Western Australian Government Submission

to the:

i. The House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs Inquiry; and

ii. The Senate Standing Committee on Legal and Constitutional Affairs Inquiry

on the

Native Title Amendment Bill 2012

25 January 2013

Department of the Premier and Cabinet
Dumas House
2 Havelock Street, West Perth WA 6005

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1 Native Title in Western Australia

The *Native Title Act* 1993 (Cth) ("**NTA**") has had a more profound impact on Western Australia than any other jurisdiction. This is because more than ninety per cent of Western Australia ("**WA**") is subject to either a native title determination or a native title claim and because the WA economy – and to a great extent the national economy – is dependent on WA's efficient management of a high volume of exploration (mineral and petroleum) titles.

Western Australia's engagement with the NTA has been comprehensive:

i. The WA Government is committed to the settlement of native title through agreement rather than costly and protracted litigation wherever possible;

ii. There are 35 native title determinations in WA covering approximately 36% of the State, this represents approximately 60% of the area under native title determination nationally;

iii. Since 1995, approximately 90% of mineral title applications in Australia subject to the NTA's future act regime originated in Western Australia;

iv. By comparison with any other Australian jurisdiction, WA has invested heavily in comprehensive native title agreements, e.g. the Yawuru Agreement ($200 million), the Ord Final Agreement ($70 million); and

v. WA is continuing to develop native title agreements that aim to deliver innovative long term economic and social outcomes, e.g. the South West Settlement, the Browse Regional Agreement.

The WA Government's achievements are instructive. It is simplistic to approach the proposed amendments to the NTA in isolation from their direct and indirect impact on both the management of native title claims and future acts in WA. The WA Government's assessment is that the majority of proposed changes are unnecessary and will increase uncertainty and inefficiency in the management of native title. Furthermore, it is frequently overlooked that native title claimants and the Indigenous community, the resource sector and the state and territory governments are all disadvantaged by increasing the potential for prolonged delay to the native title process.

The WA Government considers that there are better options available to the Commonwealth Government to assist in the native title process other than further changes to the NTA. These include the Commonwealth Government engaging in good faith negotiations with the states and territories to develop functional forward-looking policies to expedite the resolution of native title claims and to develop socially and economically productive native title agreements.

2 The Native Title Amendment Bill 2012

On 6 June 2012 the Attorney-General announced that the Commonwealth Government will progress a number of amendments to the NTA. The Western Australian Government ("**WA Government**") provided a submission on the *Native Title Amendment Bill 2012 Exposure Draft* (**"Exposure Draft"**) on 22 October 2012. Subsequently, the *Native Title Amendment Bill 2012* ("**NTA Bill**") was introduced into the Commonwealth Parliament and two inquiries into the NTA Bill are currently taking place:

i. The Senate has referred the NTA Bill to the Standing Committee on Legal and Constitutional Affairs. The Committee has invited submissions by 31 January 2013, noting that the amendments are intended to improve the operation of the native title system.

ii. The House of Representatives has referred the NTA Bill to the Standing Committee on Aboriginal and Torres Strait Islander Affairs. The Committee has invited submissions by 31 January 2013 addressing:

- Whether a sensible balance has been struck in the Bill between the views of the various stakeholders; and/or
- Proposals for future reform of the Native Title process.

The WA Government welcomes these inquiries as they provide the opportunity for wider scrutiny of the individual provisions in the NTA Bill. This submission is addressed to both Standing Committees.

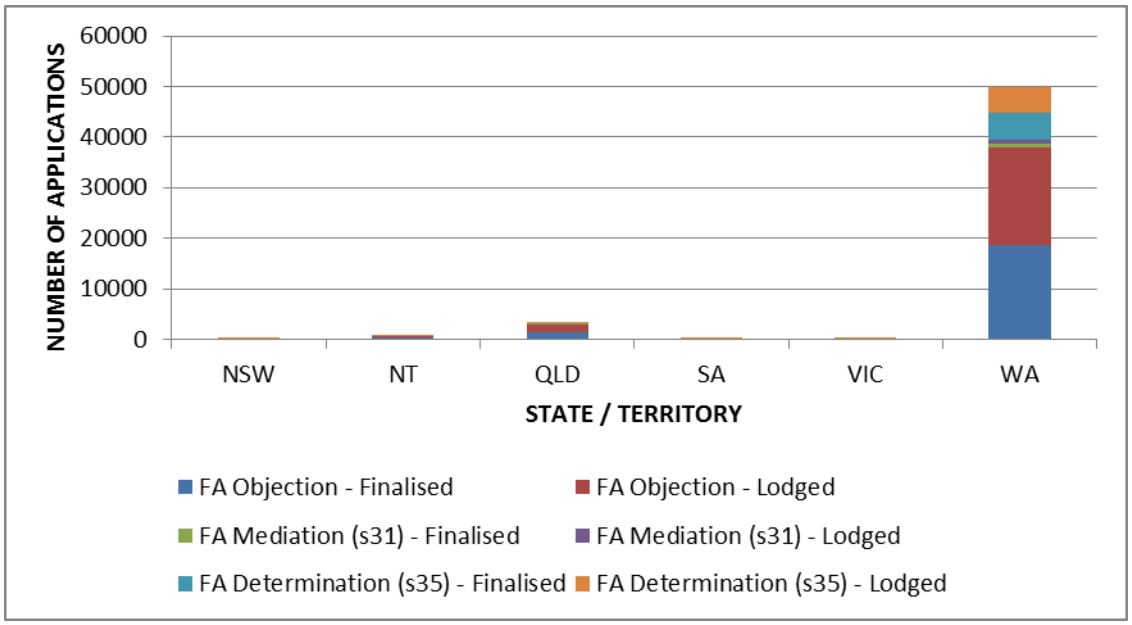
The proposed reversal of the onus of proof for establishing continuity of native title connection is not included in the NTA Bill. However on 29 November 2012 the House Select Committee referred that matter to the House Standing Committee on Aboriginal and Torres Strait Islander Affairs. In response, the WA Government's submission also addresses the detrimental effect reversing the onus of proof will have on the process of establishing native title connection.

3 Impact to the State of Western Australia

The WA Government's view is that the impact of the provisions in the NTA Bill upon the State of Western Australia ("**WA**") will be significant. They will have the greatest application in WA due to the high rate of exploration and mining activity, when compared to the other Australian jurisdictions. (See, **Appendix 1 Map of Native Title Applications and Determinations**).

Between 1995 and 2011 more than 90% of all native title future act applications relating to mineral titles originated in WA. Figure 1 below shows the comparison of mineral title future act processes between the Australian jurisdictions.

Figure 1: Summary of Applications for Mineral Titles submitted to the NTA process, 1 January 1995 – 31 December 2011. Data Source: National Native Title Tribunal.



Since 1995, the WA Government has made every effort to integrate its mineral titles system with the NTA to avoid unnecessary delays in exploration and mining. Without question, the NTA introduced extrinsic constraints to mineral titles management in WA that have challenged efficient tenure administration and have exposed the mineral title system to misuse by some sections of the mining industry and some native title parties.

(Please refer to **Appendix 2, WA Government – Management of Mineral Applications**, which documents the WA Government's endeavours since 1995 to introduce changes to its own procedures to reduce impediments to land access, whilst conforming to the NTA.)

As Figure 1 illustrates, Western Australia is the jurisdiction most reliant on efficient compliance with the NTA's future act regime and on the maintenance of existing conventions and systems. As they currently operate, the Right to Negotiate. (**"RTN"**) and the expedited procedure in the NTA's future act regime are critical to the efficient functioning of WA's mining, petroleum and land management systems. Those systems have evolved in WA over the past 17 years to achieve a steady state of operation that is fair, reasonable and understood by all parties.

In this context the State Government is particularly alarmed about amendments which will directly impact on procedures for "negotiations in good faith" (**"NIGF"**) under the RTN. The WA Government's conclusion is that the changes proposed for NIGF will significantly increase costs to industry and reduce efficiency in the future act process.

4 Negotiations in Good Faith

In their totality, the proposed amendments to the NIGF will add red tape to an already complex system. At present, the average length of time for a future act to progress through the RTN process is 18 months.[1] The proposed changes will prolong future act mediation and arbitration, delay the release of mineral titles, and increase the costs and risks facing the resource industry.

The proposed amendments are an unnecessary procedural constraint on the operation of the State's mining and land management approvals systems, with no evidence that they will benefit any party in the process.

4.1 Commonwealth Government's rationale for proposed changes to the NGIF provisions

The Commonwealth Government's rationale for the proposed changes to the NIGF provisions appears to be based on a flawed response to one particular legal judgement. Furthermore it is not informed by the substantial record of future act arbitrations involving NIGF matters.

Section 31(1)(b) of the NTA requires parties to negotiate in good faith for at least six months, with a view to obtaining the agreement of the native title parties to the doing of the act. In proposing to amend s31(1)(b), the Commonwealth Government has relied heavily on *FMG Pilbara Pty Ltd v Cox and Others* (2009) 175 FCR 141 (**"*FMG v Cox*"**)[2] for justification. The Commonwealth Government's assumption appears to be that this decision has had a significant detrimental effect on the value of the RTN. Specifically, the Commonwealth has asserted that *FMG v Cox* provides that:

i. demonstrable bad faith is required before the Court will find a lack of good faith; and

ii. the good faith requirement under the NTA does not require negotiations to reach a certain stage nor prescribe the manner and content of negotiations by compelling parties to negotiate in a particular way over specified matters.

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[1] This average was given by the Department of Mines & Petroleum, noting that some applications for grant of mining title have been and still are sitting in the system, undetermined for many years.

[2] *FMG Pilbara Pty Ltd v Cox and Others* [2009] FCAFC 49; 175 FCR 141.

In the Second Reading Speech for the *Native Title Amendment (Reform) Bill 2011 (**"NTA Reform Bill 2011"**)*, which in the WA Government's view provided the impetus for the NIGF changes proposed by the Commonwealth Government, Senator Rachel Siewart stated:

> 'in practice it is virtually impossible for claimants to establish that a proponent is not acting in good faith. This is borne out by the decision of the Full Federal Court in the matter of *FMG Pilbara vs. Cox* - a decision which substantially watered down the right to negotiate, to the extent that any negotiation in which the native title party cannot demonstrably prove bad faith is effectively considered to be a good faith negotiation.'[3]

The WA Government submits that the decision in *FMG v Cox* does not substantiate the propositions asserted by either the Commonwealth Government or Senator Siewart. There is simply no evidence to demonstrate that the test for good faith negotiations is incorrect, or that systemic or widespread unfairness in negotiations has occurred. Furthermore, there appears to be a presumption that unfairness is solely the prerogative of the grantee party.

The reasons given for the Court's decision in *FMG v Cox* are not consistent with the Commonwealth Government's interpretation of the case as a precedent; that is, that demonstrable bad faith is required to show a lack of good faith. It appears that the comments of the Court at [24] - [27] have led to the erroneous conclusion that the Federal Court has effectively 'watered down' the RTN.

The following 3 paragraphs contain the only instances in the judgment where the Federal Court makes reference to bad-faith behaviour:

i. at [24], the Court stated that it is not sufficient to merely 'go through the motions' in negotiations, with a closed mind or a rigid or predetermined position, and observed that there was no suggestion that the grantee party had adopted this attitude;

ii. at [26], the Court re-stated the National Native Title Tribunal's ("**NNTT**") conclusion that there was no evidence that the grantee party had deliberately avoided negotiating or had engaged in deliberately misleading behaviour; and

iii. at [27], the Court noted that "In the present circumstances there could only be a conclusion of lack of good faith within the meaning of s.31 (1) (b) of the Act where the fact that the negotiations had not passed an 'embryonic' stage was, in turn, caused by some breach of or absence of good faith such as deliberate

[3] Second Reading Speech*, Native Title Amendment (Reform) Bill* 2011, Senate, 21 March 2011 (Rachel Siewart, Senator).

delay, sharp practice, misleading negotiating or other unsatisfactory or unconscionable conduct."

In light of the above, it is clear that the Federal Court was concerned with the conduct of the negotiations. However, there is no evidence to support the Commonwealth Government's assertion that the decision in *FMG v Cox* could discourage parties to actively engage in negotiations and thus limit the value of the RTN to the native title party.

Additionally, whilst the Federal Court held that section 31(1)(b) of the NTA does not require negotiations to reach a particular stage, or be at a particular level of specificity before they can be said to be in good faith, the existing principles of law surrounding s.31 (1)(b) requiring good faith are preserved. The WA Government submits that the Commonwealth Government's interpretation of this decision is a flawed basis for legislative intervention with widespread consequences.

4.2 Statistical evidence indicating that the proposed changes are not justified

The WA Department of Mines and Petroleum ("**DMP**") and the NNTT have provided statistics pertaining to future act agreement-making and NIGF enquiries. From 1995 to 2012, 78% of granted tenements subject to the RTN were covered by agreements between the parties. The remaining 22% of tenements were the subject of section 35 applications for an arbitral body determination - 18% of tenements were granted following a consent determination, 3.7% were granted following contested arbitration, and the remaining 0.3% were determined by the NNTT as being future acts that could not be done. Figure 2 depicts these percentages:

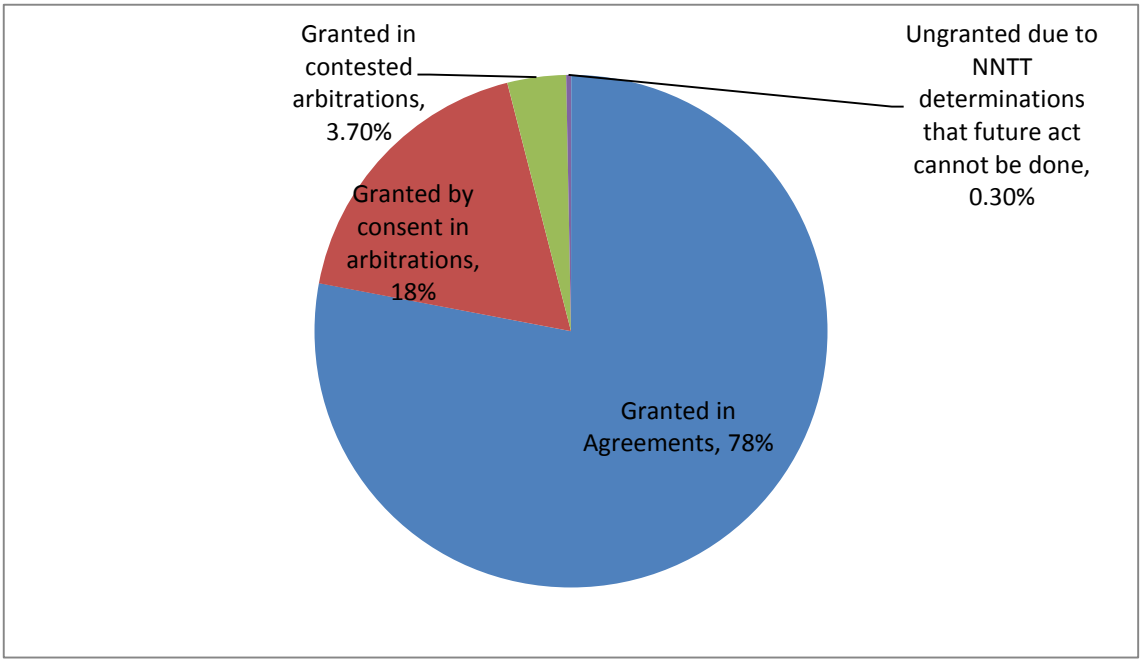


Figure 2: Percentage of Tenements Granted in Western Australia 1995 – 2012. Data Sources: DMP & NNTT

These figures demonstrate that since 1995, 96% of determined RTN matters in Western Australia were resolved by agreement between the parties: i.e. parties in the RTN are focused on negotiated rather than arbitrated outcomes.

Of those matters referred to arbitration, a very small number raise NIGF as an issue. In the small subset of cases in which full NIGF enquiries were conducted by the NNTT:

i. in 57 applications the Government party was found to have negotiated in good faith and only in 4 applications not to have; and

ii. in 42 applications the grantee party was found to have negotiated in good faith and only in 4 applications not to have.

Further examination of the same NIGF enquiries reveals that any presumption that only non-native title parties negotiate in bad faith is incorrect. In 4 cases the native title party alleged that NIGF had not taken place after the substantive arbitration had been programmed, ostensibly as a delaying tactic.[4] The NNTT subsequently found that the allegations in each of the 4 cases had no substance. In a further 2 cases,[5] the NNTT found the native title party had not negotiated in good faith. In 9 cases,[6] the native title

[4] NNTT inquiry matters WF03/2, WF04/9, WF10/19, WF11/10.
[5] NNTT inquiry matters WF03/32 and WF03/33.
[6] NNTT inquiry matters WF98/5, WF98/8, WF04/9, WF05/3, WF05/10, QF08/1, WF08/17, WF10/25, WF10/19.

party's behaviour[7] was considered relevant to the dismissal of their allegation that NIGF had not been undertaken by the other parties.

The Commonwealth Government's basis for amending the RTN provisions is not supported by any legal or statistical evidence. The evidence does show that the RTN system in Western Australia is evenly balanced and is fair and reasonable. An overwhelming majority of parties negotiate in good faith and the NNTT and the Federal Court have applied the indicia of good faith robustly.

4.3 Particular features of the proposed amendments to NIGF

4.3.1 Requiring parties to use all reasonable efforts to reach agreement

The proposed amendment to the NIGF would effectively replace the existing requirement that negotiating parties negotiate "with a view to reaching settlement". The WA Government's view is that the meaning of "all reasonable efforts" is ambiguous and will lead to further litigation to establish new case law on the application of the NIGF. Such litigation will in turn introduce further delays to the RTN. To promote further test cases by amending this section of the NTA is a wasteful and costly exercise. The current wording of the section is well understood and working effectively.

4.3.2 Specifying the requirements for good faith negotiations

The Commonwealth Government proposes that, in deciding whether or not a negotiation party has negotiated in good faith, regard is to be had to whether the party has done the following:

i. Attended, and participated, in meetings at reasonable times.

ii. Disclosed relevant information (other than confidential or commercially sensitive information) in a timely manner.

iii. Made reasonable offers and counter offers.

iv. Responded to proposals made by other negotiation parties for the agreement in a timely manner.

v. Given genuine consideration to the proposals of other negotiation parties.

vi. Refrained from capricious or unfair conduct that undermined negotiation.

vii. Recognised and negotiated with the other negotiation parties or their representatives.

[7] Examples of the native title party's behaviour that was deemed relevant to the dismissal of the no NIGF allegation ranged from the native title party refusing to enter into negotiations, terminating a bilateral agreement without discussion with the grantee party and not making a submission on the effect of a future act despite an invitation to do so by the other parties.

viii. refrained from acting for an improper purpose in relation to the negotiations.

The NTA Bill also adds the requirement to allow the arbitral body to consider any other matter it considers relevant to establishing if a party has NIGF.

The WA Government considers that codifying the indicia of good faith negotiations will increase the scope for disputes and delays. In its many years of experience in conducting such enquiries, the NNTT recognises that negotiations vary greatly, the set of indicia is not closed and that an inquiry as to whether there has been NIGF is not a formulaic exercise.

What the indicia deem ‘reasonable’ or ‘genuine’ may vary from circumstance to circumstance and can obviously be open to interpretation, particularly in the heightened context of some negotiations. Mandating reasonableness, whether relating to meeting times or offers made, is more likely to create uncertainty than to resolve it. Requiring parties to refrain from “acting for an improper purpose” is equally open to interpretation and is likely to result in an increase in litigation and further delays to the negotiation process.

Broadly, individual elements of a party's negotiation behaviour may not indicate whether a party has failed to negotiate in good faith. However, when the overall conduct of the party is examined it may be apparent as to whether the party has, or has not. The relative weight of any individual element of the conduct of the parties needs to be viewed in the overall context of the negotiations. Codification is likely to limit the adaptability of negotiation processes, encourage compliance with a minimum standard and lead to an assumption that failure to comply with individual criterion is automatic evidence of a failure to negotiate in good faith.

4.3.3 Extending the minimum negotiation period from six months to eight months

At present, section 35 of the NTA allows any negotiation party to apply to the arbitral body for a determination under section 38 of the NTA in relation to the act, if no agreement has been made within six months of the notification day. The WA Government questions how two additional months will ensure that the parties will negotiate in good faith. The only certainty of the proposal is that it will introduce further delays to the current operation of the State's approvals systems. The assumption appears to be that the amendment will require negotiations to reach a certain stage of progress, rather than focusing on the conduct of the parties during that negotiation. For those parties which have reached an agreement and require a consent determination, which is as high as 18% of all granted matters, there will be an extension of two months before which they can seek such a determination despite having already reached agreement.

(Please refer to Figure 3 - Negotiation in Good Faith – Comparison of Current NTA Provisions & the NTA Bill. The diagram illustrates the extent of delay which may be caused by the proposed amendments and also illustrates how complex the current system is.)

4.4 Reversal of the onus of proof in Negotiations in Good Faith

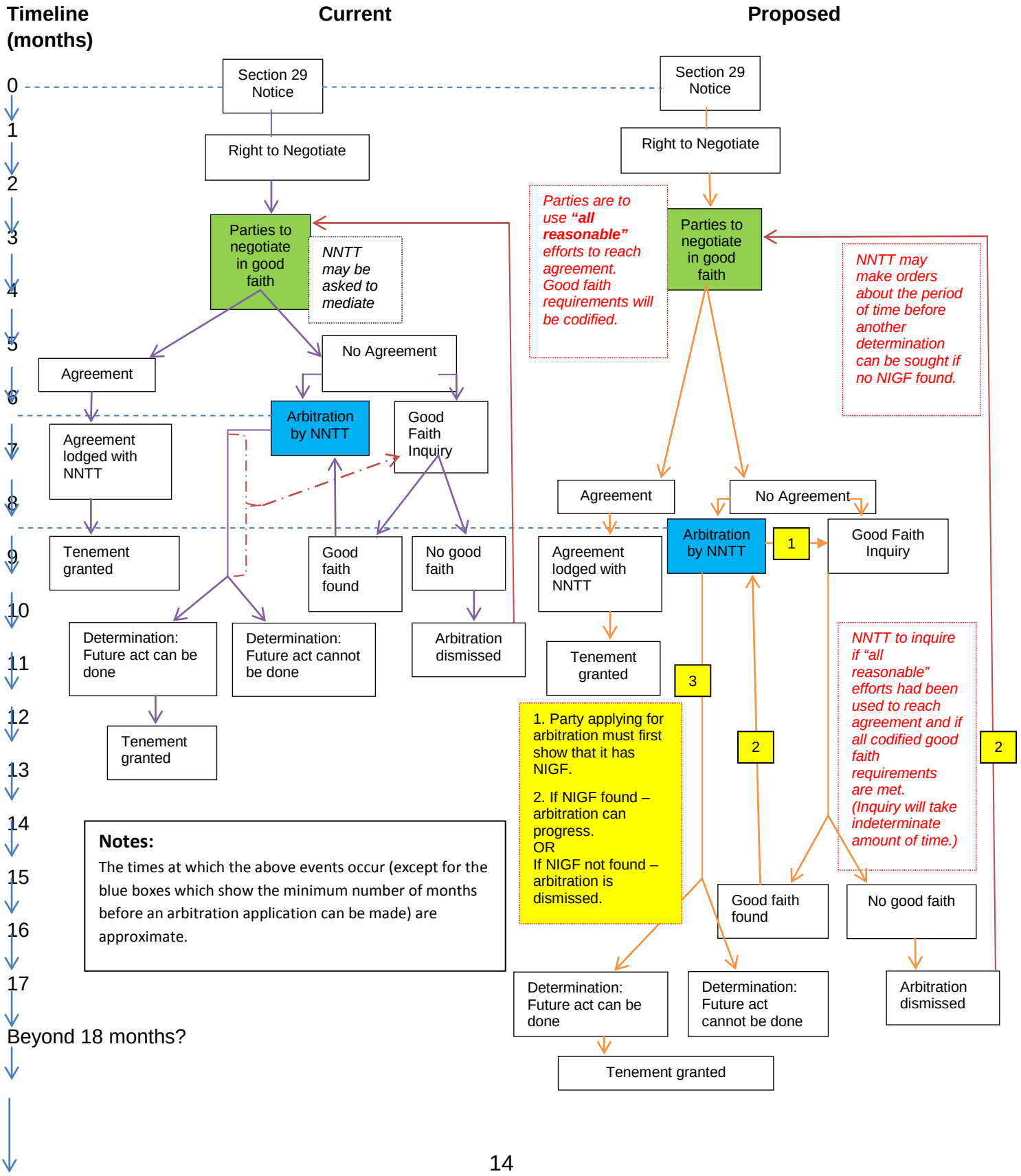
The proposed changes will fundamentally restructure the balanced bargaining relationship that currently exists in the RTN. The consequence will be less agreement making and increased procedural costs.

The proposition underpinning these particular amendments is that if it is alleged that a respondent (explorer, miner, government party) has not negotiated in good faith, the respondent must then prove they have done so. Furthermore, the NTA Bill overlooks the possibility that a native title party may adversely impact on the ability of the respondent to negotiate in good faith.

As a matter of practicality, it is unclear how the NNTT will determine whether applications are to be lodged together with evidence of good faith on behalf of the applicant, or whether the evidence of good faith must be provided once an allegation of good faith is contested. In either case, the proposed amendment would burden the grantee or government parties to the extent that they must present a large amount of evidence relating to good faith to the NNTT before the section 35 application can be considered.

Furthermore, the proposed subsection 36(2) appears to operate as a “lock out” provision, where there is a finding by the NNTT that a negotiation party has not negotiated in accordance with the good faith negotiation requirements in section 31A. Western Australia submits that the absence of any legislative guidance as to the appropriate length of this “lock out” period may result in absurd and unjust results, with the result that the current six month negotiation period is extended well beyond eight months. The scope for a de facto veto to emerge, making some projects unsustainable, cannot be overlooked.

Figure 3. Negotiation in Good Faith – Comparison of Current NTA Provisions & NTA Bill



5 Disregarding Historical Extinguishment

Sections 47, 47A and 47B of the NTA currently require prior extinguishment of native title in respect of pastoral leases held by native title claimants, reserves held by claimants and vacant Crown land, to be disregarded in certain circumstances.

The proposed amendment inserts a new section 47C and related provisions to provide the following:

i. Extinguishment of areas such as parks and reserves can be disregarded where there is agreement between the government party and native title party.

ii. The non-extinguishment principle applies; any current interests over land will continue to exist and prevail to the extent it is inconsistent with native title.

iii. Allows flexibility for parties to agree which area (parts of parks/reserves) is subject to the agreement to disregard extinguishment.

iv. Can be used for new and existing claimant applicants, to revise a native title determination and to amend applications to claim the benefit of this agreement.

v. Notification requirement is two months.

vi. Allows for extinguishing effect of public works occurring within the park to be disregarded in an agreement with the Government party.

In 2012, the WA Government amended its *Conservation and Land Management Act* (WA) (1984) and *Wildlife Conservation Act 1950* (WA) to enable Aboriginal people to carry out customary activities in the conservation estate, regardless of whether there has been a determination of native title. The amendments also facilitate shared management of the conservation estate with traditional owners.

In that context, the need for the proposed amendments to the NTA in Western Australia is questionable. Furthermore, the proposed amendment is likely to introduce significant delays in the claims settlement process as native title parties seek agreement from the WA Government to disregard prior extinguishment. Amendments to existing native title determinations and native title agreements are also likely to be sought. Of particular concern is that the Commonwealth Government remains silent on its readiness to accept the compensation liability that will result from expanding the statutory reach of the NTA into areas previously exempt from any future act obligations.

6 Streamlining the Indigenous Land Use Agreement (ILUA) Process

The proposed amendments are chiefly technical changes to simplify the process for minor amendments to ILUAs, improving objection processes for Area ILUAs and

clarifying coverage of ILUAs. The NTA Bill proposes to insert provisions to affect the following:

i. Broaden the scope of body corporate ILUAs – in native title determination areas containing areas where native title exists and areas where it is extinguished, parties can use Subdivision B ILUAs, which have a simpler registration process.

ii. ILUAs can be used to cover a broad range of issues, including restrictions on native title rights and the final settlement of any compensation liability.

iii. Registration of Subdivision C ILUAs are streamlined by:

    a. Reducing the mandatory three month notice period to one month.

    b. Modifying the process for opposing registration of ILUAs to capture all those who should be involved in the authorisation process, for example where claimants are not registered but can establish a *prima facie* case that they may hold native title.

    c. Providing guidance for the Registrar in considering objection material.

    d. Clarifying what rights objectors have to view material supporting an application for registration.

The WA Government makes the following general comments:

i. ILUAs as currently provided in the NTA are already quite flexible in their content, scope and construction processes.

ii. It is noted that the NNTT recommended that any changes of a minor nature not requiring re-negotiation, re-authorisation or re-approval should only be of a technical nature, such as updating legal property descriptors, legal description identifying a party and contact details.

iii. The Commonwealth Government has presented no data to substantiate the need to reduce notification periods and to safeguard against lengthy delays caused by vexatious or frivolous objections to ILUA registration.

iv. It is noted that the NNTT opposed any changes that would shorten and potentially compromise the integrity of the registration process. In the NNTT's experience, for Area ILUAs, the view of non-native title parties was that a robust registration process, including its requisite timeframe, provides a high level of assurance that they are dealing with the right people. This is also a primary concern for the WA Government.

7 Technical Amendment to Section 47

This technical amendment will ensure that where an Indigenous corporation has members rather than shareholders, s.47 could still apply to disregard extinguishment over the area.

The WA Government supports this proposed amendment.

8 Native Title Connection and the Reversal of the Onus of Proof

In August 2011, the WA Government's submission to the Senate Standing Committee on Legal and Constitutional Affairs on the *Native Title Amendment (Reform) Bill 2011* (Cth) ("**NTA Bill 2011**") advised that serious problems were likely to arise if the onus of proof for establishing native title were to be reversed.[8] The 2011 submission conveyed the WA Government's assessment that such reforms to the NTA are unnecessary and will only compound existing delays, costs and uncertainty in the native title system.

On 29th November 2012, the House of Representatives Select Committee successfully proposed to refer the Native Title Amendment Bill 2012 to the Standing Committee on Aboriginal and Torres Strait Islander Affairs. The main reason cited in support of the referral was to "specifically examine and report on the benefits or otherwise of an amendment to the Bill that would reverse the onus of proof for claimants on on-going connection to land". Subsequently, the Standing Committee released its terms of reference inviting submissions addressing "whether a sensible balance has been struck in the Bill between the views of various stakeholders' and/or 'proposals for future reform of the Native Title process".

The Commonwealth Government has provided no advice on what might constitute a "sensible balance" in this matter. That there is frustration among stakeholders with the native title claims process is not in dispute, however the reversal of the onus of proof will ultimately be counterproductive to that process and its legal and public credibility. The proposal also highlights the lack of Commonwealth Government engagement with other governments to develop policy-based solutions that would enable the NTA to deliver more functional outcomes.

Currently, the WA Government has supported 28 consent determinations from a total of 35 (litigated and consent) native title determinations. The Government is of the view that

[8] Western Australia's submision to the Senate Standing Committee on Legal and Constitutional Affairs about the Native Title Amendment (Reform) Bill 2011 – available – http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=legcon_ctte/completed_inquiries/2010-13/native_title_three/submissions.htm

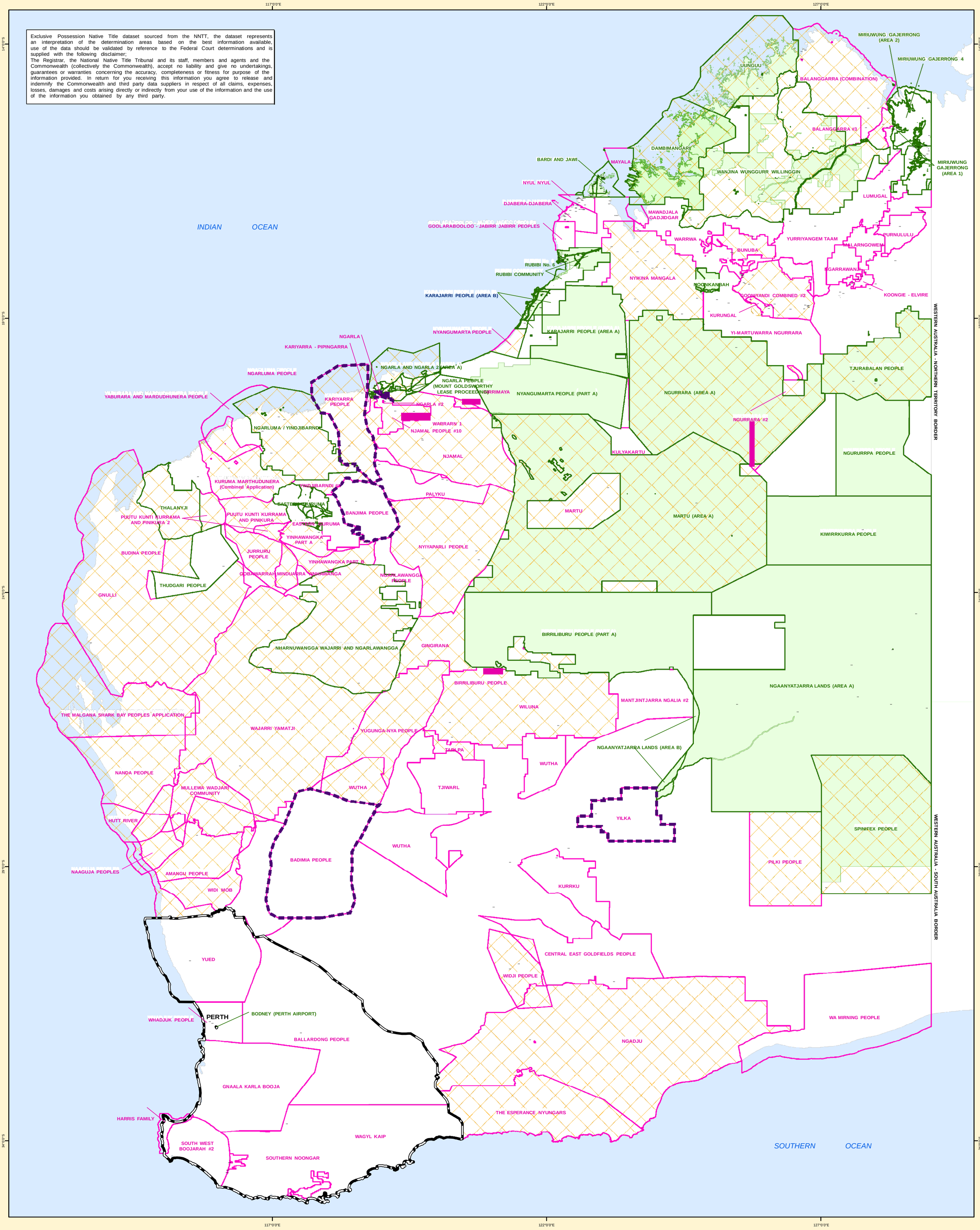
the impact of the reversal of the onus of proof would not expedite the resolution of native title claims but instead disrupt the existing processes for resolving native title claims, particularly due to (i) the likelihood of further litigation to test and determine the meaning and effect any new statutory provisions and (ii) the scope for retrospective review of existing determinations.

The WA Government notes that this proposal overlooks policy initiatives in different jurisdictions to expedite the resolution of native title claims and to expand the substance of native title agreements allied to native title determinations. It also overlooks the fact that most consent determinations require a generous interpretation of claimant evidence by respondent parties to adopt inferences that address gaps in the available evidence. Very few claims generate incontrovertible proof.

The WA Government position is that:

i. Reversing the onus of proof ensures that to do anything other than accept the *prima facie* case is to challenge the application. There is a real risk that any goodwill between parties would be lost and mediation set aside in preference to litigation. If the onus of proof shifts to the Government it has no option except to test the proof to its fullest in the Court to obtain the legal clarity required.
ii. To investigate the merits of an application from the available ethnography would in most cases result in significant problems for the claim group in satisfying the s223 requirements. The effect of such reforms would very likely be counter-productive by requiring state and territory Governments to place renewed emphasis on identifying the flaws in connection evidence. The overall effect would limit rather than assist the resolution of native title claims by consent.
iii. The key issues around proof of native title rely upon contemporary evidence from claimants about continued observance of a traditional system of law and custom, contextualised within an anthropological model of continuity. To determine the merits of a claim absent that information is impossible unless Government is willing to adopt a policy of accepting a *prima facie* case based on the application.
iv. Any reforms of this nature are likely to result in native title holders seeking to modify existing determinations so that they are consistent with current native title law. The resultant process would be far more resource intensive and litigious and would ultimately outweigh any perceived benefits in the resolution of claims.

Exclusive Possession Native Title dataset sourced from the NNTT, the dataset represents an interpretation of the determination areas based on the best information available, use of the data should be validated by reference to the Federal Court determinations and is supplied with the following disclaimer;
The Registrar, the National Native Title Tribunal and its staff, members and agents and the Commonwealth (collectively the Commonwealth), accept no liability and give no undertakings, guarantees or warranties concerning the accuracy, completeness or fitness for purpose of the information provided. In return for you receiving this information you agree to release and indemnify the Commonwealth and third party data suppliers in respect of all claims, expenses, losses, damages and costs arising directly or indirectly from your use of the information and the use of the information you obtained by any third party.



NATIVE TITLE APPLICATIONS AND DETERMINATIONS

LAND TENURE AS AT 29/9/2011

0 100 200 300 400 500

Kilometres

Latitude and Longitude based on Geocentric Datum of Australia 1994

LEGEND

- Registered Native Title Applications
- Claims in Litigation
- Areas under Active Management
- Determined Native Title Applications
- Determined - Areas Subject to Exclusive Possession
- South West Negotiations Area
- Aboriginal Communites

DATA SOURCES

Cadastral and Tenure information sourced from Landgate Spatial Cadastral Database (SCDB).
Administrative boundaries are sourced from the Landgate Administrative Boundaries Dataset.
Topographical data sourced from the PSMA Dataset.
Coastlines and shorelines are interpreted from aerial photography or recorded from ground surveys.
Local Authorities terminate at Low Water Mark (LWM) unless otherwise specified.
Pastoral Leases terminate 40 metres above High Water Mark (HWM) unless otherwise specified.
Islands shown are Unallocated Crown Land (UCL) unless otherwise specified.
Aboriginal Communities and ALT Lands datasets from DIA

DISCLAIMER
For informational purposes only. This map is a pictorial representation of data extracted from Landgate Datasets and is intended to be an overview of general geospatial information.
Waterlines shown on this map do not necessarily depict an exact cadastral boundary.
Native title application boundaries interpolated from descriptions held by the National Native Title Tribunal (NNTT) and Federal Court.
Reference should be made to the NNTT for confirmation of this boundary for any legal purposes.
In the event of any discrepancy between the written application boundary description and the areas depicted on this map the written description shall take preference as the maps and/or enlargements are indicative only.

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PRODUCED 07/03/2012

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Landgate

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Appendix 2: WA Government – Management of Mineral Applications

Year	Key Development	State's Processing of Mining Applications (no. of applications per year)		
		Received	Pending	Granted
1996/1997	WA compliance with the RTN commenced in 1995.	5,545	6,585	2,540
1998/1999	Wik 10 Point Plan amendments to NTA. Sharp increase in pending applications and a decline in granted applications caused by the RTN process.	5,121	11,048	1,124
2001/2002	A decrease in applications received as the number stalled in the RTN process increases. WA Technical Taskforce on Mineral Tenements Applications recommends Regional Standard Heritage Agreements to decrease objections to the use of the expedited procedure.	3,457	11,776	1,064
2006/2007	Mining applications stalled in the RTN process increases. WA Govt amends *Mining Act 1978* to allow mining lease applications to revert to applications for exploration titles over a 12 month period, to ensure only genuine mining proponents are applicants for future developmental titles. This affects approximately 50% of mining lease applications.	8,420	18,479	2,683
2007/2008	During the twelve month period there is a reduction in the pending applications and an increase in the applications granted. WA Govt maintains its approach to submit all exploration and prospecting applications to the expedited procedure.	4,144	14,626	4,678
2011/ 2012	Current situation. The backlog of pending applications has been reduced significantly.	3,666	6,239	3,398