



ANINDILYAKWA LAND COUNCIL

Manager
Corporate Tax Unit
Business Tax Division
The Treasury
PARKES. ACT 2600
Email: nativetitle@treasury.gov.au

Dear Sir,

Tax Treatment of Native Title Benefits

I am writing on behalf of the Anindilyakwa Mining Trust (AMT), which is an Aboriginal Trust established to hold and invest funds received from the Groote Eylandt Mining Company (GEMCO). The beneficiaries of the Trust are the Aboriginal traditional owners of the land upon which mining takes place and those other Aboriginals directly affected by the mining.

The Trust was established by the Anindilyakwa Land Council (ALC) as a result of an agreement concluded in 2006 between the ALC and GEMCO pursuant to Section 46 of the Aboriginal Land Rights (NT) Act 1976 (the Land Rights Act). The Agreement provides for payments to be made by GEMCO to the ALC based on the production of manganese mined from Aboriginal land on Groote Eylandt. The ALC is bound by the terms of the agreement to transfer the payments it receives from GEMCO into the AMT.

The Trust has examined the exposure draft of the *Tax Laws Amendment Bill 2012: tax treatment of native title benefits*. While noting that the intention of the proposed legislation is to provide certainty about the way native title benefits interact with the income tax system, it remains unclear to the Trust as to whether payments made under section 46 of the Land Rights Act can be classified as *native title benefits* as defined in the proposed legislation.

In the detailed explanation of the new law at paragraph 1.15, a native title benefit is defined as:

- A payment or non-cash benefit provided under an agreement made under Commonwealth, State or Territory legislation (or an instrument under such legislation) to the extent the payment or benefit relates to an action affecting native title.

The explanatory material at paragraph 1.16 then defines *an action affecting native title* as one that extinguishes native title rights and interests **or is otherwise wholly or partly inconsistent with their continued existence, enjoyment and exercise.**

The explanatory material then goes on to state at paragraph 1.17 that agreements captured by this definition include, but are not limited to, Indigenous Land Use Agreements under the NTA and



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agreements under the *Traditional Owner Settlement Act 2010 (Vic)*. There is no mention of the Land Rights Act or any agreements that may be concluded under that legislation.

It is our submission that the payments made by GEMCO to the ALC in relation to mining on Aboriginal land on Groote Eylandt can and should be captured by the definition of a native title benefit. It is clear that mining on Aboriginal land amounts to an action affecting native title and is "partly inconsistent with their continued existence, enjoyment and exercise." To take any different view would be to compound the current uncertainty and confusion that the proposed legislation seeks to remove.

It is also our submission that to the extent the new legislation seeks to draw some artificial distinction between the Aboriginal traditional relationship to land underpinning the Land Rights Act and the relationship to land recognised under the Native Title Act (NTA), a serious inequity will result. Indeed, such an inequity may well have the effect of Aboriginal Traditional Owners in the NT making claims under the NTA in order to secure the benefits of the proposed legislation. It would also continue the practice of Aboriginal Trusts in the NT having to seek Tax Concession Charity status to gain income tax exemption but which reduces their capacity to pursue economic development outcomes of the kind the Government is keen to promote.

The Trust is of the strong view that the legislation should make explicit that payments made under section 46 of the Aboriginal Land Rights (NT) Act be classified as a native title benefit. Thank you for receiving our submission and we would be willing to discuss the issues raised at a time of your convenience.

Yours sincerely


Tony Wurrumarrba
Chairman
Anindilyakwa Mining Trust.
23 August 2012.

Cc The Hon. Nicola Roxon MP
The Hon. Jenny Macklin MP
The Hon. Warren Snowdon MP
The Hon. David Bradbury MP