

**Parliamentary Joint Committee on  
Native Title and the Aboriginal and  
Torres Strait Islander Land Fund**

***OPERATION OF THE NATIVE TITLE ACT***

**Inquiry Into Indigenous Land Use  
Agreements**

**Submission No: 10**

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The Secretary  
Parliamentary Joint Committee on Native Title and  
the Aboriginal and Torres Strait Islander Land Fund  
Parliament House  
CANBERRA ACT 2600

**Inquiry into Indigenous Land Use Agreements**

Dear Sir/Madam

Enclosed is the Minerals Council of Australia's submission to this Inquiry. It has also been emailed to Robina Jaffray.

Please contact me in relation to any public hearings that the Committee may hold, or if you require any further information in relation to our submission.

Thank you for your assistance.

Yours sincerely

**Bridson Cribb**  
**Deputy Executive Director**

22 December 2000

# MINERALS COUNCIL OF AUSTRALIA

## SUBMISSION

TO THE

### PARLIAMENTARY JOINT COMMITTEE ON NATIVE TITLE AND THE ABORIGINAL AND TORRES STRAIT ISLANDER LAND FUND

ON THE

### INQUIRY INTO INDIGENOUS LAND USE AGREEMENTS

#### **Introduction**

The minerals industry experience with ILUAs to date is relatively limited. This submission focuses on area agreements under Section 24C of the *Native Title Act*.

The minerals industry considers that ILUAs provide one potentially positive avenue for reaching agreements with indigenous communities, within the constraints of the *Native Title Act*. However ILUAs are not a panacea, and there are many circumstances where their use is currently neither practical nor appropriate. In their present form, ILUAs have a significant number of inherent limitations which could be improved through amendments to the *Native Title Act*.

#### **Resources**

ILUAs are enforceable voluntary agreements. Experience to date indicates that the negotiation of an ILUA is invariably an expensive and lengthy process. A smaller company considering the development of a relatively short life minerals project, simply would not have the resources required to negotiate an ILUA. Even for long lived projects involving major companies, the time and resources that are required for the negotiation of an ILUA are substantial, and act as a disincentive.

In addition, the representative bodies with which minerals companies are required to negotiate have a broad range of responsibilities and in many instances are under-resourced. They do not normally have sufficient dedicated resources to enable them to engage effectively in the negotiations, particularly if there are a number of potential agreements competing for their attention.

Consequently, the minerals company is normally obliged to provide funding to the representative body, in order to initiate the negotiations, and to facilitate their subsequent progress. This is of course in addition to the substantial costs the minerals

company is already bearing in relation to the preparation and conduct of its own side of the negotiations.

As a result, the minerals company is being required to deal with organisations that have official duties to perform, but insufficient resources to perform them. Companies frequently face the prospect of funding core functions in these organisations in order to ensure timely action on matters of concern to them.

### **Recommendation**

The Commonwealth Government should allocate sufficient, dedicated funds to representative bodies to enable the development and retention of the skills necessary to facilitate the expeditious negotiation of agreements.

### **Timing**

One of the major limitations of ILUAs is the lack of any disciplines to conclude the negotiating process. As a result, the ILUA process is completely open-ended, with no obligation or requirement for any agreement to be reached. In these circumstances, minerals companies often find themselves obliged to utilise the right to negotiate provisions of the *Native Title Act*, in order to bring the negotiations to a conclusion.

This appears to be quite a common feature of ILUA negotiations. Consequently, rather than providing a separate and different negotiating process to the right to negotiate process, in many respects the ILUA process simply becomes an adjunct to the right to negotiate process. If this trend continues, minerals companies may conclude that the right to negotiate process, despite its manifest imperfections, is actually more efficient than the ILUA route.

### **Recommendation**

Bipartisan consideration and support should be given to amendments to the *Native Title Act* that would require a conclusion to the ILUA negotiating process within a reasonable time period.

### **Registration and Deregistration**

The registration process for ILUAs is onerous, lengthy and uncertain. Even once this process has been completed, and the agreement has been registered, there remains some risk that the ILUA can subsequently be deregistered.

Before an ILUA can be registered, the representative body needs to certify that all potential native title claimants have been notified, and that there are no objections to it. After public notification, a three-month period is allowed for objections to the registration of the agreement. Once the ILUA is registered, it legally binds all native title holders in the area covered by the agreement, regardless of whether or not they are parties to the agreement. However, the ILUA can be deregistered if native title is subsequently awarded to someone who was not a party to the original agreement.

The requirement to achieve a consensus agreement, with no dissenters, is very difficult to achieve in many circumstances. However, having achieved such consensus, the ILUA should not be subject to the risk of deregistration, unless this is agreed by all parties, or it can be established that some serious offence such as fraud has been committed to achieve an improper outcome to the negotiations.

### **Recommendation**

Bipartisan consideration and support should be given to amendments to the *Native Title Act* that would remove the risk of a properly constituted ILUA being deregistered.

The registration test provisions should be reviewed in the light of the experiences of the Federal Court and the National Native Title Tribunal with competing claims.