty

There are some potential negative effects that can arise because of the introduction of a new ad valorem mining royalty scheme. These include negatives effects due to free/holidays periods, progressive royalty rates, and if the result is an extremely low ad valorem rate.

Table 8 Considerations and Risks of an Ad Valorem Royalty

1	Free period	In some cases, mining companies are given a free period during which they are not required to pay any royalties. This can be a significant loss of revenue for governments and communities, especially if the mine is particularly profitable. This is a common argument without a solid justification.
2	Progressive royalty rates:	Some royalty schemes use a progressive rate, which means that the rate increases as the value of the minerals extracted increases. This can be beneficial for governments and communities in the long term, as it ensures that they receive a larger share of the profits from mining. However, it can also have a negative impact in the short term for governments and communities.
3	Low ad valorem rates	Ad valorem rates are often set very low, which means that governments and communities receive a small share of the profits from mining. This can have a significant negative impact on ABA.

It is important to be aware of the potential negative impacts. When negotiating and designing royalty arrangements, it is essential to ensure that the interests of local communities are protected.

References: (Translated by Content Engine, 2021) (Hilson, 2020) (Translated by Content Engine, 2022) (Gavidia, 2015) (Banda, 2019) (Hogan, 2012) (Jones et al., 2019)

B.7 Royalty rates of mining countries

The MDT Report presents a review of royalty rates in various mining jurisdictions, including Australia. Although it is important to conduct a comparative analysis, using countries like Germany, Ukraine, and Ireland as examples of mining to understand royalty regimes can lead to misleading conclusions and evaluations. Overall, the MDT Report fails to provide sufficient arguments to determine whether the current royalty regime is affecting the competitiveness of the mining sector in the NT.

A international benchmark and comparative analysis of different mining royalties should include traditional mining countries where mining activities contribute significantly to the GDP and exports and involve companies such as Rio Tinto, South 32, Glencore, and Newmont. While it may be relevant to understand different types of royalty regimes, the royalties should be analysed considering the context of each country.

Examples 1: Profit-based royalties

Chile, Canada, and Peru are three countries that use profit-based mining royalties. In Chile, the profit-based mining royalty is a combination of an ad valorem tax and an operating margin tax. The ad valorem tax is a fixed percentage of the value of the minerals extracted. The operating margin tax is a percentage of the operating profit of the mining company.

In Canada, the rates and basis of royalties' calculation and mining taxes vary depending upon the type of mineral and the jurisdiction and can be between 1% and 17%.

In Peru, the profit-based mining royalty is a sliding scale, with the rate increasing as the profits of the mining company increase. The royalty rate can top 12%.

Table 9 Profit based Royalty

	Chile	Canada	Peru
	Mining Operational Taxable Income	Gross Profits	Gross Profits
Copper	5% - 14%	1% - 17%	1%-12%
Gold	5% - 14%	1% - 17%	1%-12%
Iron Ore	5% - 14%	1% - 17%	1%-12%
Coal	5% - 14%	1% - 17%	1%-12%
Nickel	5% - 14%	1% - 17%	1%-12%
Lithium	5% - 14%	1% - 17%	1%-12%
Cobalt		1% - 17%	1%-12%

Example 2: Ad valorem royalties

Ad valorem royalty rates can vary significantly from country to country. In some countries, the rate is as low as 1%, while in other countries, it can be as high as 15% (Australia-Coal). The rate of the royalty is often based on a few factors, including social, political, the type of mineral being extracted, the size of the mining company, or the government's fiscal objectives among others.

For example, the Democratic Republic of the Congo (DRC) has an ad valorem royalty rate of 10% for cobalt. Australia also has a high ad valorem royalty rate, at 15% for Coal in QLD (and additional tiers for increments adjusted by price).

Table 10 Ad Valorem Royalty

APAC				
	Australia	PNG	Philippines	Mongolia
Copper	2.5% - 7.5%	2%	4%	5%
Gold	2.5% - 5%	2%	4%	2.5% - 5%
Iron Ore	2.5% - 7.5%		4%	5%
Coal	2.5% - 15%			2.5% - 5%
Nickel	2.5% - 5%	2%		
Lithium	2.5% - 5%			
Cobalt	2.5% - 5%			

Americas				
	Brazil	Mexico	USA	Colombia
Copper	2%	7.50%	2%-7%	4%
Gold	1.50%	0.5%-7%	2%-7%	3%-4%
Iron Ore	3.50%	7.50%	2%-7%	
Coal	2%	7.50%	2%-**12.8%**	**10%**
Nickel	2%	7.50%	2%-7%	4%
Lithium	2%	7.50%	2%-7%	
Cobalt	2%	7.50%	2%-7%	

Sub-Sharan Africa				
	Madagascar	Ghana	South Africa	DR Congo
Copper	2%	5%	0.5% - 5%-7%	3.50%
Gold	2%	5%	0.5%-5%	3.50%
Iron Ore	2%	5%	0.5% - 7%	1.00%
Coal	2%	5%	0.5% - 7%	
Nickel	2%		0.5% - 7%	
Lithium	2%		0.5% - 5%	
Cobalt	2%		0.5% - 5%/7%	**10%**

References: (PWC, 2020) (Jones et al., 2019) (Balde, 2020) (Jelenkovic and Tosovic, 2014) (2021) (Chen and Perry, 2015)

B.8 Royalty Rate Boundaries

The discussion surrounding royalty rates in the Northern Territory should be an opportunity to establish boundaries for the future scheme. Royalties serve as a significant source of income for government and for local Indigenous communities, and the new scheme should enhance their economic and social conditions and acknowledge the invaluable contributions made by Aboriginal groups.

To address these considerations and ensure that fair royalties are paid to the ABA, as well as obtain certainty regarding future payments, a new proposal for an ad valorem royalty scheme should establish clear boundaries. This includes defining the new royalty rate and its equivalent rate to the current profit-based rate of 20% in an early stage of the process. By establishing these boundaries, communities will have a better understanding of the new proposal and can more accurately evaluate the future payments generated from mining activities.

Moreover, boundaries clarification would empower Indigenous communities, providing them with the means to independently invest in social development projects or initiatives that benefit their overall well-being. It would create opportunities to foster economic growth, promote education, healthcare, and cultural initiatives. By having a say in their own economic future, these communities can break away from the cycle of dependency and establish sustainable and thriving local economies.

Additionally, setting boundaries provides a crucial platform for conducting informed, meaningful and respectful consultations with Aboriginal communities. It allows for open discussions and negotiations between resource companies and Indigenous groups. Importantly, it ensures that their voices and preferences are heard and respected. This approach fosters a more collaborative partnership between all parties involved and establishes a solid foundation for mutually beneficial agreements that extend beyond royalty payments.

B.9 Political context for mining activities

Mining activities are significantly influenced by the socioeconomic and political context surrounding projects. The quality of local public institutions, regulatory frameworks, resource governance, and the relationships between governments, companies, and civil society all greatly impact how investors assess risks and determine the price they are willing to pay.

Therefore, when evaluating mining investments, there is always a trade-off between socio-political risk and the level of tax or royalty that investors are willing to pay. Generally, higher socio-political risk results in lower tax or royalty payments. **Investors from mining jurisdictions with a low level of socio-political risk, on the other hand, are generally more willing to take on a higher level of tax or royalty.**

Obtaining a good estimation of the relative socio-political risks of a country can be done by examining various indices developed by independent research centres. Indices such as the Democracy Index and Corruption Perceptions Index provide a broad overview of the socio-political context. Alternatively, indexes such as the Resource Governance Index and the Survey of Mining Companies (Fraser) offer a more specific viewpoint from the perspective of the resource industry and mining sector.

Table 11 Considerations and Risks of an Ad Valorem Royalty

Index	Comment	Institution
Democracy Index (General)	The index includes 60 indicators to assess: pluralism, civil liberties, and political culture. The index categorizes each country into four regime types: full democracies, flawed democracies, hybrid regimes, and authoritarian regimes.	Economist Intelligent Unit
Corruption Perceptions Index (CPI) (General)[1]	Evaluate the public sector corruption, using expert assessments and opinion surveys.	Transparency International
Resource Governance Index (Resource Industry)[2]	The Resource Governance Index measures the quality of extractive industry governance in extractive economies around the world.	Natural Resource Governance Institute
Survey of Mining Companies (Resource Industry)[3]	Assess the perception regarding mining attractiveness, regulatory framework, taxation, and regulatory uncertainty.	Fraser Institute

References: (EIU, 2023) (Dashwood et al., 2022) (International, 2022) (Institute, 2022b) (Institute, 2022a, 2023)

[1] https://www.transparency.org/en/cpi/2022
[2] https://resourcegovernanceindex.org/
[3] https://www.fraserinstitute.org/studies/annual-survey-of-mining-companies-2021

Australia Socio-political position and Mining Activities.

Australia is one of the world's leading democracies, and the Democracy Index reaffirms its strong political position. The Index, devised by The Economist, ranks countries on a scale from 0 to 10 based on their electoral processes, political participation, and protection of civil liberties. Australia consistently scores high on this index, showcasing its deep commitment to democratic values. This political stability allows for a transparent decision-making process and a robust legal framework, forming a solid foundation for mining activities in the country.

In terms of governance and transparency, Australia's ranking on the Corruption Perceptions Index (CPI) is also noteworthy. The CPI, published by Transparency International, scores countries based on their perceived levels of public sector corruption. Australia consistently performs well, indicating a strong commitment to good governance in the mining sector. This translates into a fair and equitable regulatory environment, ensuring a level playing field for mining companies operating in the country.

The Resource Governance Index evaluates the quality of natural resource governance in countries, considering factors such as legal frameworks, safeguards, and accountability mechanisms. Australia's high scores on this index demonstrate its effective management of its abundant mineral resources. The country's regulatory framework ensures environmental protection, public consultation, and revenue management, mitigating potential negative impacts associated with mining activities.

The Survey of Mining Companies, commonly known as the Fraser Institute survey, provides insight into the mining industry's perception of a jurisdiction's attractiveness for investment. Australia consistently ranks among the top destinations for mining investment globally. The country's favourable scores on various aspects, such as political stability, regulatory environment, and mineral potential, reflect its political position that supports and encourages mining activities.

Overall, Australia's high rankings on the Democracy Index, Corruption Perceptions Index, Resource Governance Index, and the Fraser Institute survey highlight its favourable political position for mining activities. The country's strong democratic institutions, commitment to good governance, and effective management of mineral resources make it an attractive and reliable destination for mining investments.

Therefore, mining investors should be willing to pay higher royalties.

B.10 How the current regime could be better administered to reduce claims that it is 'complex'?

One of the arguments used to suggest a new royalty scheme are the accounting and administrative complexities of the current profit-based royalty. This argument makes no sense, given that mining companies are subject to use high level of accounting standards. It is relatively easy to identify those accounting items that can be considered as deductions and submit an audited report.

Table 12 Accounting standards and regulations for the mining sector in Australia

IAS 38 Intangible Assets	This standard specifies the accounting for intangible assets, including mineral rights
IAS 16 Property, Plant and Equipment	This standard specifies the accounting for property, plant, and equipment, including mine buildings and equipment
IAS 2 Inventories	This standard specifies the accounting for inventories, including mineral ore
IAS 37 Provisions	Contingent Liabilities and Contingent Assets - This standard specifies the accounting for provisions, contingent liabilities, and contingent assets, including environmental liabilities.
IAS 41 Agriculture	This standard specifies the accounting for agricultural assets, including agricultural land.
IFRS 6	Exploration and evaluation of minerals resources
Corporations Act 2001	This Act sets out the requirements for financial reporting by Australian companies.
Australian Accounting Standards Board (AASB)	The AASB is responsible for developing and issuing accounting standards in Australia
JORC Code	The JORC Code is a set of guidelines for the reporting of mineral resources and reserves.

These principles and standards provide a framework for accounting for the unique assets and liabilities of mining companies. By following these standards, mining companies can provide investors and other stakeholders with accurate and transparent information about their financial performance.

C. Consultation and due process

C.1 Adverse effects on the Aboriginals Benefit Account addressed through policies.

The consultation paper suggests that adverse effects on the Aboriginals Benefit Account (ABA) can be mitigated by implementing policy and administrative changes. However, such an approach may represent a significant risk for Aboriginal communities for several reasons.

Firstly, relying solely on policy and administrative changes may not address the underlying issues faced by Aboriginal communities. The ABA was established to distribute financial benefits from mining and resource extraction on Aboriginal lands. If adverse effects on the ABA arise, it indicates that the underlying resource extraction activities are posing risks to the communities. Without addressing the harmful impacts of resource extraction on Aboriginal lands, policy changes may not effectively mitigate the risks faced by these communities. Thus, a narrow focus on the ABA without broader consideration of the root causes of adverse effects could perpetuate negative issues that affect Aboriginal people and their lands.

Secondly, policy changes often require lengthy bureaucratic processes and political negotiations, which may delay or dilute any potential benefits for Aboriginal communities. The risk with relying on policy changes alone is that they may not be implemented promptly or may become compromised during the decision-making process. This could exacerbate existing issues affecting Aboriginal communities, whose socio-economic disadvantages and marginalization often require immediate attention. While policy and administrative changes may eventually lead to positive outcomes, the time taken to achieve such changes can negatively impact the communities' well-being and development.

Furthermore, policy and administrative changes may not guarantee equitable distribution or fair mechanisms for Aboriginal communities to access and control the ABA. Historically, Aboriginal communities have faced various challenges in accessing their share of resource revenue and determining how it should be used. Without careful considerations of the power dynamics at play, policy changes may not result in meaningful improvements for Aboriginal communities' autonomy and self-determination.

Overall, relying solely on policy and administrative changes to address adverse effects on the ABA may represent a risk for Aboriginal communities. It is essential to consider comprehensive solutions that acknowledge and address the underlying issues causing these adverse effects, while ensuring meaningful participation and equitable distribution of the ABA for the benefit of Aboriginal people.

References: (Sanders, 2016) (Barnes, 2009) (Pamela and Joselyn, 2020) (Altman and Levitus, 1999) (Ciaran O'F, 2007) (Altman, 1995) (O'Faircheallaigh, 1995) (Libby, 1989)

C.2 Mining Industry international best practices & Indigenous Communities

At a global level, the mining industry has extensively used different mechanisms, standards, or frameworks in the context of negotiations and engagement with indigenous communities. While there is no one-size-fits-all approach, and the best approach will vary depending on the specific circumstances. These mechanisms, standards, and frameworks can help to ensure that the engagement with indigenous communities is respectful, transparent, and effective.

In the context of a new royalty scheme and negotiation it will be relevant for government to develop an **engagement and negotiation strategy** based on these best practices to reflect: the cultural and historical significance of the land to the indigenous community; the potential economic impacts; the need for meaningful consultation and participation during the decision-making process; an objective and fair compensation; and adequate measures to mitigate the potential negative impacts.

References: (Hohmann and Weller, 2018)

Table 13 Best practices, mechanisms, standards, and framework (Mining & Indigenous Communities)

1	The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).[4]	The UNDRIP is a landmark international document that recognizes the rights of indigenous peoples to self-determination, land, culture, and development. The UNDRIP can be used as a framework for negotiations between indigenous communities and mining companies
2	The Voluntary Principles on Security and Human Rights[5]	The Voluntary Principles are a set of guidelines for companies on how to manage security risks in a way that respects human rights. The Voluntary Principles can be used by mining companies to ensure that their security arrangements do not violate the rights of indigenous communities
3	The International Finance Corporation's Performance Standards on Social and Environmental Sustainability	The Performance Standards are a set of guidelines for companies on how to manage social and environmental impacts. The Performance Standards can be used by mining companies to ensure that their operations do not have a negative impact on indigenous communities.
4	The Extractive Industries Transparency Initiative (EITI).[7]	The EITI is a global initiative that promotes transparency in the extractive industries. The EITI can be used by mining companies to ensure that they are accountable to indigenous communities and other stakeholders.
5	The Indigenous Peoples and Mining Protocol. (Canada). [8]	The Indigenous Peoples and Mining Protocol is a set of guidelines for companies on how to engage with indigenous communities in a way that respects their rights and interests. The Indigenous Peoples and Mining Protocol can be used by mining companies to ensure that their engagement with indigenous communities is meaningful and effective.
6	The International Council on Mining and Metals (ICMM).[9]	The ICMM is a global association of mining companies that has developed a set of voluntary principles on responsible mining. These principles include a commitment to respect the rights of indigenous peoples and to engage in free, prior, and informed consultation with them.
7	The International Council on Mining and Metals (ICMM). [10]	Indigenous Peoples and Mining: Good Practice Guide
8	The World Bank's Indigenous Peoples Safeguards[11]	The World Bank's Indigenous Peoples Safeguards are a set of guidelines that aim to ensure that the Bank's projects do not adversely impact indigenous peoples. The safeguards include a requirement for free, prior, and informed consultation with indigenous peoples.
9	The FPIC Toolkit[12]	The FPIC Toolkit is a resource developed by the UN. The toolkit provides guidance on how to implement free, prior, and informed consultation with indigenous peoples

[4] https://humanrights.gov.au/our-work/un-declaration-rights-indigenous-peoples-1
[5] https://www.voluntaryprinciples.org/
[6] https://www.ifc.org/en/types/insights-reports/2012/publications-handbook-pps
[7] https://eiti.org/
[8] https://mining.ca/
[9] https://www.icmm.com/en-gb/resources?q=&page=2&filter=22-guidance
[10] https://www.icmm.com/en-gb/guidance/social-performance/2015/indigenous-peoples-mining
[11] https://www.worldbank.org/en/topic/indigenouspeoples
[12] Free Prior and Informed Consent – An Indigenous Peoples' right and a good practice for local communities – FAO | United Nations For Indigenous Peoples

C.3 Frameworks and Guidelines in Australia (Aboriginal communities and Mining)

Australia has developed some guidelines for engagement between Aboriginal communities and Mining.

Table 14 Guidelines and framework in Australia (Mining & Indigenous Communities)

1	The Indigenous and Community Relationships Framework [13]	Minerals Council of Australia
2	The Guidelines for Effective Engagement with Indigenous Peoples	Australian Government Department of the Environment and Energy.
3	The Aboriginal Engagement Toolkit [14]	the University of Queensland

<u>Key elements of these frameworks</u>

1. The Indigenous and Community Relationships Framework (ICRF)

- Respect: Mining companies should respect the culture, traditions, and values of Aboriginal communities. This includes using culturally appropriate language and respecting cultural protocols.
- Transparency: Mining companies should be transparent about their plans and activities, and they should share information with Aboriginal communities clearly and understandable.
- Inclusivity: Mining companies should ensure that all members of Aboriginal communities can participate in engagement activities. This includes providing translation services and making accommodations for people with disabilities.
- Early engagement: Mining companies should engage with Aboriginal communities early in the planning process, so that their views can be considered and incorporated into the project design.
- Continuous engagement: Mining companies should engage with Aboriginal communities throughout the life of the project, so that they can continue to provide input and feedback.

[13] Stronger mining partnerships with First Nations communities - Minerals Council of Australia

[14] Good practice guide Indigenous peoples and mining - second edition - Centre for Social Responsibility in Mining (uq.edu.au)

2. The Guidelines for Effective Engagement with Indigenous Peoples

- **Start with a relationship-building approach.** This means taking the time to get to know Aboriginal communities and to build trust.
- **Be culturally sensitive.** This means understanding and respecting the culture and traditions of Aboriginal people.
- **Be transparent and accountable.** This means sharing information openly and honestly and being willing to answer questions.
- **Be inclusive.** This means ensuring that all members of Aboriginal communities can participate in engagement activities.
- **Be respectful of Aboriginal decision-making processes.** This means allowing Aboriginal communities to make their own decisions about how they want to be involved in the project.

3. The Aboriginal Engagement Toolkit

- **Understand the context.** This means understanding the cultural, historical, and political context of the Aboriginal community you are engaging with.
- **Build relationships.** This means taking the time to get to know the people in the community and to build trust.
- **Be respectful.** This means using culturally appropriate language and respecting cultural protocols.
- **Be transparent.** This means sharing information openly and honestly.
- **Be inclusive.** This means ensuring that all members of the community can participate in engagement activities.

C.4 FPIC as best practice

The FPIC frameworks (Free, Prior, and Informed Consent) have been developed by different institutions, organisations, and governments. The toolkit and guidelines developed provide guidance on how to implement consultation and engagement with indigenous peoples based on the principle that indigenous communities have the right to participate in decision-making processes that affect their lands, territories, and resources. The guidelines and toolkits also consider the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

Under the FPIC framework, the assessment of mining royalties would involve engaging with indigenous communities in a meaningful and informed manner. This includes conducting consultations and negotiations with community representatives to ensure their consent is obtained before any mining activities take place, working through appropriate institutional structures.

The assessment framework should consider the following key elements:

Table 15 FPIC Framework elements

1	Participation	Ensure the full and effective participation of indigenous communities in the assessment process. This should include consulting with community leaders, conducting community meetings, and involving key stakeholders.
2	Information sharing	Provide comprehensive and accessible information to indigenous communities on the potential impacts of mining royalties. This includes disclosure of benefits, risks, and mitigating measures related to royalties.
3	Informed decision-making	Ensure that indigenous communities have sufficient time and resources to understand the potential impacts of mining royalties and make informed decisions. This may involve providing legal, technical, and financial support to communities to effectively engage in decision-making processes.
4	Consent	Obtain the free, prior, and informed consent of the indigenous communities before implementing mining royalties. This consent should be based on a clear understanding of the potential impacts and benefits, as well as the rights and interests of the community.
5	Monitoring and accountability	Establish mechanisms for monitoring and evaluating the impacts of mining royalties on indigenous communities. This includes regular consultations, impact assessments, and the establishment of grievance redress mechanisms.

References: (Seck, 2016) (Hohmann and Weller, 2018)

C.5 Best practices for policy evaluation

Table 16 Issues that cannot be solved by changing the royalty scheme

1	Cost-Benefit Analysis (CBA):	CBA is a widely used framework that assesses the costs and benefits of a policy change to help determine its overall desirability. In the case of a tax regime change, CBA would analyse the potential costs of implementing the new tax system (such as administrative costs or compliance burdens) and compare them to the anticipated benefits (such as increased revenue or improved economic efficiency).
2	Distributional Analysis:	This framework focuses on the distributional effects of a policy change, specifically examining how it impacts different income groups or socioeconomic classes. In the context of a tax regime change, distributional analysis would assess whether the new tax system leads to increased inequality or if it redistributes wealth more equitably among different segments of society.

D. Analysis of assumptions and methodologies

D.1 Evaluation of Assumptions

In order to thoroughly evaluate the assumptions made, it is essential to gather additional information such as financial statements and mining scenarios. Without such information, it becomes challenging, if not impossible, to determine the validity of these affirmations and conclusions. There may be instances where these conclusions hold true, but only for a specific year or mining operation, thereby making them invalid for a longer duration or failing to represent the complete picture of the mining industry.

Obtaining financial statements and mining scenarios allows for a deeper understanding of the context in which these assumptions are being made. By analysing financial statements, important financial indicators such as revenue, profitability, and liquidity can be assessed, providing crucial insights into the financial health of the mining company and its royalty payments. Additionally, mining scenarios provide a comprehensive outlook on potential variables that may impact the royalty payments in the future.

This additional information enables a more accurate evaluation, contributing to a holistic understanding of whether the assumptions are justified or flawed. It allows us to determine if the conclusions derived from these assumptions hold true not only for a specific instance but also over a longer period, accurately representing the mining industry's overall situation.

Table 17 Evaluation of Assumptions

	Assumption in the MDT Report	Preliminary evaluation
1	Effective headline royalty rate of 6.5% to 13.1% (cumulative over 10 years). This is the highest in Australia, aside from the Queensland Government's step rate royalty for coal.	A comprehensive evaluation requires a meticulous examination of financial statements and mining scenarios to validate the assumptions made and ensure that the conclusions drawn accurately depict the reality of the mining industry.
2	Over 20% of pre-tax cashflows are paid in royalties, leaving less than 80% to repay capital, cover other taxes and generate a return to the owners of the capital (debt and equity). In comparison, most other Australian regimes result in between 10% to 12% of project-free cashflow going to royalties.	
3	Projects with a relatively long project life will pay more in royalties once the deduction on capital assets is exhausted, typically after 10 years.	
4	The Territory's scheme captures a significant share of upside value but maintains a minimum royalty when cashflows are weak.	
5	Although capital deduction is uplifted to recognise the cost of capital, benchmarking the deduction factors to the effective risk-free rate (the 10 year Australian Government security rate) plus 2% results in a deduction below the cost of capital for mining, particularly greenfield and small projects.	
6	Investors view the current system as complex and extremely high risk. This is a deterrent to investment occurring compared to other Australian and international jurisdictions.	Investors' views are not correct and are biased.

References: (Freebairn, 2015)

E. Final Reflection

The political narrative of large global mining companies, such as Newmont, Glencore, South32, and Rio Tinto, and the International Council on Mining and Metals (ICMM), focuses on concepts such as just transition, nature-based mining, and commitment to communities. These companies are actively promoting sustainable mining practices and striving to contribute positively to the areas in which they operate.

However, these endeavours (also linked to other globalist political narratives) seem to be at odds with the intentions to change the royalty scheme in the Northern Territory (NT). The proposed changes clearly aim to reduce royalty payments, which could potentially hinder the intention of mining companies to fulfill their commitments to sustainable practices and community development. This misalignment between the political narrative and the proposed royalty changes raises concerns about the long-term impact on both the mining industry and the local communities.

To ensure that the interests of communities are served, it is essential to establish a shared vision and value proposition for mining development. While large global companies have the financial resources and expertise to drive mining operations, it is crucial that the benefits generated by these activities are distributed equitably among the communities affected. This means that the opportunities created by the dynamics of markets (critical minerals and energy demands) should not solely benefit the mining companies but also contribute to the prosperity of the local communities.

One of the key components to achieving this shared vision is the implementation of best practices within the mining industry. Mining value propositions should go beyond solely maximising profits (and reducing royalty payments) and include considerations for social and environmental sustainability. By prioritising responsible mining practices, companies can minimise their negative effects and contribute positively to the development of surrounding communities.

Furthermore, it is imperative to ensure that Aboriginal communities, who have a deep historical and cultural connection to the land, are actively engaged in the decision-making processes regarding the new royalty scheme. Their input and perspectives must be valued and considered a core part of any discussions regarding the future of the mining industry in the NT. By integrating the interests of Aboriginal communities into the decision-making processes, it is possible to foster a more inclusive and fair system that benefits all parties involved. It is also possible to mitigate social licence risk associated with reform.

In conclusion, while large global mining companies promote a political narrative that emphasises sustainable practices and community commitment, the proposed changes to the royalty scheme in the NT raise concerns about the ability of these companies to uphold their commitments. To align the interests of mining companies and communities, a shared vision and value proposition are necessary. By implementing best practices, considering mining value propositions, and actively engaging Aboriginal communities, it is possible to create a more inclusive system that ensures the prosperity of the NT and its Aboriginal communities. It is crucial for all stakeholders to come together and work towards a common goal of sustainable and responsible mining practices that benefit both the companies and the communities they operate in.

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