

Submission to the Australian Law Reform Commission: Response to Options Papers

Introduction

The Eastern Goldfields Prospectors Association (EGPA) represents a broad cross-section of stakeholders in the mining industry. We are comprised of prospectors, small miners and junior ASX explorers. In response to the two Option Papers released by the Law Reform Commission, we would like to submit our concerns, insights, and recommendations regarding the proposed reforms.

1. Extension of Submission Period

We believe that the current submission period is insufficient to fully consider and develop workable solutions to the significant issues raised by the reforms. Given the complexity and far-reaching consequences of the proposed changes, we respectfully request an extension of the submission period by an additional 3 months. Our organisation knows many people are not even aware that this Australian Law Reform Process is underway. This has enormous implications on the livelihoods of small miners and prospectors. It is absolutely critical that government gets this right otherwise the whole industry will face enormous negative consequences. This extension of time for submissions would provide adequate time for all relevant stakeholders, including industry groups, Traditional Owners, and legal representatives, to consult and prepare comprehensive submissions that address these critical issues.

2. Abuse of Expedited Process Objections

We strongly oppose the recent removal of fees for expedited process objections in October. While the intention may have been to streamline the objection process, it has unfortunately led to a significant abuse of the system. The removal of fees has made it easier for individuals and groups to lodge objections that lack substantive merit, resulting in unnecessary delays and disruptions for industry participants who are trying to operate in good faith. We urge the Commission to reconsider this change and introduce mechanisms that prevent abuse while ensuring legitimate concerns can still be raised effectively.

3. Abolishment of the Future Acts Process

The proposed abolishment of the Future Acts process is, in our view, a direct threat to the viability of the mining industry. This process has been a key framework for balancing the rights of Traditional Owners with the interests of mining companies. Removing it would create uncertainty and instability, leading to potential disruptions and conflicts that could harm both the industry and the broader economy. We recommend that the Future Acts process be retained, and that any necessary reforms focus on improving its efficiency rather than dismantling it entirely.

4. Oaths Act and the Need for Evidence

Under the Oaths Act, there are no clear requirements for the submission of evidence in support of objections. This creates a situation where statements made in objections cannot be held to legal scrutiny or account. To ensure that objections are genuine and based on verifiable facts, we recommend that the Commission consider introducing mandatory evidence requirements where all parties can also be cross examined on that evidence for all objections lodged under the Native Title Act. This would help to prevent frivolous objections and ensure that all parties are acting in good faith. At present statements are simply signed not under oath and then lawyers then argue and contend that these statements are truthful. Lawyers for native title parties also argue that matters should be determined on papers only without even cross examination and this just leads to false statements being made and the Tribunal relies upon those statements to make decisions.

The whole process of submitting evidence and having the clear right to cross examine individual statements on any evidence must be heavily tightened up otherwise this whole process will continue to be abused to exploit the mining industry.

5. Abuse of the Objections Process

The abuse of the objections process is a significant issue, particularly in the context of the growing number of objections that are not based on substantial evidence. Objections should be meaningful and supported by concrete, readily available evidence. Currently, there is little accountability for objections that are submitted without sufficient backing, which contributes to delays and confusion. We urge the Commission to introduce measures that ensure that objections are well-founded and that those raising objections have access to and provide appropriate evidence in support of their claims.

6. Increased Power for Lawyers at the Expense of Traditional Owners

We are concerned that the proposed changes will disproportionately benefit lawyers, potentially to the detriment of Traditional Owners. By giving legal representatives more power to influence the outcome of Native Title claims and objections, the reforms could undermine the voice of Traditional Owners, who should be the primary stakeholders in decisions regarding their land. The emphasis should be on empowering Traditional Owners to engage in the process, rather than allowing lawyers to take greater control. We recommend that the reforms focus on ensuring that Traditional Owners have the tools and support they need to actively participate in and influence outcomes in a fair and balanced manner.

8. The Native Title Act: Administration, Not Legislation

Finally, we would like to address the broader concern that the Native Title Act itself is somehow flawed. We believe that the Native Title Act, in its original form, is fundamentally sound. The issues that have arisen in its implementation are more related to its administration, rather than any inherent flaws in the legislation itself. The focus should be on improving how the Act is administered, ensuring that all parties – particularly Traditional Owners and industry stakeholders – are treated fairly and with respect.



Conclusion

In conclusion, we urge the Law Reform Commission to reconsider some of the proposed changes, particularly those that could have unintended negative consequences for the mining industry and the broader community. We remain committed to working with all relevant stakeholders to find solutions that balance the rights of Traditional Owners with the legitimate interests of the mining sector. However, this can only be achieved if adequate time and processes are in place to allow for meaningful consultation, evidence-based decision-making, and fair participation for all parties.

We appreciate the opportunity to provide this submission and are looking forward to engaging further on these important issues.
