

19 June 2015



Daniel Owen
Assistant Secretary – Land Reform
Department of the Prime Minister and Cabinet
CANBERRA ACT

By email – SOWGSecretariat@pmc.gov.au

Dear Daniel

COAG Investigation into Indigenous land administration and use

Thank you for the opportunity to make comment on the COAG Investigation into Indigenous land administration and use.

As the peak national industry body representing hundreds of mining and mineral exploration companies throughout Australia, the Association of Mining and Exploration Companies (AMEC) has a direct interest in supporting Indigenous economic development.

This is an extremely complex and sensitive issue on which to provide comment. It is therefore disappointing to note that no discussion or consultation paper is available to provide background or any indication of the current thinking of the Senior Officers Working Group or the Expert Indigenous Working Group.

From AMEC's perspective this has created great uncertainty in the deliberations of the COAG Working Group. Any consideration of use of Indigenous land holdings will need to differentiate the various types of interest in land held by Indigenous Australians. As a national body, AMEC is very aware of the jurisdictional differences in land-holdings between States and Territories, and the different types of interests in land held by Indigenous people within States and Territories.

Without more detailed explanation on the direction of the Working Group's considerations it is extremely difficult to provide targeted feedback.

AMEC nevertheless provides the following high level comments:

Significant benefits provided under native title agreements

Under existing frameworks, and particularly through native title agreements negotiated as a result of the rights accorded to native title holders and registered claimants under the *Native Title Act*, the mining and mineral exploration industry provides significant economic benefits to Indigenous groups Australia wide which should contribute towards Indigenous economic development.

Association of Mining and Exploration Companies

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Such agreements typically address a number of aspects of economic development mentioned in the review's terms of reference, including:

- financial payments, usually to a trust for the benefit of members of the native title group;
- indigenous employment and training; and
- indigenous business development.

Measures which encourage and facilitate the making and effective implementation of these types of agreements could therefore better enable Indigenous land owners to derive economic benefits from their land. This could include:

- measures which increase certainty around the outcomes of native title and indigenous heritage processes (including but not limited to more timely resolution of native title claims and heritage clearances);
- measures which reduce "red tape" and delays in this area;
- more co-ordinated governance and other assistance to registered native title bodies corporate and the bodies managing and distributing financial benefits.

Alternatively, reforms which increase uncertainty and risk of litigation on native title issues are likely to hinder the making of native title agreements.

Incorrect direct link between native title rights and property rights

The Terms of Reference for the Senior Officers Working Group indicates that it will focus its investigation and advice on Indigenous land legislative, regulatory, administrative and operational systems and processes to (amongst other things) '*enable Indigenous land owners to derive economic benefits from their land.*'

Despite noting the general sentiment behind such a statement, AMEC considers that it appears to raise an incorrect direct link between native title rights and property rights.

AMEC is cautious of proposals for an alternative form of land title arising from native title rights and interests.

As recently noted by the Western Australian Attorney-General (*Legalwise Native Title Conference 12 June 2015*), native title rights and interests are fundamentally different to other forms of tenure, so implementing such proposals would be extremely complex.

There is some concern such proposals could impact the security arrangements of mining investors. Such proposals could create a sense of heightened uncertainty and wariness of unforeseen risks and circumstances arising from native title which could hinder the making of native title agreements and investment in mining and exploration projects.

These concerns arise primarily in relation to proposals for a new land title arising from native title. Proposals for a new land title out of other types of indigenous tenure (eg. reserves for Aboriginal purposes) may be considered, but AMEC remains cautious given such reform is also complex and tenure issues can have an impact on current and proposed investment decisions and project developments.

Resolution of outstanding Native Title claims

Industry proponents and government approval agencies need clarity and certainty, including whether the proposed development area is the subject of native title.

Although the *Native Title Act 1993 (Cth)* is well over 20 years old, it is understood there are still approximately 400+ native claims throughout Australia requiring resolution.


While various attempts have been made by Governments to make the process more efficient more work needs to be done to reduce the current timeframes and subsequent costly delays for industry; and missed economic opportunities for Indigenous people.

The process becomes more complicated where native title has still not been determined, a native title claim not yet submitted or registered, where there may be over lapping claims and where there may be several native title stakeholder groups with an interest in the license area.

There is a clear need for more efficient resolution of outstanding claims which should result in additional Indigenous economic benefits being achievable.

Thank you for the opportunity to provide comment. AMEC would appreciate further consultation as the review progresses and the potential outcomes narrowed.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Simon Bennison', with a long horizontal flourish extending to the right.

Simon Bennison
Chief Executive Officer

