



Native Title Services Victoria Ltd

ABN 27 105 885 149
Level 2 642 Queensberry Street (PO Box 431) North Melbourne VIC 3051
ph (03) 9321 5300 fax (03) 9326 4075 www.nts.com.au

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Resource Exploration
Productivity Commission
GPO Box 1428
Canberra City ACT 2601

Via email: resourceexploration@pc.gov.au

Dear Commissioners

Inquiry into non-financial barriers to mineral and energy resource exploration

Native Title Services Victoria Ltd (NTSV) welcomes the opportunity to respond to the Productivity Commission's above inquiry.

NTSV was registered as a company limited by guarantee in August 2003 for the purpose of providing professional services to native title claimant groups in Victoria. It is funded under s203FE of the *Native Title Act 1993* (Cth) ('NTA') to carry out the functions of a representative body as prescribed in the NTA. It also receives funding from the Victorian Government to assist Traditional Owners in negotiations under the *Traditional Owner Settlement Act 2010* (Vic) ('Settlement Act') and to assist Traditional Owners with Natural Resource Management projects. It is governed by a Board of Directors comprising Victorian Traditional Owners.

We look forward to the Commission's consideration of our comments which are intended to illustrate that native title is not an impediment to mining exploration in Victoria and that we generally support the draft recommendations 5.1, 5.2 and 5.3 pertaining to heritage protection. NTSV is confident that the *Aboriginal Heritage Act 2006* (Vic) already meets these benchmarks and, providing the amendments to this Act are made in line with the Victorian Government's recent response, NTSV believes the appropriate protection to our client's rights will be afforded while facilitating exploration activity.

I would be pleased to discuss any aspect of our submission.

Yours faithfully

Matthew Storey
CHIEF EXECUTIVE OFFICER

Submission: Native Title Services Victoria

Inquiry into non-financial barriers to mineral and energy resource exploration

Native title should not be seen as a barrier to exploration

While native title issues do not form a formal part of the terms of reference for this inquiry, it is important for NTSV to assert that native title issues are not an impediment to exploration, particularly in light of other submissions to this inquiry. Indeed, native title provides certainty to developers and all land users by clearly identifying the Traditional Owners with rights and interest in a particular area.

Victoria has an excellent track record of securing negotiated agreements for exploration and production. *The Native Title Act 1993* (Cth) allows for parties to native title agreement negotiations to refer the matter to the National Native Title Tribunal for arbitration or mediation if agreement has not been reached after a six month period.¹ In Victoria, there has never been an exploration application which has incurred a delay as the result of native title issues.

Traditional Owners and industry must work in partnership

Native title is inexorably linked to any inquiry into mineral exploration due to the legal rights and interests that are conferred on Traditional Owners over their land. Therefore, NTSV strongly agrees with the recommendations put forward by both NTSCORP in their submission and the submission and oral evidence given by Yamatji Marpa Aboriginal Corporation that Traditional Owners *must* be considered as partners in any decision-making process regarding exploration on their traditional Country.

Our clients are not opposed to exploration, but they do express a strong cultural obligation to ensure proper management of Aboriginal heritage, while facilitating exploration activity.

NTSV commends the Productivity Commission for considering options that achieve a balance between minimising costs and delays for explorers and protecting the rights and interests of Traditional Owners. NTSV believes it is in the interests of all parties to consult with Traditional Owners at the earliest stage of the process. It provides certainty to developers and avoids the risk of the project being delayed further into the process as a result of an ongoing poor relationship.

Heritage Protection in Victoria

The Victorian *Aboriginal Heritage Act 2006* ('the Act') represented the first opportunity for Victorian Traditional Owners to be properly included in Heritage protection. It was recently subject to a Parliamentary Inquiry and a Draft Amendment Bill is now proposed to be introduced in 2014 with a future Victorian Aboriginal Cultural Heritage Strategy proposed to be developed in 2014.

Following the Inquiry, the Government committed to strengthening heritage protection through recognising the primacy of Traditional Owners rights to manage and protect their cultural heritage.

¹ Section 35(1) of the Native Title Act 1993 (Cth).

NTSV advocates that Traditional Owners are the only appropriate people to manage their cultural heritage and that they should be properly resourced and accountable for their decision making.

The Act already addresses all the Productivity Commission's draft recommendations as outlined in section 5.3. Under the Act, the Victorian Aboriginal Heritage Council determines Registered Aboriginal Parties (RAPs) and each RAP has important responsibilities relating to the management of their cultural heritage. This includes evaluating cultural heritage management plans (CHMPs), which are generally considered an efficient and effective approach to cutting red tape in this area, providing advice on applications for cultural heritage permits, making decisions about cultural heritage agreement and providing advice about ongoing protection declarations.

Given the Victorian Government's recent commitment to strengthening the primacy of Traditional Owners with amendments to the Act, NTSV is confident that Victoria's heritage management regime will become one of Australia's leading systems for the protection and management of Aboriginal cultural heritage while facilitating the exploration process by reducing regulatory burdens.