REFORMS TO THE *NATIVE TITLE ACT* – Options Paper, November 2017

ASSOCIATION OF MINING AND EXPLORATION COMPANIES

February 2018

AMEC response to Specific Questions

Question No	Option Paper Question	AMEC Response
1.	Should the Act be amended to confirm the validity of section 31 agreements made prior to the McGlade decision?	Yes, and the future acts done under them.
2.	What should be the role of the applicant in future section 31 agreements? Which of the three options, if any, do you prefer?	Option 3 on the following basis: • a majority of the members of the applicant to be sufficient to enter into section 31 agreements, unless the claim group specifically decides that a majority is not sufficient to enter into this type of agreement; • if claim group decides a majority is not sufficient, this needs to be shown on the public record (see further below); and • an additional statutory authorisation process is not supported as this will increase costs and cause delays.
3.	Do you support the proposals to:	
	(a) allow claim group members to define the scope of the authority of the applicant,	Yes if: • scope of authority is 'registered' and publicly available; • process for groups to change scope of authority is clarified, which AMEC suggests would require authorisation by the claim group (and potentially Court orders) but should not require the claim itself to be amended; • changes to scope of authority can only take effect when the 'registered' scope of authority is amended - except in limited circumstances such as where a member of the Applicant passes away and the remaining living members are automatically empowered to act (see further A3); and • reforms include protections for third parties entering into agreements with an Applicant, in particular: ○ introduction of an assumption similar to that applying in the post-determination context

		by reason of Division 104 of the CATSI Act; and ○ confirmation that an agreement executed by the Applicant in accordance with the scope of authority is executed on behalf of and will bind all members of the native title claim group. See further comments in attachment A1.
	(b) clarify that an applicant can act by majority unless the claim group specifies otherwise,	Yes, again so long as the scope of authority for any claim group which 'opts out' of the standard (acting by majority) is shown on the public record, and where that public record can be relied upon by third parties. See further comments at attachment A2.
	(c) allow the composition of the applicant to be changed without going through a section 66B reauthorisation process in prescribed circumstances, and/or	See further comments in attachment A.
	(d) impose a statutory duty on the members of the applicant to avoid obtaining a benefit at the expense of native title holders?	See further comments in attachment A.
4.	Do you support the creation of an alternative agreement-making mechanism? If so, what limitations would you seek to have applied to such an agreement? Alternatively, does the native title system currently allow for adequate flexibility in agreement-making? Are there better ways to achieve the objectives of increasing flexibility in agreement-making and reducing transaction costs can be achieved (for example, through the COAG Investigation recommendations outlined in Attachment B)?	See comments in attachment B1.
5.	Do you support the proposals set out in Attachment C to streamline existing agreement existing processes?	See comments in attachment C.

6.	(a) Should there be a Register of 31 agreements? (b) Should ILUAs – and other agreements made under the Act – be publicly accessible?	AMEC does not object to the establishment of a register of s31 agreements if only limited details of the agreements are provided - eg. date, parties and future acts covered. The disclosure of the whole of a s31 deed is more problematic. Although s31 deeds are generally in a standard form, different versions have been applied in different periods of time, there remains an argument that disclosing them could affect the commerciality of a project. AMEC strongly opposes reform requiring broad disclosure of ILUAs and other agreements (eg. agreements ancillary to section 31 agreements). These types of agreements reflect negotiated outcomes which are not intended to become 'precedents'. Requiring disclosure is likely to give rise to a much more cautious approach to agreement-making by proponents, to discourage creative solutions, and to discourage agreement-making at all where an alternative process is available. If only certain types of agreements are to be disclosed (eg. ILUAs), parties are likely to develop a standard form for disclosure while retaining all the negotiated terms in a side agreement, which increases transaction costs and does not assist transparency. These arguments also apply to section 31 agreements if the State will no longer be required to be a party (see attachment C8). Redaction of commercially sensitive aspects of an agreement before it is to be disclosed will increase transaction costs and is likely to result in redaction of such large portions of the agreement that its disclosure (as opposed to registration of limited details) is not very useful.

7.	Should the Act and the PBC Regulations be amended to allow native title claim groups and native title holders to determine their decision-making processes, rather than mandating the use of traditional decision-making where such a traditional process exists?	AMEC has no objections to this proposal.
8.	Do you support the proposed amendments detailed in Attachment E to improve the efficiency and effectiveness of claims resolution?	See comments in attachment E.
9.	Do you support the proposed amendments in Attachment F to address post-determination native title related disputation ?	See comments in attachment F.

Detailed responses to Options Paper and Attachments

Attachment A – the Applicant (and authorisation)

#	Proposal/recommendation	Source(s)	Further detail	AMEC response
A1	The Native Title Act should be amended to clarify that the claim group may define the scope of the authority of the applicant.	ALRC Report, Rec 10.5.	*Current practice* Section 62A provides that, once authorised, the applicant may deal with all matters arising under the Act to deal with an application. According to the Explanatory Memorandum the provision 'ensures that all those who deal with the applicant in relation to matters arising under the NTA can be assured that the applicant is authorised to do so'. In practice, however, some groups include in their authorisation specific directions or constraints on the applicant's authority. Consequently, the extent of the authority of the applicant may not be clear to stakeholders. The legal status of these directions or constraints is also unclear. *Benefits of proposal* The proposal would allow the native title claim group to define the scope of the authority of the applicant in conducting the claim and confirm the status of such directions.	AMEC supports the proposal to allow claim groups to define the scope of authority of the applicant subject to the following: • scope of authority to be 'registered' and publicly available - eg. submitted to the Federal Court as part of the Form 1 and then shown on the Register Extract or Application Summary which can be downloaded from NNTT's website - also see G6; • process for groups to change scope of authority to be clarified, which AMEC suggests would require authorisation by the claim group (and potentially Court orders) but should not require the claim itself to be amended; • changes to scope of authority only take effect when the 'registered' scope of authority is amended - except in limited circumstances such as where a member of the Applicant passes away and the remaining living members are automatically empowered to act (see further A3); and • reforms include protections for third parties entering into agreements with an Applicant, in particular: ○ introduction of an assumption similar to that applying in the post-determination context by reason of Division 104 of the *CATSI Act* - i.e. a person should be able to assume that that an agreement executed by the Applicant (eg. where signed by a majority of members of the Applicant signing where group has not specified that Applicant cannot act by majority - see further A2) has been duly executed by the Applicant in accordance with scope of authority and does not breach fiduciary or other duties as Applicant (see further A3), and the Applicant/claim group should not be entitled to assert to the contrary in any proceedings; and ○ confirmation that an agreement executed by the Applicant in accordance with its scope of authority is executed on behalf of and will bind all members of the native title claim group. This will also help align pre and post determination agreement-making. These comments and the suggested third party protections relate to the scope of authority of the Applicant in conducting the claim, dealing with all

				other matters arising under the NTA and in otherwise contracting on behalf of the claim group (see below). AMEC seeks that the reforms clarify that the scope of authority of an Applicant to contract on behalf of the relevant claim group extend beyond "matters arising under" the NTA. For example, in WA and some other States, agreements providing for heritage processes to ensure compliance with both State and Commonwealth heritage legislation are typically entered into with the Applicant in respect of a claim on behalf of the broader native title claim group, notwithstanding these agreements arguably do not "deal with matters arising under" the NTA as mentioned in s62A. Without this clarification, the parties to such agreements need to rely on the common law principles of agency, and it is unclear whether those principles apply to agreements (other than ILUAs and section 31 agreements) made with a claim group. This is because a claim group can be characterised as an 'unincorporated association' whose membership fluctuates over time. Further consideration may need to be given to the distinction between the 'scope' of authority of an Applicant as opposed to the 'terms' of authority of an Applicant. We understand the scope of an Applicant's authority to be the things which the Applicant is empowered to do on behalf of the claim group. The terms of an Applicant's authority may include processes with which the Applicant is obliged to comply before it can exercise certain powers - eg. the Applicant may be required to consult with a working group or a certain sub-group of the claim group before entering into agreements in relation to some types of future acts or in relation to some areas. The *terms* of an Applicant's authority are more appropriately matters for the claim group's internal governance - if there are protections such as set out above which entitle a third party to rely on an Applicant's execution of an agreement.

A2	The Native Title Act should be amended to provide that the applicant may act by majority, unless the terms of the authorisation provide otherwise.	ALRC Report, Rec 10.6 COAG Investigation, Table 1, Item 2	*Current practice* The Act currently requires the members of the applicant to act unanimously unless the terms of authorisation specify otherwise. Where members of an applicant cannot agree, the claim group must re-authorise a replacement applicant. This can be costly and time-consuming. Following the 2017 Amendments, the applicant for a registered native title claim can act by majority to enter into an area ILUA. The execution requirements for section 31 agreements are considered in the first part of this Options Paper, Section 31 agreements. *Benefits of proposal* This proposal would ensure that a claim can progress where single members of the applicant do not agree with a proposed course of action, but ensure that a claim group can maintain the requirement for unanimity if the group chooses to do so.	AMEC supports this proposal subject to the following: • where the claim group 'opts out' of the standard (i.e. decides Applicant cannot act by majority), this is shown on the public record - see further at A1; • reforms include protections for third parties entering into agreements with an Applicant, in particular the 2 protections suggested above; and • clarification of what is meant by 'majority' - eg. simple majority (50%+1), special majority (75%) or near-consensus (i.e. all in favour with only abstentions rather than opposition).
A3	Section 66B of the Native Title Act 1993 (Cth) should provide that, where a member of the applicant is no longer willing or able to perform the functions of the applicant, the remaining members of the applicant may: (a) continue to act without reauthorisation, unless the terms of the authorisation provide otherwise; and (b) apply to the Federal Court for an order that the remaining	ALRC Report, Rec 10.7	*Current practice* Currently, if a member of an applicant is no longer willing or able to continue in that role, a claim group must hold an authorisation meeting to authorise a replacement applicant. This can be costly and time-consuming and may be unnecessary in circumstances where the claim groups' authorisation is such that a further authorisation process is not required.	Support changing the composition of the applicant, where unwilling or unable, without a further authorisation being required for a limited period of time so as to avoid a situation of legal frustration, particularly if "succession plans" are not confirmed (see A4). However, again in the absence of any "succession plan", the 'new' Applicant should still be required to be authorised by the claim group within a 12 month period. Additionally, some clarity may be needed around the meaning and scope of 'no longer willing' – for example, in this circumstance will it require consent from the person to be removed (i.e, will they have to confirm that they are no longer willing to perform the functions of the applicant).

	members constitute the applicant.		*Benefits of proposal* The proposal would streamline authorisation requirements. As a safeguard, an order of the Federal Court confirming the new composition based on evidence (such as a death certificate, consent from the person to be removed, or evidence of incapacity) would be required for the change of composition to come into effect.	
A4	The authorisation of an applicant sometimes provides that if a particular member of the applicant becomes unwilling or unable to act, another specified person may take their place. Section 66B of the Native Title Act 1993 (Cth) should provide that, in this circumstance, the applicant may apply to the Federal Court for an order that the member be replaced by the specified person, without requiring reauthorisation	ALRC Report, Rec 10.8	*Current practice* Sometimes an applicant consists of representatives of each of the different family groups or clans that make up a claim group. Some claim groups have developed succession plans for circumstances where a representative is unwilling or unable to continue to act as a member of the applicant. *Benefits of proposal* The proposal would give legal status to the succession plans of claim groups without the need for a re-authorisation meeting under s 66B.	AMEC supports this proposal subject to the following: • the successor / succession plan needs to be shown on the public record - similar to comments at A1; • clarification of when a member of the Applicant becomes 'unwilling' or 'unable' to act; • reforms include protections for third parties entering into agreements with an Applicant, in particular the 2 protections suggested above, to enable reliance on both agreements made (1) with the former Applicant immediately before the making of the Federal Court orders and (2) with the replacement Applicant after the making of the Federal Court orders; • further consideration to be given to the interaction between the proposals at A3 and A4 - AMEC's view is that if a successor or succession plan is 'registered', unless the scope of authority specifies otherwise, the remaining members of the Applicant will still be automatically empowered to act in the interim period before the Federal Court orders replacing the Applicant are made.
A5	The Act should be amended to provide that a member of the applicant must not obtain an advantage of benefit at the expense of the common law holders.	ALRC Report, Rec 10.9 Taxation of Native Title and Traditional Owner Benefits and Governance Working Group, Report published 1 July 2013, Rec 4	*Current practice* It is not clear whether the common law fiduciary duty of the applicant is owed to the claim group (which may change from time to time) or to the native title holders as finally determined, or both. *Benefits of proposal* A statutory duty would avoid some of the difficulties associated with disputes between the applicant and claim group by making it clear	Note: the recent decision *Gebadi v Woosup* (No 2) [2017] FCA 1467 confirmed the Applicant does have a fiduciary relationship with the claim group so legal position is clearer than when the Options Paper was published and therefore the amendment may not be necessary.

		Creating Parity: The Forrest Review, Report published 1 August 2014, Rec 27.1	there is a duty between these two actors.	
A6	The amendments recommended regarding authorisation… should only apply to matters that come before the Court after the date of commencement of any amendment.	ALRC Report, Rec 12.2	This recommendation is to ensure that amendments to authorisation have prospective effect only, ensuring that disputes about authorisation cannot be re-opened after the law is changed.	Support.

Attachment B – Alternative agreement-making

	Proposal/recommendation	Source(s)	Further detail	AMEC response
B1	Consider options for allowing a PBC to enter into a contract, as opposed to an ILUA, about certain types of future act that would not require the PBC to consult with, and obtain the consent of the native title group.	COAG Investigation, Table 1, Item 16	*Current practice* Currently, PBCs are required to consult with native title holders, and obtain their consent, before entering into contracts. *Benefits of proposal* If this option was to be pursued, it may be limited to certain circumstances, i.e. where the native title holders are involved in the doing of the future act, or the types of future act that can be done under the mechanism. This would allow certain low risk activities to be carried out expeditiously within the bounds of native title holders' consent.	AMEC supports increased flexibility in agreement-making, reducing the delays and transaction costs of future acts. On this basis, AMEC supports the concept of a reform which enables: • some types of future acts to be validly done if agreed by the PBC under an ordinary agreement; and • allowing PBCs to change their rulebooks (in accordance with the usual requirements - eg. special resolution) to allow them to enter agreements or otherwise make 'native title decisions' as defined in the *Native Title (Prescribed Bodies Corporate) Regulations (**PBC Regulations**)* about some types of future acts without consulting with or obtaining the consent of the common law holders. This reform could reduce delays and transaction costs for AMEC's members if - for example - prospecting or exploration licences could be validly granted under an agreement between the PBC and proponent without needing to go through the authorisation and registration requirements of a Body Corporate ILUA, and (if the PBC's rulebook allows) without consultation with and consent of the common law holders. However, as the proposal is for such a process to be entirely voluntary, there is a risk it will rarely be used in practice. The potential benefits a PBC could obtain through these types of agreements about lower impact future acts may not be sufficient for a PBC to invest time and effort into the special resolution process to amend its rulebook. Similarly a proponent is likely to prefer seeking tenure through the expedited procedure or right to negotiate procedures rather than investing in a process the parties may not ultimately reach agreement, especially if the timeframes for the expedited procedure are truncated as proposed at G1. Further, due to the costs, delays and voluntary nature of an alternative agreement-making regime, AMEC does not support an alternative voluntary agree-making process as the sole alternative to ILUAs to validate the doing of low-impact future acts after a determination, and other minimal impact activities which otherwise fall into a 'gap' in the future act subdivisions. An alternative agreement-making process could even be akin to a 'right to negotiate', which would not be appropriate for these types of acts. To facilitate the valid doing of such acts, AMEC seeks amendments which provide that these acts can be validly done but accord the native title parties rights to be notified of the proposed act, to comment on the proposed act and

				to seek compensation for the impact of the act on native title - also see comments at B4. AMEC also does not support reforms which allow the disapplication of the protective 'consultation and consent' processes where the PBC is the proponent or is otherwise involved in the future act. This is because a decision by the directors of a PBC to pursue a project does not necessarily mean that the common law native title holders for the area have consented to the project and its impact on their rights and interests - the decision-making processes and personnel involved may be quite different. It will also be difficult to prevent non-indigenous proponents from forming a 'partnership' with a PBC to avoid obtaining the usual consents, or for PBCs to make alternative agreements for the purpose of assigning rights to conduct the project to a non-indigenous proponent. We also note that the 'consultation and consent' requirements can already be streamlined either through alternative consultation and consent processes set out in its rulebook (in accordance with Regulation 8A of the PBC Regulations) or by the native title holding group authorising their PBC to consent to a class of future acts (such as the grant of all prospecting and exploration tenements in the determination area where the proponent has entered a heritage agreement).
B3	Consider options for allowing a PBC to contract about future acts and compensation, including allowing a PBC to contract out of future acts and compensation provisions of the Native Title Act.	COAG Investigation, Table 2, Item 5	*Current practice* It is not currently open to PBCs to contract out of the future acts/compensation provisions of the Act. Parties can, however, enter into an ordinary contract which includes an agreement not to seek compensation under the Act. Such a contract can only bind the parties to the agreement. *Benefits of proposal* It may be desirable to allow PBCs to contract about a broader range of subject matter, including future acts and compensation. As the contract would be entered into	AMEC notes it is currently possible for PBCs to contract out of future act provisions under an ILUA, and understands the proposal is to allow PBCs to contract out of future act provisions under an ordinary agreement. AMEC supports the concept of this proposal, but notes the concerns identified at B1. Consideration should also be given to whether an agreement contracting out of a future act procedure will itself be a 'native title decision' (and therefore not subject the consultation and consent requirements of the PBC Regulations). If not, then alternative protections for native title holders should be inserted.

			by the PBC, it would bind all native title holders. Such a contract would need to balance the adequate protection of native title rights against any competing reasons for entering into the contract. Similarly to Item B1, similar restrictions could be included to require native title holders to preapprove the matters that a PBC can contract about.	
B4	Consider options for addressing the relationship between state and territory natural resource management activities and native title rights including amending section 24LA to permit the doing of low-impact future acts following a determination that native title exists.	COAG Investigation, Table 2, Item 6	*Current practice* After a native title determination is made, state and territory governments and proponents cannot rely on section 24LA and must enter into an ILUA in order to carry out activities which, pre-determination, would have been classified as "low impact" and did not require the consent of the native title claimants. *Benefits of proposal* Allowing low-impact future acts to occur on native title land after a determination would enable governments/proponents to carry out activities in a more flexible and efficient way. This would, however, need to be balanced against protecting the rights of native title holders to consent to activities on their land. An alternative agreement-making mechanism may also assist in addressing this issue	The limitations of section 24LA do not just impact the States' natural resource management activities - it also impacts various licences issued to third parties including mining and exploration companies. For example, licences under section 91 of the *Land Administration Act 1997* (WA) for the purposes of access or low impact feasibility studies are often issued on the basis that section 24LA applies, and are therefore expressed to end when a positive native title determination is made. Post-determination, it is not practical for proponents to seek to negotiate and register an ILUA. One issue is that the ILUA process is entirely voluntary (eg. there is no requirement to negotiate in good faith or at all, and no arbitral or other 'circuit breaker' process if the parties are unable to agree). An ILUA also involves significant financial and time investments by both the proponent and native title party which are not proportionate to the benefits either would obtain from reaching agreement. Proponents will therefore generally seek an alternative tenure which can be done under section 24MD(6B) or one of the other future act processes, but which ultimately permit greater impact on native title. However, as noted at B1, AMEC does not consider an alternative agreement-making process is the solution to this issue. Such a process would still involve significant costs and delays and could even be akin to a 'right to negotiate', which is not appropriate for low or minimal impact acts. AMEC supports an amendment to section 24LA to allow low-impact future acts to occur following a determination. (If this amendment is not ultimately adopted, at a minimum section 24LA should be extended to allow the conduct of low-impact acts post determination where the determined native title rights and interests are non-exclusive.)

			by lowering transactions costs associated with negotiating ILUAs for certain kinds of activities.	AMEC also supports the introduction of a new future act process for the valid conduct of low impact future acts post-determination which accords native title holders with procedural rights consistent with section 24HA (notification, opportunity to comment and rights to compensation). Any such process should also apply to other minimal impact future acts i.e. acts which involve a small amount of excavation or clearing but which would otherwise be low impact future acts.

Attachment C – Streamlining agreement-making

	Proposal	Source(s)	Further detail	AMEC response
C1	Allowing body corporate ILUAs to cover areas where native title has been extinguished.	COAG Investigation, Table 1, Item 14 Native Title Amendment Bill 2012, Schedule 3	*Current practice* Section 24BC provides that body corporate ILUAs can only be made if there are PBCs in relation to all of the ILUA area. It currently appears that PBCs cannot make body corporate ILUAs over areas where native title has been extinguished, on the basis that there is consequently no PBC in the area (even though compensation for extinguishment is one of the subject matters body corporate ILUAs can deal with under s 24BB). This means native title groups are required to enter into area ILUAs for areas where native title has been extinguished, which are more costly and time-consuming. *Benefits of proposal* Allowing body corporate ILUAs to include areas where native title has been extinguished in specific circumstances enables the wider use of such ILUAs and reduces transaction costs and registration timeframes.	Support.
C2	Allowing minor technical amendments to be made to ILUAs without requiring re-registration.	COAG Investigation, Table 1, Item 14 Native Title Amendment Bill 2012, Schedule 3	*Current practice* The Act makes no provision for amendments to ILUAs. Other than updating a party's address (see s 199B(4)), the Registrar has no power to amend the Register of ILUAs. Parties wishing to make amendments to an ILUA, while preserving its binding effect on native title holders who are not parties to the ILUA, may need to make a	Support.

			new application for registration of the amended ILUA. *Benefits of proposal* Parties are able in certain circumstances to make minor changes to an ILUA without a new registration process; the Registrar will have express power to amend the Register of ILUAs accordingly. This saves time and resources.	
C3	Removing the requirement that the Registrar give notice of an area ILUA if it was not satisfied the ILUA could be registered.	COAG Investigation, Table 1, Item 14 Native Title Amendment Bill 2012, Schedule 3	*Current practice* Section 24CH requires the Registrar to give notice of an area ILUA even if it does not meet the requirements of the Act to be registered. This imposes unnecessary compliance procedures and costs on the Registrar and may confuse stakeholders. *Benefits of proposal* Reduced compliance procedures where they are unnecessary in the circumstances.	Support.
C5	Amend the Native Title Act to ensure that the future acts regime applies to land and waters to which section 47B applies to disregard previous exclusive possession acts on vacant crown land.	COAG Investigation, Table 1, Item 12	*Current practice* There is uncertainty about whether the future act regime applies to acts on areas subject to a claimant application that relies on s 47B. If the requirements of s 47B are met, previous extinguishment over an area can be disregarded. Whether or not the requirements are met will only be known when the application is determined.	AMEC strongly opposes this proposal, which suggests that even where native title is being extinguished in an area, and ultimately a claim may be withdrawn or dismissed or s47B determined not to apply to an area, the lodgement and registration of that claim can force governments, proponents and native title claimants to comply with future act processes in the interim. There is not sufficient uncertainty about this issue to warrant such a significant amendment. It is a central concept of native title law that once native title in an area has been extinguished, it does not automatically spring back when the extinguishing tenure is removed. This is the difference between an extinguishing act and an act which is wholly inconsistent with native title but to which the non-extinguishment principle applies. The lodgement of a native title claim (essentially an application for declaratory

			Benefits of proposal Clarifies that s 47B has effect from the date of lodgement of an application. Dealings on the affected areas would have to comply with the future act regime in order to be valid.	orders of the Federal Court) does not change the legal or conceptual position. The position can be contrasted with where there is a positive determination of native title by the Federal Court which holds that going forward the historical extinguishment is disregarded - in this case respondent parties have had the opportunity to participation in the negotiations/mediations/litigation and the Court has made a decision after considering the evidence (including evidence of occupation) and often complex legal questions about whether the area was subject to a resumption process at the relevant time. AMEC's key practical concern is the significant additional transaction costs to proponents, government and native title parties in complying with future act processes in areas where native title has been extinguished and s47B is not ultimately applied. We note that s47B may not be ultimately applied for a number of reasons: eg. the relevant claim may be withdrawn or dismissed, the claimants may concede that s47B does not apply to the area or the Court may not be satisfied that the evidential or legal requirements of s47B are met for that area. In addition, native title claims do not usually particularise the areas to which s47B is said to apply when first lodged. The relevant areas are often only specified when a litigated claim nears trial on extinguishment issues, or once the parties have entered into negotiations on the terms of a consent determination and resources are allocated to precise mapping and historical tenure research and analysis. At this point, the parties to the claim may negotiate or enter mediation about s47B issues, and the claimant may concede that s47B does not apply to certain areas. In the interim, it is not practical for a proponent (or the claimants or the State) to undertake that level of research and analysis to identify precisely which areas are or may be claimed under s47B in order to determine whether future act processes apply. Further, this proposal may encourage 'ambit' claims made without proper research and formulation, in order to gain procedural rights in areas of historical extinguishment.
C6	Amend section 24EB of the Native Title Act to allow parties to an ILUA to agree that the ILUA does not provide compensation for a future act.	COAG Investigation, Table 1, Item 13	*Current practice* Section 24EB provides that native title holders within the area of an ILUA are not entitled to any compensation for an act done under the ILUA, other than compensation provided for in the ILUA itself. This process	Support, on the proviso that any amendment must ensure that if compensation is agreed in the ILUA then the current position remains that there cannot be a further claim for compensation post-dating execution (either prior to, or post-future acts)

			requires parties to settle compensation in the ILUA. Stakeholders have reported difficulties in quantifying compensation prior to the doing of the future act. *Benefits of proposal* Stakeholders are able to delay finalising compensation until after the agreement is made, and they have a better understanding of an appropriate compensation figure. This will also ensure that agreements are reached sooner, as there are fewer initial matters to resolve.	
C7	Consider amending section 199C of the Native Title Act to clarify that removal of details of an ILUA from the Register does not invalidate a future act that is the subject of the ILUA.	COAG Investigation, Table 2, Item 2	*Current practice* There is uncertainty about the effect of the removal of an ILUA from the Register of ILUAs on the future act that was the subject of the ILUA. In particular, whether the removal of an ILUA that validates a past act makes the act invalid. *Benefits of proposal* The clarification ensures that acts which were valid due to the operation of an ILUA at the time they were done remain valid even if the ILUA is removed from the Register.	Support.
C8	Consider amending section 30A of the Native Title Act so that Government parties are not required to be a party to a section 31 agreement (for	COAG Investigation, Table 1, Item 17	*Current practice* Section 30A defines the 'negotiation party' to a section 31 agreement as the grantee, the native title party and the	Amendment **not** supported. The State is the person doing the future act and therefore should not be relieved of its responsibility to negotiate in good faith about the effect of the act on registered native title rights and interests. This is particularly relevant in jurisdictions where the State adopts inflexibly applied policy positions such

	example, an agreement about mining).		government. Generally, parties negotiate two agreements: a section 31 deed between all negotiation parties which records the parties' consent to the doing of the future act and a private agreement between the native title party and the grantee recording their commercial arrangements. States and Territories consider that being a negotiation party imposes unnecessary costs and delays onto the negotiation process. *Benefits of proposal* It is proposed that section 31(b) is amended so that government can cease being a negotiation party with the consent of all parties. The government could, however, continue to be a negotiation party for the purposes of arbitration by the NNTT (s 35) where it generally plays an active role. This would result in reduced transaction costs for parties to s 31 agreements.	as the insistence on regional standard heritage agreements which significantly impact the negotiation environment.
C9	Consider options for amending the objection process created by section 24MD (6B), which applies to some compulsory acquisitions of native title and the creation or variation of a right to mine for the sole purpose of constructing an infrastructure facility.	COAG Investigation, Table 2, Item 4	*Current practice* Section 24MD(6B) provides procedural rights to registered native title claimants and native title holders, including the right to object to the doing of a future act. It is unclear whether government can proceed to do the act where an objection has been made but the native title party has not requested for the objection to be heard by an	Support.

			independent person or body for adjudication (s 24MD(6B)(f)). *Benefits of proposal* Clarifies that a future act can progress unless an objection is referred for adjudication, which ensures that the relevant future act can progress. It may be appropriate for a particular objections period to be imposed, after which the government can proceed to do the act; submissions are particularly sought on the appropriate length of such a period.	
C10	Consider options to encourage electronic transmission of notices including amending sections 29 and 6(1)(a) of Native Title (Notices) Determination 2011 (No 1) to provide that notices can always be transmitted electronically.	COAG Investigation, Table 2, Item 7	*Current practice* Section 29 requires that government must give notice to any registered native title body corporate/registered native title claimant (as applicable) affected by the proposed future act as well as the NTRB/SPs. In addition, unless there is a PBC, government must also publish a notice in a local and an Indigenous newspaper. *Benefits of proposal* It is proposed that the public notification process is modified by allowing summary notices to be published in newspapers which refer to comprehensive notices available online or the option of being sent in the mail a copy of the comprehensive notice. This proposal could apply to notices other than s 29 notices (e.g. notices under s 66).	Support.

			Taking advantage of digital communication method would result in reduced transaction costs and wider notification reach.	
C11	Amend section 251A to clarify who must authorise an ILUA as a person or persons who may hold native title, being a person or persons who can establish a prima facie case to hold native title.	Native Title Amendment Bill 2012, Schedule 3, Items 13-16.	*Current practice* Section 251A of the Act specifies the process for authorising area ILUAs. This provision limits access to this process to persons 'holding native title' within the area of the ILUA, which would mean that only individuals who could demonstrate that they held native title rights would be able to participate in the ILUA authorisation decision. Uncertainty around this provision also exists as a result of case law, which has created two conflicting precedents. In *QGC v Bygrave* [2011] FCA 1457, the court found that where an ILUA area falls within the area of a registered native title claim and an unregistered claim, the only people who are entitled to authorise the making of the ILUA are the registered claimants and not the unregistered claimants. However, *Kemp v Native Title Registrar* [2006] FCA 939 held that where the native title parties comprised more than one distinct group, all persons would have to authorise the ILUA, and would have to do so separately, provided their assertion of native	AMEC supports increased clarity, consistency and certainty in the application of the Native Title Act, and for this reason supports this proposal.

			title was more than ‘merely colourable’. *Benefits of proposal* Addresses a drafting oversight and removes the confusion created by case law and ensures that all persons with a claim to native title, whether registered or not, must consent to an ILUA before it can be registered, thus protecting all native title rights in the area.	

Attachment E – Claims resolution and process

	Proposal	Source(s)	Further detail	AMEC response
E4	Consider amending Part 2, Division 5 of the Native Title Act to allow a PBC to be the applicant on a compensation claim.	COAG Report, Table 1, Item 8	*Current practice* A PBC can only be the applicant for a compensation application if the claim is made over land and waters for which the corporation is the PBC. This is because PBCs only operate in relation to areas where native title has been determined to exist. Where native title has been extinguished and an entitlement to compensation arises, a PBC cannot bring a compensation application and the application has to be brought by authorised applicants instead. *Benefits of proposal* The proposal would allow native title holders to choose whether their compensation application is brought by the PBC or authorised applicants.	We note that adopting proposal G17 (allowing claims over areas the subject of previous exclusive possession acts) may reduce the need for this amendment. We also note this amendment may need to be made to section 61 rather than to Part 2, Division 5.
E5	Amend reg 3 (and reg 8) of the PBC Regulations to clarify that the decision to make a compensation application is a native title decision.	COAG Report, Table 1, Item 8	*Current practice* Currently the decision to bring a native title claimant application is not a native title decision as defined in reg 3 of the PBC Regulations which means the PBC, when deciding to make such an application, has no express obligation to consult with and seek the consent of the native title holders. *Benefits of proposal*	Support.

			The amendment would ensure that a decision to lodge a compensation application is treated in a similar way to other significant native title decisions, i.e. the common law holders of native title have a say in whether their PBC can bring a compensation application.	
E6	Introduce a new section into the Act allowing for historical extinguishment over areas of national, state or territory parks to be disregarded, where the parties agree, for the purposes of making a native title determination	NTAB12, Schedule 1, Items 1-15	*Current practice* The historical extinguishment provisions currently apply only where: - A pastoral lease which is partly or wholly held by members of the claim group exists over an area within the claim boundary - An area within the claim boundary is unallocated crown land, or - An area within the claim boundary is a reserve held on trust for the benefit of Indigenous people. *Benefits of proposal* By expanding the scope of the provisions, the historical extinguishment provisions will make more land available for positive determinations of native title.	AMEC is concerned with any unintended consequences of this proposed amendment, which could add further complexity and time to the determinations. This disregarding, even if by agreement, of historical legislation may have the effect of undermining the broader legislation and potentially encourage an increasing trend towards seeking to renegotiate existing land access agreements or include tenure that is extinguished.

Attachment F – Post-determination dispute management

	Proposal	Source	Further detail	AMEC response
F2	It is recommended that the *CATSI Act* be amended to provide a power for the Registrar to refuse to amend a PBC's rule book in circumstances where the amendment would result in the PBC no longer meeting the requirements of regulation 4(2) of the PBC Regulations.	COAG Report, Table 2, Item 10 and Technical review report recommendation 54 and State and Territories proposal	*Current practice* Membership criteria are set out in the rulebook. Membership does not have to be open to all common law holders, but has to be consistent with the native title determination. Currently the *CATSI Act* does not provide for a mechanism to ensure consistency. *Benefits of proposal* This amendment ensures that PBCs are not able to establish membership criteria to disenfranchise a section of the native title group.	Support this amendment. All persons who fit within the definition of native title holder, as defined in the relevant native title determination, should, as of right, be entitled to membership of their PBC.
F4	Remove the directors' discretion to refuse membership to a person who meets the PBCs membership criteria other than in exceptional circumstances	COAG Report, Table 2, Item 10 and State and Territories proposal	*Current practice* PBCs are the corporations established to represent the common law holders. Under the *CATSI Act*, PBC directors have discretion to refuse to accept a membership application by a common law holder, even if the eligibility requirements are met, thus having the power to arbitrarily exclude persons from PBCs. This gives rise to a large number of disputes. ORIC has no power to direct PBCs to accept eligible members. *Benefits of proposal*	Support.

	Proposal	Source	Further detail	AMEC response
			The benefit of the proposal would ensure that memberships are not refused arbitrarily when eligibility criteria are met and all persons who are entitled to membership and wish to become members of the PBC are accepted as members.	
F7	It is recommended that the *CATSI Act* be amended to require PBCs to set up and maintain: 1. a 'Register of Native Title Decisions'; and 2. a 'Register of Trust Money Directions'. It is recommended that the *CATSI Act* be amended to require the Register of Native Title Decisions to include copies of documents created to provide evidence of consultation and consent in accordance with the PBC Regulations. It is recommended that each of the Register of Native Title Decisions and the Register of Trust Money Directions be available for inspection by: 1. members; 2. common law holders. It is recommended that PBCs be required to provide an extract of the Register of Native Title	COAG Report, Table 2, Item 8 and Technical review report recommendations 55 - 59	*Current practice* The functions of PBCs under *the PBC Regulations* include: • to use native title monies as directed by the native title holders; and • to obtain consent of native title holders on decisions to do with native title. PBCs are currently not required to document how they have obtained the direction or consent of the native title holders. *Benefits of proposal* The proposals would increase transparency and accountability of PBCs. Native title holders and non-native title holders dealing with PBCs will benefit from the increased transparency of decision-making.	Support.

	Proposal	Source	Further detail	AMEC response
	Decisions or the Register of Trust Money Directions to any person having a 'substantial interest' (within the meaning of that phrase as used in the PBC Regulations) in the relevant decision. It is recommended that the Registrar should have the same powers in relation to the Register of Native Title Decisions and the Register of Trust Money Directions as in relation to the Register of Members (and the Register of Former Members).			
F8	It is recommended that the *CATSI Act* be amended to require PBCs to keep separate financial records and reports in relation to 'native title benefits' (as defined by the *Income Tax Assessment Act 1979* (Cth)) received by the PBC.	COAG Report, Table 2, Item 9 and Technical review report recommendation 62	*Current practice* There are no express requirements for PBCs to separately account for native title monies received, other than in accordance with applicable accounting standards. These funds are different from other moneys the PBC holds as they are beneficially owned by the native title group (i.e. not merely by the PBC).	Support.

Attachment G – State and territory proposals

This attachment sets out a number of reform proposals submitted to the Australian Government by states and territories for consideration. Stakeholder views on these proposals – and any others not canvassed by this paper – are invited.

	Proposal/recommendation	Further detail	AMEC Response
	Section 31 agreements		
G1	Shorten the objection period for acts which the government party considers attract the expedited procedure from 4 months to 35 days where the entire area affected by the act is subject to a native title determination.	*Current practice* Under s 32(3) a native title party has 4 months from the notification day to object to the government's application of the expedited procedure to an act notified under s 29(7). This period applies regardless of whether native title in relation to the area subject to the act has been fully determined.	AMEC strongly supports the proposal to shorten the objection period which the government party considers attract the expedited procedure from 4 months to 35 days after notification of the proposed future act. The current notification and objection period appears to be anomalous in a process specifically designed to be 'expedited'. The proposal will promote more timely outcomes. However, it will be necessary to ensure that frivolous and vexatious objections are minimised. Consideration should also be given to streamlining other periods under section 29 in cases where native title has been determined and there is a Prescribed Body Corporate.
G2	Amend section 29 so that a minor defect in the notification of the proposed act does not invalidate the notice if there is no detriment to the native title party.	*Current practice* *Narrier v State of Western Australia* [2016] FCA 1519 provides that notice defects may invalidate notice. Re-notification would be required.	This amendment may no longer be necessary given the *Narrier* decision on the relevant points was reversed on appeal to the Full Federal Court.
G3	Confirm that s 29 notices to identified parties may be made by email, and that public notice is able to be given online.	*Current practice* Notices under s 29 are currently to be given in writing to affected parties and published in a newspaper – see *Native Title (Notices) Determination 2011 (No 1)* [See also related reform proposal C10]	Support.
G4	Amend section 141(2) of the Act to clarify that parties to inquiries in relation to expedited procedure objection applications are the Government party, native title parties which have objected under s 32(3), and the grantee parties.	*Current practice* Section 141(2), which deals with inquiries in relation to 'right to negotiate application', only refers to the 'native title parties' as opposed to the 'native title parties that have objected under s 32(3)'.	Support.
G5	Amendments to ensure that any changes to the role of the registered	The potential effect of the *McGlade* decision on section 31 agreements also extends to	Support.

	native title claimant in making section 31 agreements also extend to the role of the registered native title claimant in making agreements under approved alternative schemes.	agreements made under alternative state regimes. A proposal which changes how s 31 agreements are made should be framed to capture agreements made under alternative state regimes.	In response to AMEC correspondence dated 30th March 2017, the Attorney General indicated that the Government would consider the need for future reforms of the *Native Title Act*. This followed passage of an Amendment Bill to remedy uncertainties created by the Full Federal Court decisions in relation to *McGlade* v Native Title Registrar & Ors (*McGlade* decision) and area ILUAs. AMEC expressed concern that the *McGlade* decision had resulted in significant angst amongst mining and mineral exploration companies which may have entered a range of 'Future Act' Agreements under section 31 of the *Native Title Act*. These include Agreements relating to such issues as compensation payments, training and employment opportunities, consents to acts or projects, and cultural heritage processes. These Agreements represent billions of dollars to Indigenous people Australia wide, particularly in Western Australia. The validity of these Agreements may now be open to legal challenge as a result of the *McGlade* decision. While *McGlade* dealt with a series of stated questions of law specifically addressing ILUAs and is therefore arguably not directly relevant with regard to section 31 agreements, the outcome is that the Court has determined **all** members of the 'registered native title claimant' must execute an ILUA if it can be considered a binding statutory Agreement under the Act. The *Native Title Amendment (Indigenous Land Use Agreement) Bill 2017* did not deal with the concerns raised in relation to s31 Agreements. AMEC is therefore fully supportive of appropriate amendments which urgently address the uncertainty as to the invalidity of existing and new section 31 agreements. In addition, amendments to the role of the registered native title claimant in making section 31 agreements should be framed to capture agreements about other categories of future acts which may be affected by *McGlade*. Some examples relevant to AMEC's members may be: • an agreement providing for the claimant's consent to (and their agreement not to object to) the grant of mining infrastructure tenure under s24MD; and • an agreement providing for the claimant's consent to (and their agreement not to make adverse comments about) the grant of water rights under s24HA. The amendments should also clarify that an application / registered native title claimants can contractually bind their native title claim group by entering into other agreements (eg. heritage agreements). As noted at A1, in WA and some other States, agreements providing for heritage processes to ensure compliance with both State and Commonwealth heritage legislation are usually

			made with the registered native title claim / applicant on behalf of the broader native title claim group, notwithstanding these agreements arguably do not "deal with matters arising under" the NTA as mentioned in s62A.
	The applicant (and authorisation)		
G6	Require any limitations on the Applicant's authority to be notified, e.g. on the Form 1. The other parties to the claim should be entitled to assume that the applicant has full authority unless and to the extent it is informed otherwise.	*Additional information* Would operate consistent with proposal A1.	Support. See comments at A1.
	Agreement-making and future acts		
G9	Clarify that section 24MD(3) (treatment of acts that pass the freehold test) applies to a compulsory acquisition of native title rights as if the taking of native title rights and grant of the new interest in land are the same act.	*Current practice* States and territories have asserted that there is uncertainty around whether the acquisition of native title rights and grant of new interests are two separate acts.	Support.
G10	Amend the definition of sections 24MD(6B) and 253 to expand the definition of 'waste facilities' to include rubbish tips and other waste disposal facilities.	*Current practice* Proponents of future acts are currently required to enter into ILUAs in order to build waste facilities for futures acts that ordinarily create waste.	Support. The related definition of "Infrastructure facility " at s253 should be further expanded to include: Accommodation facility
G12	Require RNTBCs to be bound by arrangements (e.g. ILUAs) negotiated prior to a determination, following a determination.	*Current practice* RNTBCs are currently not bound by area ILUAs post determination.	Support.
G14	Amend the Act to allow for the enactment of legislation by Western Australia which validates mining leases affected by the invalidity identified in *Forrest & Forrest Pty Ltd v Wilson & Ors* [2017] HCA 30.	The decision of *Forrest & Forrest* identified a flaw affecting the issue of a number of mining leases under Western Australian legislation. The Western Australian Government has requested an amendment to the Act to allow for Western Australian legislation which would validate the leases affected by this issue.	**Strongly support.** The Western Australian Government is proposing to urgently introduce legislation to confirm the validity of mining leases that have purported to be granted and whose validity might be affected by failure to have strictly complied with the requirements of the *Mining Act.* In that context, AMEC is extremely concerned that such validating legislation may be regarded as a new "future "act" under the *Native Title Act,*

			notwithstanding that the future act provisions of the *Native Title Act* were complied with at the time of the original purported grant. In order to remove any uncertainty and secure the validity of tenure granted in reliance upon that compliance, the *Native Title Act,* should be amended to allow for validating legislation by the State or Territories, where it is necessary to address technical compliance with State legislation, but where there has otherwise been compliance with the *Native Title Act.* AMEC wrote to the Attorney General on 8 December 2017 to alert him to our concerns and for the matter to be **urgently** dealt with. It would appear that the amendments to the *Native Title Act* necessary to address this issue would include provisions providing that where: (a) a future act consists in the making of legislation by a State or Territory (the "validating legislation"); (b) the validating legislation provides for the validation of past grants of a right to mine (or some other land tenure) (the "purported grant") in circumstances where there has been some non-compliance with the State legislation authorising that grant; and (c) the future act provisions of the *Native Title Act* were complied with in relation to the purported grant at the time that it was made and, save for the non-compliance with the State legislation, would have been valid to affect native title, the validating legislation will affect, and is taken to always have affected, native title to the same extent as if the purported grant complied with the State legislation in relation to that grant. We understand that the effect of such a provision would enable critically important State validating legislation to be Proclaimed and restore the assumption of validity in relation to the previous grant. In view of the overall prevailing uncertainty that has been created within industry by the *Forrest & Forrest* case and the associated validating legislation relating to the WA Mining Act, it is critically important that amendments to the *Native Title Act* are proclaimed immediately. This will require the reference to **amendments referenced in Annexure G14 being de-coupled from the broader Reforms** to the *Native Title Act.* AMEC has already verbally alerted the Review Team to this requirement and the need for the issue to be dealt with expeditiously.
G15	Amend the act to confirm that 'renewals' in s 26D(1)(a)(i) includes renewals within the meaning of 24IC(2) and (2A); allow for 'renewals' to be made without being subject to	The Act as it currently stands potentially treats lease renewals which: - replace a single lease with multiple leases - replace multiple leases with a single lease	Support.

	the right to negotiate process without any substantive reason for the application of that process	as renewals for the purposes of Subdivision I, but not as renewals for the purposes of section 26D. This subsequently subjects such renewals to the right to negotiate.	
	Claims resolution		
G16	Allow hearing of native title and compensation applications together.	*Current practice* States and territories have expressed concern that there is not clarity around whether native title determination and compensation applications can be heard together.	This amendment is **NOT** supported. If it is held that Native Title does not exist, the substantial additional cost, time and inconvenience of running the compensation application will have been thrown away. We note section 13(2) of the Act not only allows but requires the Federal Court to make a native title determination when making a compensation determination, if there is not already a native title determination covering the area.
G17	Amend section 61A to remove restriction on bringing a claim over an area subject to a previous exclusive possession act.	*Current practice* Section 61A provides that a native title determination application cannot be made over an area subject to a previous exclusive possession act. A previous exclusive possession act is a grant of freehold estates or certain leases on or before 23 December 1996.	AMEC supports reform which will encourage the making of native title determinations which confirm where within the external boundaries of the claim native title has been wholly extinguished. It can create confusion where the native title status of an area within the external boundaries of a determination is not specified as areas where native title is either recognised or extinguished because that area is not claimed due to a categorical exclusion of areas the subject of previous exclusive possession acts (PEPAs). This proposal could also help resolve inconsistency between section 13(2) (which requires a native title determination to be made when a compensation determination is made) and section 61A (which prohibits claims over PEPAs). However, this proposal is to allow the inclusion of areas the subject of PEPAs in claims rather than to require them, so it may not achieve these aims. Further, if this proposal is to be adopted, further consideration is needed as to whether to prevent freeholders and others with current interests in areas the subject of PEPAs from joining the native title claim.

OTHER RELEVANT ISSUES	AMEC comments
Register for section 31 agreements	AMEC does not object to the establishment of a register of s31 agreements if only limited details of the agreements are provided - eg. date, parties and future acts covered. The disclosure of the whole of a s31 deed is more problematic. Although s31 deeds are generally in in standard form, different versions have been applied in different periods of time, there remains an argument that disclosing them could affect the commerciality of a project. AMEC opposes reform requiring broad disclosure of ILUAs and other agreements (eg. agreements ancillary to section 31 agreements). These types of agreements reflect negotiated outcomes which are not intended to become 'precedents'. Requiring disclosure is likely to give rise to a much more cautious approach to agreement-making by proponents, to discourage creative solutions, and to discourage agreement-making at all where an alternative process is available. If only certain types of agreements are to be disclosed (eg. ILUAs), parties are likely to develop a standard form for disclosure while retaining all the negotiated terms in a side agreement, which increases transaction costs and does not assist transparency. These arguments also apply to section 31 agreements if the State will no longer be required to be a party (see attachment C8). Redaction of commercially sensitive aspects of an agreement before it is to be disclosed will increase transaction costs and is likely to result in redaction of such large portions of the agreement that its disclosure (as opposed to registration of limited details) is not very useful.
***Warrie* Native Title decision**	In the *Warrie (formerly TJ) (on behalf of the Yindjibarndi People) v State of Western Australia* [2017] FCA 803 decision handed down in July 2017, the Federal Court appears to have substantially 'lowered the bar' for what is required for native title groups to secure exclusive possession native title. This could have long-term implications for the cost-efficient development of new projects. Exclusive possession native title is the exclusive right to 'possession and occupation of land and/or waters as against the whole world', subject to the common law of Australia. The Court appears to have concluded that: • travelling through an area amounts to "occupation" of that area; and / or • a place once visited established "occupation" of the surrounding area arguably without limitation The Court also made a number of observations about the legislative purpose of the untested 'revised native title determination' provisions in the Native Title Act.

	If these observations go unchallenged, they could lead to uncertainty as previously determined native title claims are re-litigated to allow claimants to take advantage of any changes in native title law. The Court appears to have indicated that it is entirely appropriate for long-settled native title determinations to be re-opened and re-litigated years or even decades later to take the benefit of changes in the law. This has the potential to restart litigation in settled native title claims across Australia thereby introducing grave uncertainty and risk to those who seek to develop projects on the land. These two findings represent compounded risk. In lowering the threshold to secure exclusive possession, combined with providing a mechanism for 'old' determinations to be re-opened, there is a possibility that claims settled earlier on a non-exclusive basis will be re-litigated in an attempt to secure exclusive possession. **Recommendation:** **That the issues raised in the *Warrie* Native Title decision are clarified to remove the uncertainties created.**
Native Title issues in the Northern Territory	The *Aboriginal Land Rights Act* (ALRA) is Commonwealth legislation administered in liaison with the Northern Territory Government. Approximately 46% of the Territory is under the ALRA, and 45% under pastoral lease. The ALRA currently provides Indigenous people with a right of veto for 5 years. This right of veto has been the source of frustration and conflict for many years. A review of the Act in 2012/13 by Justice Mansfield failed to address the issue, despite AMEC`s strong recommendation to replace the power of veto with a right to negotiate. The current power of veto is unduly restrictive in creating economic development opportunities for Aboriginal people in the Territory. In a joint media release dated 24 August 2016, the Central Land Council and Northern Land Council *'called on States, Territory and Commonwealth Governments to work with Indigenous peak organisations to establish a comprehensive planning and implementation strategy focussed on delivering economic, ecological and social / cultural benefits to Indigenous people in northern Australia'.* The current power of veto process is a major dis-incentive to companies wanting to undertake mineral exploration and possible mining activities in the Territory.. It also provides a significant lever which can be used by Land Councils to delay and frustrate project development and demand extortionate fees and charges from companies for access and heritage clearances. A review of the *Northern Territory Sites Act* recommended the transfer of Authority Certificates which would address duplicative processes and fees. Mining and exploration companies currently contribute tenement rentals and environmental bonds to the Northern Territory Government Department of Mines and Energy. Land Councils also demand similar bonds / advance payments in the event that

	companies do not meet any annual payments to the Land Councils. This is an additional cost which is lost to exploration, and an additional cost to industry. In view of confidentiality clauses that have been built into Native Title and other Agreements there is a general lack of transparency around the extent of funding being provided to Aboriginal groups and how those funds are being used. **Recommendation:** **That a Review be conducted on the operations of the Native Title processes in the Northern Territory.**