

Our ref: kb 221181

28 July 2025

Ms Jane Hall
Senior Legal Officer
Australian Law Reform Commission

By Email: [REDACTED]
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Dear Sir

Discussion Paper: Review of the Future Acts Regime

We refer to our telephone conversations with you and thank you for agreeing to an extension of time to today's date for lodging a submission on behalf of PKKP Aboriginal Corporation (**PKKP AC**).

PKKP AC is the prescribed body corporate under the *Native Title Act 1993* (Cth) which holds native title rights and interests on trust for the Puutu Kunti Kurrama and Pinikura People.

The Puutu Kunti Kurrama People and the Pinikura People comprise two unique socio-territorial language groups that have maintained a common spiritual affiliation with, and share primary spiritual responsibility for, their ancestral country in the West Pilbara region of Western Australia (commonly referred to as the 'Ashburton Plains' and the 'Hamersley Plateau', with the western boundary being approximately 120 kilometres east of the town of Onslow and the eastern boundary being approximately 90 kilometres North West of Paraburdoo).

The native title rights and interests of the Puutu Kunti Kurrama and Pinikura peoples to these lands and waters were recognised in the determination of the Federal Court in Chubby on behalf of the Puutu Kunti Kurrama People and the Pinikura People #1 and #2 [2015] FCA 940 on 2 September 2015.

PKKP welcomes the opportunity to make a submission (through us) to the Australian Law Reform Commission in relation to the above Discussion Paper. This submission is focused primarily on the Expedited Procedure noting that the majority of the PKKP Determination Area is covered by mining tenure, the majority of those being Exploration Licences which have all (but one or two) been subject to the Expedited Procedure. The PBC has an obligation to consider each and every application and take steps to object where appropriate. This places an extraordinary financial, administrative and cultural burden on PKKP.

PKKP generally supports the Proposals set out in the ALRCs Discussion Paper and in particular, strongly supports the repeal of section 32 of the NTA (Expedited Procedure) at Proposal 9. However, but only if the Expedited Procedure is to be retained, we propose some practical amendments which would go some way to ameliorate the inherent unfairness in the process so far as it concerns the native title party.

The Discussion Paper emphasises early engagement and agreement making. As the ALRC points out, this approach 'requires an even playing field' if it is to work for the native title party.

The current right to negotiate is a negotiation between parties with unequal bargaining positions; where the native title holders have very little power compared with the proponent and government parties. The Expedited Procedure aggravates that power imbalance because:

- the proponent understands that it does not have to agree to the terms that the PBC is proposing to negotiate in the period it has within which to decide to file an objection (usually 4 months);
- the onus is on the PBC to establish an objection on the very limited grounds offered under section 237(a), (b) or (c) of the NTA often without access to detailed information about the proposed activity;
- supporting an objection when the relevant country subject of the tenement is often unsurveyed is difficult (and often not possible) for the PBC ;
- the default position for a proponent in WA is to enter into a Regional Standard Heritage Agreement (**RSA**) which does not require the proponent to protect heritage that has been determined to exist and does not provide for any monetary benefit (amongst other things)

To ameliorate the unequal bargaining position we propose that there be changes to section 32 including to require:

- the Government party to make a proper merits assessment for the purposes of section 237 (reviewable by the NNTT) before it may issue a statement triggering the expedited procedure;
- the proponent to provide a sufficient amount of information as to what work it intends to carry out on the proposed tenement both to the State and to the Native Title parties;
- the State to take into account the proponent's stated intentions together with the rights associated with the grant of the tenement (eg. to assess possible impact including the right of a tenement holder to apply for excess tonnage – see from paragraph 24 of PKKP's Third Submission to the [Parliamentary Inquiry](#) into the destruction of Juukan Gorge);
- the State to engage in a consultation process with the proponent and native title party before it issues or completes its merits assessment; and
- the State conduct its merit assessment and seek further comments from the proponent and native title party prior to determining to issue a statement to the effect the expedited procedure applies.

After the process described above (in the event of an objection by the native title party to the NNTT) the onus should remain with either the State or the proponent to show why the expedited procedure should apply; or alternatively, that it is in effect an inquisitorial process such that the onus is not on the native title party.

In addition to the above the standard RSHA (or various versions of it) must be reviewed and amended such that its conditions are substantially fairer to the native title party than the current conditions.

The advantages of such an approach include:

- an updated RSHA would provide an incentive to negotiate an agreed outcome;
- contain provisions which better reflect changing community expectations in respect of protection of important heritage sites;
- contain provisions which provide for the proper remuneration of traditional owners for their heritage survey work (traditional owners are often required to rearrange their work and family commitments to meet survey obligations set by proponents, despite the fact scheduled rates in the current RSHA are outdated and fail to reflect the nature of the work performed or the value of the traditional knowledge being shared);
- recognise the native title party's entitlement to compensation pursuant to section 24MD(4)(b) of the NTA¹ eg. propose to include an obligation (as a minimum) on the proponent to make an annual payment of 5% of its on ground expenditure being an amount which is:
 - easily ascertainable²; and
 - referable to the actual disturbance/impact that has occurred;

[without a provision requiring the proponent pay compensation it is unlikely that compensation will ever be paid by that proponent due to the difficulty PBCs would have in bringing separate proceedings for native title compensation against all mineral explorers operating on their country]

- a compensation payment tied to minimum spends is already a common provision in standard heritage agreements (at least across the Pilbara and in the Kimberley) and is generally accepted by proponents (but not always, which creates an uneven playing field amongst mineral explorers); and
- in our experience, a negotiated outcome is ultimately good for business with proponents who enter into agreements which are fair and equitable and who continue to engage over the period of exploration, invariably yielding better business outcomes.

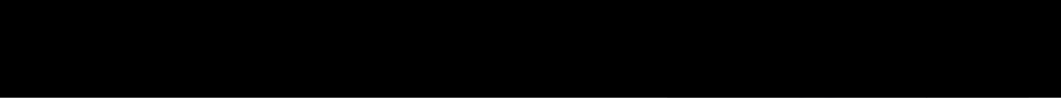
¹ noting that section 24MD(4)(b) allows the State to transfer its liability for compensation to the mining proponent which it has done in WA by virtue of Section 125A of the Mining Act

² as required in an annual form to be completed and submitted by the proponent

We will be pleased to respond to any queries you may have or provide further clarification in relation to this submission.

Yours sincerely

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