Amalgamated Prospectors and Leaseholders Association of W.A. Inc.

Representing Prospectors Since 1904

Amalgamated Prospectors and Leaseholders Association (APLA) is the peak advocate for small-scale miners and prospectors in Western Australia since 1904, ensuring that government policy reflects the diversity of stakeholders in the mining sector.

Prospectors are an important part of Australia's mining ecosystem as they find the mines of the future. They also contribute directly to regional economies and its cultural fabric. Prospecting is generally undertaken by individuals, families or small partnerships. By its very nature, prospecting is highly speculative, and periods of success can be followed by long periods of 'drought'. Many prospectors who attempt to make a living by prospecting are not well educated and/or do not have the resources to engage lawyers to assist them. Nor do they necessarily have the financial resources to meet the ever-increasing levels of compensation, payments and costs that are requested. This puts them at a disadvantage in the current and proposed systems.

APLA appreciates the opportunity to provide feedback to the Australian Law Reform Commission (ALRC) regarding the Review into the Future Acts Regime: Discussion Paper 2025.

This submission provides our experience with the current Future Acts process under the *Native Title Act 1993 (Cth)* and is structured to provide responses to the questions relevant to APLA specifically identified in the Discussion Paper.

Native Title Management Plans (NTMP)

The Discussion paper introduces Native Title Management Plans (NTMP) as reform towards self-determined land governance for Native Title Prescribed Bodies Corporate (PBC) for their determination areas. This flexibility should not come at the expense of increased complexity, cost and deprived access to land.

For areas of non-exclusive Native Title, APLA is cautious how PBC's will introduce NTMPs - noting fund availability and resourcing constraints for PBC's and stakeholders alike. It is important that stakeholders can rely on simple statutory procedures where the content (including compensation) of a registered NTMP is not appropriately aligned with the nature and scope of the prospecting activities, thus creating an effective veto. APLA recognises that there has been a unilateral increase in the costs for services provided by consultants, i.e. archaeologists, anthropologists and lawyers who are the architects of a myriad of paperwork that proponents are now forced to understand, agree and, in most cases, sign.

Conduct and content standards

APLA considers the reciprocal "*duty to act in good faith*" is a cornerstone of the negotiation process. A key concern identified about the current future acts regime is the lack of consequences if such legal obligations are not met. APLA recognises that there is a limited pool of suitably qualified experts who can provide support to both parties, and this process is further complicated by the time constraints commonly faced by proponents due to industry requirements and by the native title parties.

During the negotiation process, APLA acknowledges that reasonable costs and fees should be borne by proponents, however with the rise of vexatious objections to future acts the legal costs for agreement negotiation are becoming time-consuming and unmanageable for prospectors. Over the recent period, APLA has members who report request from PBC's legal firms to pay upfront cost of $5000 to $70,000 to enter the negotiation process. Regulations to mandate the reasonableness of legal costs would be welcomed. Future act payments have been likened in the Discussion Paper to licence fees. APLA believes these payments should be benchmarked with other relevant licence fees for the same activity – not be a licence to print money.

There is an assumption in the Discussion Paper that proponents are better resourced than PBC's/Native Title parties. When it comes to prospecting, this is not necessarily the case. The Discussion Paper purports to be creating a more fair and reasonable system, however it is only becoming more unfair and more unreasonable for individual and small-scale prospectors. The perception of a fair and reasonable system is not correct as many prospectors cannot even afford to engage their own lawyer and placing Native Title costs and fees (and potentially royalties/profit-sharing requirements) on them will effectively make prospecting an unviable activity.

Agreement transparency

An opt-in public register for native title agreements would balance the efficiency with fairness for our members and Native Title Parties. Making non-confidential information available about agreements would enable all parties to make better-informed decisions.

Recreational prospectors often struggle to determine whether a particular area is under exclusive, non-exclusive, or pending Native Title. GIS tools like TENGRAPH (WA Department Mines Petroleum Exploration) are helpful but not always user-friendly for non-specialists. State regulatory bodies could enhance mapping platforms with intuitive layers indicating where recreational prospecting is clearly Allowed, Prohibited or Conditional.

APLA makes the general observation that some native title parties may support confidentiality but confidentiality in the future act agreements is often a requirement to protect sensitive information provided by proponents. There is a general lack of readily available information on what the contents of a future act agreement should look like which leads to an ad-hoc arrangement where transparent and accurate benchmarking of agreements is and will become a challenge.

Reshaping the statutory procedures

The expedited procedure in Western Australia allows certain low-impact activities (eg grant of a prospecting licence) to proceed without full negotiation —unless a Native Title party objects. This procedure has been a critical mechanism for small-scale prospectors/miners to access land affordably and efficiently. APLA is aware, that in Western Australia, the timing of the approval process when dealing with the NNTT is a slow and cumbersome process, particularly when dealing with an objection.

The proposal to remove the expedited procedure in Western Australia and replace it with an impact-based model provides some concern to APLA as currently there is a no fee for service when native title parties are responding to expedited procedure notifications. For low-impact activities, like limited ground disturbance dry-blowing or wet plant treatment, which APLA members undertake, this would require some level of negotiation/consultation and minimum procedural standards, and possibly compensation which would have a direct impact on APLA members. If the expedited procedure were abolished, it would spell the death knell for prospecting, as prospectors are generally not sufficiently resourced to meet the increasingly costly demands in alternative agreements, particularly when most prospecting activities in many areas can be carried out without significantly impacting Native Title rights and interests.

Western Australia has recently introduced a process where tenement applications which would normally attract the expedited procedure are triaged and applications likely to be successfully challenged are sent straight to Right to Negotiate (RTN). This gives prospectors the opportunity to withdraw their application at this stage, albeit losing their application fees.

The RTN process has become costly and lengthy agreement making process. The proposed model does not remedy events that encourages vexatious objections resulting in extending cost/time delays, a move towards defacto vetos to land access (akin to freehold land rights), an expanded power (and workload) of the National Native Title Tribunal (NNTT) to impose conditions (eg royalties, profit sharing) but not shared liability, thus further reinforces the inequity model against small scale operators.

Navigating a tiered negotiation system will require burdensome legal advice, disadvantaging prospectors/small scale miners who lack the resources of corporate explorers. To balance fairness and feasibility, the reform might include an exemption category for registered prospectors for low-impact activities and reduce the strain on PBC's.

Compensation and Costs

The inflated cost of third-party consultants and time delays are due to the complex negotiation and agreement making process for access to land. Introducing a separate, mandatory payment duplicates compensation mechanisms, creating a de-facto royalty regime that conflicts with the Crown's ownership of minerals.

Practical issues make it difficult to determine and quantify the compensation amount for a future act involving low impact ephemeral prospecting activities. A mandatory payment will disproportionately price out prospectors (with limited capital) and entrench the system where only large companies can afford to operate on native title land.

The perception of a fair and reasonable system is not correct as APLA doesn't agree that proponents should be responsible for paying PBC/Native Title parties' negotiation or consultation costs and fees. Many prospectors cannot even afford to engage their own lawyer and placing PBC/Native Title costs and fees on them will effectively make prospecting an unviable activity. APLA acknowledges that reasonable costs and fees should be borne by proponents for their own legal teams, however with the rise of unregulated consultant costs for agreement negotiation and land access are becoming time-consuming and unmanageable for prospectors.

Improved funding and capacity building funded by Government for PBC's is crucial to reduce its reliance on ancillary agreements for cost recovery.

Small-scale miners and recreational prospectors play a vital role in Western Australia's regional economy, heritage, and culture and is a time-honoured and economically valuable industry.

The increasing complex Native Title procedural requirements under the *Native Title Act 1993 (Cth)*, means small operators face challenges accessing land for low-impact prospecting and small-scale mining activities. Unlike large corporations, small scale-miners and prospectors lack the legal and financial capacity or capability to navigate the full Right to Negotiate (RTN) processes.

It is recognised that reforms to the *Native Title Act 1993 (Cth)* and regulatory procedures in Western Australia are required. These reforms must deliver a clearer, simpler, and fairer proportionate system that acknowledges the operational scale and intent of low-impact prospecting/small scale mining, while ensuring that co-existent traditional owner Native Title rights are respected and upheld.

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