MEDIA RELEASE
MINERALS COUNCIL OF AUSTRALIA

Australian mining sector calls for urgent native title amendments to end uncertainty

Statement from David Byers, Interim Chief Executive, Minerals Council of Australia

Australian minerals companies have called for urgent amendments to native title laws to remove uncertainty created by court decisions which cast doubt over the status of mining leases and tenements.

The MCA’s submission to the Attorney-General’s Department’s Options Paper for reforms to the Native Title Act (NTA) outlines two key priorities which should be brought to the Parliament before broader legislation is introduced.

The minerals industry is committed to a native title system that works effectively to both protect the rights of Indigenous Australians and facilitate activities on Indigenous land consistent with those rights, in line with the industry’s acknowledgment of Aboriginal and Torres Strait Islander peoples as Australia’s first peoples with a special connection to their traditional lands and waters.

As an active participant in native title reform, the MCA has asked the Federal Government to urgently introduce legislative amendments in two areas to validate:

- Section 31 agreements, which are frequently used as the basis of grants of mining and exploration rights over land which may be subject to native title. The validity of existing section 31 agreements which were not signed by all members of the applicant was put in doubt by the Federal Court’s 2017 McGlade v Native Title Registrar & Ors decision. This has made the status of mining and petroleum leases and other related interests granted in reliance on those agreements also unclear.

- Western Australia mining tenements, the validity of which was thrown into doubt by the High Court’s 2017 judgement in the Forrest & Forrest Pty Ltd v Wilson & Ors case. The WA State Government is now drafting a validation bill to provide retrospective validity to tenements affected by the ruling. It is essential for complementary amendments to be made to the NTA to allow the WA legislation to take effect and ensure continued validity of mining tenements and associated native title agreements.

The MCA congratulates the Federal Government and Opposition on supporting the passage of the Native Title Amendment (Indigenous Land Use Agreements) Act 2017. This resulted from a collaborative effort between the industry and native title stakeholders. It illustrates the shared interest in a legislative framework that provides certainty and efficiency for all parties.

Among the MCA’s membership are companies that pioneered the use of the NTA to negotiate agreements with traditional owners, forge relationships with Indigenous communities and build long-lasting partnerships to share the benefits of development on Indigenous land.

However, the minerals sector needs certainty to secure investment for resource projects. Without these urgent amendments, the status of mining leases and tenements across Australia, and particularly in WA, will remain under a cloud.

The MCA’s submission also outlines a set of principles – stability, certainty, efficiency, opportunity – against which broader proposals for NTA reform can be tested.

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