



Level 4, 345 King William Street
Adelaide, South Australia 5000
Telephone 08 8110 2800
Telephone Freecall 1800 010 360
Facsimile 08 8110 2811
Facsimile Freecall 1800 010 370
Website www.nativetitlesa.org

BY EMAIL: native.title@ag.gov.au

Submission

Exposure Draft: Proposed Amendments to the *Native Title Act 1993*

South Australian Native Title Services Ltd (SANTS) generally supports the proposed amendments to the *Native Title Act 1993* (the Act). However, as the sole company performing all of the functions of a representative Aboriginal/Torres Strait Islander body in respect of South Australia it is incumbent on us to relay our concerns about aspects of the proposed amendments and the impact, or lack of impact, on native title holders and those who may hold native title in South Australia. Indeed, whilst we acknowledge your strategy to improve agreement making and claim resolution it is not certain that these amendments will achieve that strategy in South Australia.

‘Good faith’ and associated amendments under the ‘right to negotiate’ provisions

As you are aware in relation to exploration and mining in South Australia our clients are subject to an alternative right to negotiate regime pursuant to Part 9B of the *Mining Act 1971* (SA). We have previously addressed your Government on our concerns with this regime and we will again be writing separately on those issues.

Whilst we support amendments clarifying the meaning of good faith and extending the time from six to eight months until a party may seek a determination from the NNTT, this will not apply to exploration and mining in South Australia. Our regime created and has maintained an overwhelming inequity in bargaining power between the industry and Aboriginal people and is not conducive to improving agreement making or sustainable outcomes. In relation to the extension of the timeframe we wish to bring to your attention that in South Australia under Part 9B we have only a four month period before a proponent can seek a determination from the Environment, Resources and Development Court. In effect, in South Australia we will have four months less to negotiate in relation to exploration agreements and two months less in relation to mining agreements. We urge the Government to ensure that these amendments are implemented in South Australia by amending Part 9B to ensure consistency between it and the Act.

We are hopeful that we will at some point in time have the benefit of these amendments so also adopt the submission of the NNTC in relation to these amendments and in particular their submission in relation to s36(2).

Historical extinguishment

SANTS generally supports the proposed amendment and notes that it could be applied across many parks and reserves in South Australia.

However, we are very concerned that like the amendments above our clients may not see the benefit of such an amendment in South Australia. This is because the amendment as drafted requires that there is agreement in writing by our Government and our clients. We note that similar beneficial provisions in ss. 47, 47A and 47B do not require such agreement. It is our concern at this time that the State of South Australia will not agree to disregard prior extinguishment over areas that are prospective for exploration and mining (including petroleum exploration and mining). Some claims in South Australia have large tracts of country that are currently parks and reserves subject to historical extinguishment (see, for example, the Far West Coast native title claim). Clearly it would be beneficial for our clients to be able to rely on the proposed amendment. However, if the State were not amenable to agreeing to apply s47C because the right to negotiate would then apply it may well result in making it more difficult to achieve claim resolution, leading to litigation in some circumstances.

We submit that the legislation should not require agreement from the State to apply and that if made out must be disregarded.

It is also our strong preference that this amendment should not be restricted to parks and reserves but should also apply to all Crown Land. Our experience in recent consent determinations in South Australia has demonstrated the utility in being able to disregard historical extinguishment across the pastoral estate and strongly believe that this would provide more certainty to all parties if this was legislated. What we have now in effect are small portions of pastoral leases not subject to native title with the remainder determined. This will we believe create uncertainty on the ground for all users of that land as to whether an area is subject to native title or not.

Indigenous Land Use Agreements

SANTS supports the amendments to provide a process for minor ILUA amendments, the amendments to s24BC and the amendments targeting authorisation and registration processes. In South Australia at this time all ILUAs registered have been certified by our organisation or our predecessor so this would prove beneficial to SANTS and our clients whilst still maintain procedural fairness for those who do wish to object.