



**Submission to the Mining Act review on behalf of the Wilyakali #1 and Wilyakali #2 Native Title Claim Groups**

**Comparison with New South Wales**

Wilyakali People, in addition to having Country in South Australia, also have Country in New South Wales. It is the experience of Wilyakali People to be engaged with before any activity occurs on country. This is an important distinction between what happens in practice in New South Wales and in South Australia.

In New South Wales, the distinction acknowledges the importance of engaging and negotiating with Traditional Owners and engaging with them early in the process for getting onto Wilyakali Country. Engagement is not a by-product but is a pre-requisite.

In South Australia, the distinction allows an explorer to determine when they will engage with Traditional Owners. It is the Wilyakali experience the danger is it will be after an explorer has assessed for themselves that an activity is no longer low impact.

**Low impact exploration and Aboriginal Heritage**

The Wilyakali understand that in South Australia explorers self-assess whether the impact of their activities on the ground is a low impact or high impact activity, and that this is based on an assessment of the impact on the environment.

This then dictates whether a Native Title Mining Agreement is required for exploration.

The Wilyakali disagree with the concept of self assessment for low impact exploration. In their view it is a conflict of interest for the explorer to self assess their activities.

They are also concerned with the concept of low impact exploration.

What can be considered low impact to a cultural landscape is a matter to be decided by Traditional Owners and while activities may be considered to have a low impact on the environment they may adversely impact on any Aboriginal heritage sites, objects or remains present.

The use of shovels and hand tools are not considered to be of low impact and the taking of samples without the consent of Aboriginal people is also a matter of strong concern.

Where there is no engagement required with native title groups in this process, the Wilyakali are worried that explorers don't know country and may adversely impact Aboriginal heritage. To mitigate this risk Aboriginal people must be involved from the first step regardless of the planned level of impact.

There have been many impacts on Aboriginal people and their heritage already and this issue is one that is important to the Wilyakali and must be addressed.

As identified above, in New South Wales an agreement is needed prior to undertaking low impact activities. Wilyakali want to work with industry in South Australia from the beginning and this needs to be built into the process.

Mining companies should always have someone with them regardless of the activity and the number of people undertaking that activity.

When Wilyakali want to access land they let property owners know, and if they go into the country of another Aboriginal group they speak to the other group. Mining companies need to show the same level of respect

### **Negotiations**

When entering into negotiations for a mining agreement, what happens during those negotiations will depend on a number of factors, including, if an agreement (which provides for heritage protection) between the Traditional Owners and the explorer has been entered into previously. In these circumstances, explorers may rely upon that prior engagement to shorten the negotiations. This is not in accordance with Aboriginal cultural protocols, wherein people have an ongoing dialogue about access and movement about Country.

From Wilyakali's perspective, explorers see reaching agreement with Aboriginal people as a check box to be ticked. This perception is worsened by the fact that if agreement is not reached within the timeframes in the Mining Act 1971 (SA), then the explorer always has the option of seeking a determination. Aboriginal people and the protection of their native title rights and interests, including the protection of their Aboriginal heritage, is undermined.

When entering into negotiations, costs - time and effort payments, travel, legal fees - associated with negotiations should be met by explorers. Costs are set by Wilyakali and they are not the subject of negotiation. Any agreement is intended to be for the benefit of Wilyakali and the explorer and negotiating in Wilyakali's view requires this kind of support to be provided to Aboriginal People.

### **Heritage Clearance fees**

Discrepancies in fees paid for clearance and survey work are also raised as a concern, governments has fees and these differ to what Wilyakali has set. The rates are determined by Wilyakali People and that fact is not being recognized.

### **Outcomes**

Agreements are entered into with explorers, but the primary outcome seems to be heritage clearances. While this is important to Wilyakali people, other outcomes related to employment and training have rarely resulted in tangible outcomes. Mechanisms or requirements that support the employment and training of Aboriginal People by (and financially resourced by) the industry need to be considered.