

28 November 2019

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Canberra ACT 2600

Native Title Legislation Amendment Bill 2019

The South Australian Chamber of Mines and Energy (SACOME) welcomes the opportunity to make this submission in relation to the *Native Title Legislation Amendment Bill 2019* (the Bill).

SACOME is the peak industry body representing companies with interests in the South Australian minerals, energy, extractive, oil and gas sectors and associated service providers.

SACOME has been advised that the Commonwealth intends to implement the *Registered Native Title Bodies Corporate Legislation Amendment Regulations 2019* following passage of the Bill.

SACOME understands that the *Registered Native Title Bodies Corporate Legislation Amendment Regulations 2019* includes proposed changes to the *Native Title (Prescribed Bodies Corporate) Regulations 1999* (PBC Regulations) that prohibit exploration Native Title Mining Agreements (NTMAs) under Part 9B of the South Australian *Mining Act 1971* (SA) being entered into by Registered Native Title Body Corporates (RNTBC) via standing instructions from the common law holders of Native Title.

SACOME submits the following comments regarding the proposed amendments to the PBC Regulations.

- The current PBC Regulations require a RNTBC to consult with common law holders of native title and a representative body for the relevant area prior to making a "native title" decision.
- In South Australia, the Department of Energy and Mining's (DEM) view has been that, in the absence of a traditional decision-making process, it is open to the common law holders of native title to agree or to adopt a process for making decisions in relation to exploration NTMAs under Part 9B of the *Mining Act 1971* (SA) that does not require a community or group meeting each time for approval of that exploration NTMA.

- The proposed changes to the definitions of “*native title decisions*” and “*standing instructions decision*” in sub regulation 3(1) and sub regulations 8(1), (2) and (8) has the effect that a decision to enter an exploration NTMA under Part 9B of the *Mining Act 1971 (SA)* amounts to a high-level decision.
- Under the 2018 Exposure Draft regulations standing instructions cannot be given for high-level decisions. This would require exploration companies and RNTBCs to consult with common law native title holders each time they propose to enter an exploration NTMA.
- SACOME broadly supports increased clarity, certainty, efficiency and effectiveness of native title processes in order to reduce delays and costs for all stakeholders; and to ensure fair and equitable negotiated outcomes and benefits for resources sector operators and Native title holders.
- From a South Australian perspective, the inability for a RNTBC to enter an exploration NTMA without first going through a detailed community consultation process each time, will place a significant time and cost burden on South Australian exploration companies. The costs of such community meetings can be quite large and, unless the meetings can be aligned with AGMs (or meetings at which other business is conducted), the costs will almost entirely be passed on to the explorer.
- The current PBC regulations work well with the existing Part 9B process in South Australia keeping costs to a minimum for all stakeholders.
- SACOME encourages the Commonwealth to give further consideration to the proposed changes to the PBC Regulations so that RNTBC continue to have the ability to consent to the entering into exploration NTMAs under Part 9B of the *Mining Act 1971 (SA)* where a RNTBC has passed a resolution to that effect.

Kind regards

Rebecca Knol
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