



Submission in response to the review of the Native Title Act 1993

Ergon Energy Corporation Limited

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As a respondent party to numerous native title claims in Queensland, Ergon Energy Corporation Limited (Ergon Energy) makes the following submission in response to the Issues Paper for the review of the *Native Title Act 1993* (NTA) (the Issues Paper).

BACKGROUND

Ergon Energy is a distribution entity under the *Electricity Act 1994* (Qld) and is responsible for the supply of electricity within its distribution area. Ergon Energy owns and maintains a distribution network which covers an area of geographical radius from the Torres Strait Islands in the north to south east Queensland.

As a distribution entity, Ergon Energy owns and manages infrastructure, including electrical lines, substations and associated equipment for distributing electricity to customers.

Ergon Energy holds tenure in many claim areas including leases, easements, licences and wayleave agreements for the purpose of construction and access to infrastructure.

Under the NTA, the valid construction of electricity infrastructure by Ergon Energy, prior to 23 December 1996, is a previous exclusive possession act which extinguishes native title.

AUTHORISATION OF ILUAS

It is noted that the "Terms of Reference do not direct the ALRC to consider the authorisation of ILUAs. However the ALRC notes that it may be desirable for the two authorisation provisions to remain consistent."¹

Section 251A of the NTA effectively provides that native title holders may authorise an agreement using a traditional decision-making process or, if none exists, a process agreed to or adopted by the group.

In Ergon Energy's experience, ILUAs are generally considered at a meeting of the full claim group. If agreed, the Applicants are authorised to sign the ILUA.

Given, as the Issues Paper has identified, the size of claim groups and that many claim group members will need to travel to a meeting, the cost of convening a meeting is considerable. In some instances these costs are sought from a respondent party.

Ergon Energy submits that the NTA should be amended to clarify that a claim group can authorise one or more Applicants to agree to and to sign an ILUA without the need for a meeting of the claim group.

Respondent Interests and Representation

Ergon Energy submits that persons who have an interest within a claim area should not be precluded from joining proceedings.

It is noted in the Issues Paper in Issues 284 to 287 that there is some suggestion that the interests of some parties could be adequately protected or represented by the relevant State or Territory government.

Ergon Energy's experience is that the State government does not have the capacity including resources to adequately protect Ergon Energy's interests, as well as the State's own interests.

The State of Queensland's resources are already stretched given their role in assessing connection and identifying and analysing the tenure of parcels in a claim area for the purpose of defining the claim. On a number of occasions the State has represented to the Court that considerable time, resources and costs are required to undertake connection and tenure analysis, particularly in urbanised areas where a considerable number of parcels may be located within a claim boundary.

¹ From page 72 of the Issues Paper.



There may also be a potential conflict between the State and Ergon Energy's interests particularly where Ergon Energy holds or seeks an interest in State land.

Ergon Energy submits that an expectation that the State will represent Ergon Energy's interests in native title proceedings is unrealistic given the capacity of the State and the potential for conflict of interests to arise.

Ergon Energy submits that it would also be against procedural fairness to prevent a party from seeking to be represented in proceedings in which they have an interest. The current provisions of the NTA allowing parties to join to proceedings under section 84(5), in Ergon Energy's view, provide adequate protection against potential delays or prejudice to other parties through the ability of the Court to exercise its discretion in any application for joinder.