

# AGREEMENT FOR PROTECTING HERITAGE SITES ON EXPLORATION AND PROSPECTING TENEMENTS

In November 2003 the Goldfields Land and Sea Council, WA State Government and major mining industry representative groups pledged to cooperate in a new arrangement that will provide secure and improved protection for Aboriginal heritage, while at the same time speeding up access to land for mineral explorers.

At the heart of the new arrangement is the Agreement for Heritage Protection over Exploration and Prospecting, which took more than a year to negotiate and follows the recommendations of the Technical Task Force on Future Acts. Claim groups in the Goldfields were consulted and have endorsed the Agreement and the GLSC's Governing Committee approved it in February 2003. The Agreement is consistent with the approach taken by claim groups over the past few years, whereby they have given their consent to prospecting and exploration, provided Aboriginal heritage was protected.

The Agreement is a great step forward: without having to go through the bureaucratic National Native Title Tribunal 'objection' process for tenement applications, Aboriginal people's concerns about their heritage will get even greater attention. This is something the GLSC has been advocating for many years.

The Agreement resulted from concerns by both the mining industry and claimant groups about the heritage survey process. For example, in the past there was confusion about such things as who should go on surveys, the reporting standards of anthropologists and other researchers, protection of confidential information, payments and record keeping.

The Agreement requires that exploration and prospecting tenement applicants adhere strictly to a list of heritage protection processes, in return for claimant groups agreeing not to lodge objections. The result is much better heritage protection than at present, more certainty and fewer delays for explorers, proper recording of surveys, and better relationships between all parties.

If miners sign the Agreement then their applications for prospecting or exploration tenements will be put into the fast, 'expedited' process for approval. If a miner refuses to sign, then the application will automatically go into the slower, 'right to negotiate' process. Previously, claimants had great difficulty and little success in getting applications referred to the 'right to negotiate' process.

The main features of the Agreement are:

## Cooperation

- Miners and claimants commit to cooperate in ensuring proper identification, management and preservation of Aboriginal sites.
- Where 'low impact activity' is planned (involving no more than minor ground disturbance eg. field mapping, small exploration camps, hand sampling) the miner may choose a survey option that avoids known sites (Site Avoidance Survey). Where more significant activities are planned, a Site Identification Survey Without Cultural Detail option can be chosen. Whatever the survey method, there is never an obligation on informants to disclose confidential or culturally-sensitive information.
- Miners agree not to make applications to 'damage or destroy' sites under Section 18 of the *Aboriginal Heritage Act*, without first giving 60-days written notice to the claimants and meeting with them to discuss ways to prevent or to limit any damage to sites.
- The GLSC, as representative of claim groups, would play a key role in coordinating the agreement process, although claimants would be able to take responsibility for the conduct of surveys.

## Heritage Surveys

- The parties agree to consult with each other to decide which parts, if any, of the tenements require survey and may cooperate with other miners to ensure maximum efficiency with surveys. This is similar to the Pilot Project that was

undertaken in 2002 by the Wongatha people, which resulted in more than 100 tenements being surveyed and granted in a partnership that involved several companies.

- The parties agree to observe all requirements of the *Aboriginal Heritage Act* and the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Commonwealth).
- The coordinating anthropologist for all surveys will be a person agreed to by both parties. This will enable claimants and GLSC to develop a close relationship with credible anthropologists and to ensure proper standards of quality control for their reports.
- The departments of Industry and Resources and Indigenous Affairs will be closely involved in assisting in the coordination of surveys and capturing data and maps. DIA has developed a special database for this purpose.

## Survey Costs

- The coordinating anthropologist must prepare and deliver a budget to each party, which must be agreed before the survey commences.  
The miner will pay the survey costs, including:
  - Standard daily rate to informants, which is pegged to the consumer price index.
  - Logistical support, including anthropologist's costs, vehicles, accommodation and meals, where applicable;
  - Standard daily fee to cover and be used exclusively for claim group's office administration, equipment and related expenses for coordinating surveys and protecting sites.

## Survey Procedures

- The coordinating anthropologist will consult with both parties to clearly establish:
  - Location of the tenements, survey dates, and whether Aboriginal sites have been previously identified.
  - Individuals who are recognised to have cultural and traditional knowledge of and who are authorised by the claim group to speak about Aboriginal heritage issues.
- A representative from the claimants' authorised agent (GLSC) may participate in the survey to ensure proper standards are adhered to by the anthropologist and/or other researchers.
- No information contained in the survey report can be used by miners or the State to oppose any native title determination application brought on behalf of the claimant group.
- The coordinating anthropologist will provide a draft survey report to the parties who have 30 days to raise any concerns and make proposals. Where there are differences the parties must consult with a view to resolving them.
- The final report must account for comments made or agreed on in the drafting phase and be forwarded to the parties within 14 days after the expiry of the 30-day comment period. A summary of the final report, excluding any confidential or sensitive information, will be provided to the Department of Indigenous Affairs.

## Confidential Information

- The final report will not be disclosed by the miner or DIA to any third party, unless the claim group agrees to its disclosure.
- No confidential information or culturally-sensitive information is required for purposes of the report and if such information is provided it may not be disclosed to the miner or DIA.
- Ownership of all intellectual property rights in any reports produced during the course of the survey remain with the claim group.

## Dispute Resolution

In the event of any dispute arising between the claim group and the miner, the parties agree to consult with each other to attempt to resolve the dispute. If within 30 days the consultations have failed, either party may refer the dispute to mediation by an agreed mediator or a mediator nominated by the Law Society of Western Australia.