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Important reforms to the Native Title Act 1993 (Cth)

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On 6 June 2012 the Federal Attorney-General, the Honourable Nicola Roxon MP, announced the Federal Government's (**Government**) intention to implement significant amendments to the *Native Title Act 1993* (Cth) (**Act**). The amendments will affect four aspects of native title:

1) The Government is seeking to make Indigenous Land Use Agreements (**ILUAs**) more flexible. This will simplify the process for making minor changes to ILUAs.
2) The Government will prescribe the requirements for 'good faith negotiations' under the Act. This will mean that in all negotiations, parties will have to satisfy certain minimum requirements before a matter can proceed to arbitration. The Government suggests that this is in response to a recent trend in paying 'lip service' to negotiations, whereby land holders aim to 'run down' the clock and put in minimum efforts prior to arbitration. Under the new regime, parties will have to prove, by conforming with the Act, that they have made real attempts to engage in good faith negotiations.
3) All native title payments will become tax free and will not be subject to capital gains tax. This clarifies recent confusion as to the taxation status of native title payments, and indicates that they are to be considered as other compensation payments.
4) The amendments will allow parties to form agreements with respect to historical extinguishment in parks and reserves. This will allow State Governments and land holders to agree to recognise existing native title rights, notwithstanding an act of historical extinguishment.

How will this impact land holders?

The amendments will have important implications for land holders. The prescription of the negotiation process will mean that minimum requirements will have to be adhered to, incurring potential costs and delays. The Federal Opposition and the National Farmers Federation have cited this issue as their biggest concern. Further, the ability to form agreements about past extinguishment could potentially impact upon native title matters that have already been settled. However, at this stage it appears that these agreements will only affect indigenous rights in national parks and reserves.

The reforms come at a time of renewed interest in native title. This week marked the 20 year anniversary of the seminal *Mabo* decision. In addition, there is currently a private member's Bill, the *Native Title (Reform) Bill 2011*, before the Federal Parliament introduced by Senator Rachel Siewert of the Australian Greens Party. The Bill seeks to introduce more fundamental reforms to the native

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title regime, the most important of which is a reversal of the onus of proof in establishing an unbroken connection with the land. Under the proposed bill there would be a presumption that an unbroken connection exists, and it would be for land holders to rebut this presumption.

How we can help?

Our project approvals team specialises in the areas of land access, native title and Aboriginal heritage. We work with industrial and resource clients, developers, project investors and government agencies in negotiating agreements involving native title and cultural heritage matters.

Squire Sanders is able to provide strategic advice on the conduct and management of indigenous issues impacting on projects. Advice is geared towards progression of projects, while being sensitive to indigenous protocols, and contributing to long term relationships between traditional land owners and the client.

For information on this issue or how our project approvals team can work with your business, please contact Margie Tannock or Lauren Barnett.

Contact

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