



# QSNTS

## FUTURE ACT LEGAL POLICY

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#### LEGAL REPRESENTATION - PROCEDURAL ISSUES

##### REQUEST FOR LEGAL REPRESENTATION

All requests for legal representation by QSNTS in future act matters must be submitted in accordance with this policy.

##### WRITTEN REQUEST FOR LEGAL REPRESENTATION

A request for legal representation by QSNTS must be in writing and must be signed by each of the persons who constitute the applicant in the registered native title determination application.

##### REQUEST MUST BE SUBMITTED IN A TIMELY MANNER

A request for legal representation must be made at the earliest opportunity to ensure that there is adequate time to provide legal advice and for the person requesting the advice to properly consider that advice.

##### REQUESTS TO INCLUDE CLEAR INSTRUCTIONS

A request for legal work must contain clear instructions including:

Background information;

Copies of relevant documents;

Scope of the representation;

Desired outcome;

The timeframe for completion of the work.

##### REQUESTING URGENT LEGAL SERVICES

Urgent legal services may be requested at any time by telephone or email.

A service will be considered urgent if it does not comply with paragraph 3 of these procedures.

A request will not be considered urgent simply because the person seeking the service failed to request the service in a timely manner.

The decision as to whether a matter is urgent and warrants a departure from the policy must be made by the Chief Executive Officer or the Principal Legal Officer having regard to the resources available.

## **CLIENT SERVICE AGREEMENTS**

QSNTS will not legally represent clients in future act matters unless all persons who constitute the Applicant have executed a service agreement in accordance with this policy.

### **6.1 FUTURE ACT NEGOTIATIONS**

#### **6.1.1 Ancillary Agreements for Exploration Permits and Authorities to Prospect for Petroleum**

So that QSNTS does not need to continually obtain instructions in these routine matters and to avoid the delays associated with obtaining authorities to act, the client will enter into a service agreement with QSNTS for a period of 12 months.

6.1.1.2 The Service Agreement will specify the scope of the work to be carried out by QSNTS and the fee for service.

#### **Indigenous Land Use Agreements (ILUAs) and Ancillary Agreements for Mining Leases**

Where a claim group wishes to engage QSNTS to negotiate ILUAs and ancillary agreements for mining leases, QSNTS will assess the scope of the work and the level of resourcing required.

Where QSNTS agrees to represent the claim group, a service agreement specifying the scope of the work and the fee for service will be prepared for execution by the client.

## **FUTURE ACT ARBITRATIONS**

Subject to paragraph 9, where the Applicant wishes to engage QSNTS to represent them in arbitration before the Land Court or the National Native Title Tribunal, QSNTS will assess the scope of the work and the level of resourcing required.

Where QSNTS agrees to represent the Applicant, a service agreement specifying the scope of the work to be performed by QSNTS and the fee for service will be prepared for execution by the Applicant.

## **LEGAL REPRESENTATION - SUBSTANTIVE ISSUES**

### **FEE FOR SERVICE**

#### **FUTURE ACT NEGOTIATIONS**

Legal work relating to future act negotiations will be on a fee for service basis.

Where QSNTS considers it is reasonable to do so, QSNTS will seek to recover the fee for service from the person proposing to carry out the future act.

If QSNTS undertakes future act negotiations for a client and is unable to negotiate the payment of the legal service fee, QSNTS will not seek to recover the fee from the client.

## **7.2 FUTURE ACT ARBITRATIONS**

7.2.1 QSNTS will only represent the Applicant in future act arbitration in accordance with paragraph 9 of this policy.

7.2.2 Unless the circumstances outlined in paragraph 9.1 and 9.2 of this policy apply, QSNTS will seek to recover costs associated with any arbitration from the client.

Prior to undertaking arbitration, QSNTS will provide the Applicant with details of the work to be undertaken by QSNTS and a cost estimate.

## **7.3 EXTRAORDINARY WORK**

7.3.1 Items of work conducted outside the scope of work specified in a service agreement or work undertaken contrary to the reasonable professional advice of QSNTS (**Extraordinary Work**) must be expressly approved by the client and agreed between the client and QSNTS.

7.3.2 If the costs of conducting Extraordinary Work are likely to exceed \$750, QSNTS will provide a separate costs agreement to the client prior to undertaking the work. The agreement will include an estimate of the total legal costs likely to be incurred by the client.

7.3.3 Any costs of Extraordinary Work must be met by the client unless otherwise agreed in writing by QSNTS.

#### **FUTURE ACT NEGOTIATIONS**

#### **ANCILLARY AGREEMENTS FOR EXPLORATION PERMITS**

Upon being notified of an application for an exploration permit, QSNTS will commence negotiations on behalf of the client based on the standard agreement for exploration permits.

In executing the 12 month service agreement, the Applicant instructs QSNTS to negotiate any agreement that is in QSNTS's view more beneficial to the client than the native title protection conditions.

All negotiations will be undertaken on behalf of the client by QSNTS.

#### **ANCILLARY AGREEMENTS FOR AUTHORITIES TO PROSPECT FOR PETROLEUM**

Upon being notified of an application for an authority to prospect for petroleum, QSNTS will prepare a proposal based on the standard agreement for authorities to prospect and seek instructions from the client. Those instructions will include the parameters for the negotiation.

Execution of the 12 month service agreement will constitute authority for QSNTS to undertake all negotiations on behalf of the client and to accept any proposal that is within the negotiation parameters referred to in paragraph 8.2(i) above.

#### **INDIGENOUS LAND USE AGREEMENTS (ILUAs) AND MINING LEASES**

8.3.1 Upon being notified of a proposed Indigenous Land Use Agreement or application for a large scale mining lease, QSNTS will contact the Applicant to discuss:

The framework for negotiations;

The scope of the work to be undertaken by QSNTS;

Resourcing for the negotiations;

The potential cost of negotiations;

The content of the service agreement;

The proposed content of the ILUA or ancillary agreement.

Based on the information obtained during the discussions outlined at 8.3(i), QSNTS will prepare a service agreement for execution by the client.

## **FUTURE ACT ARBITRATION**

### **9.1 ARBITRATION GENERALLY**

9.1.1 Subject to paragraphs 9.2.1 and 9.2.2 below, the fundamental criterion for engaging in arbitration is that the arbitration will be conducted in accordance with legal principle and practice. In particular:

There must be at least a meaningful prospect of success (i.e. there must be evidence to support the application which indicates that there is an action);

The likely outcome must be considered against the cost of engaging in arbitration.

9.1.2 If the Applicant wishes to engage QSNTS to act for them in a future act arbitration other than in the circumstances set out in paragraph 9.1(i) and (ii), the following will apply:

QSNTS must be provided with sufficient information to allow QSNTS to determine the prospects of success of the arbitration;

Information provided to QSNTS in compliance with paragraph 9(iv)(a) must be submitted in a timely manner in accordance with paragraph 3 of this policy.

### **9.2 FORM 4 - APPLICATION OBJECTING TO THE ASSERTION OF THE EXPEDITED PROCEDURE**

9.2.1 If negotiations pursuant to a service agreement and relating to an ancillary agreement for exploration are not completed within 4 months of the notification date of the tenement, QSNTS will lodge an objection application on behalf of the client.

9.2.2 The application objecting to the expedited procedure will be lodged only for the purpose of securing additional time to negotiate an agreement. In the event that the application is set down for hearing QSNTS reserves the right to withdraw the objection in appropriate cases.

### **STANDARD AGREEMENTS**

QSNTS has developed standard agreements for exploration permits and authorities to prospect.

QSNTS may develop additional standard agreements where the risks associated with the activity are low or quantifiable or the form of the arrangement for the activity is routine.

The standard agreement may be used as the basis for negotiation with a third party.

The terms and conditions set out in the standard agreements are approved as a standard format for agreements of that type. Except to the extent provided in the standard agreement itself, standard agreements must not be varied, amended or altered without the approval of a Senior Legal Officer or the Principal Legal Officer.

### **REVIEW OF AGREEMENTS PREPARED BY THIRD PARTIES**

Unless otherwise exempted by this policy, all agreements prepared by a third party for execution by the client must be submitted to QSNTS for review by a Senior Legal Officer or the Principal Legal Officer.

### **EXTERNAL CONSULTANTS**

#### **LEGAL CONSULTANTS**

A register of external legal consultants will be established and maintained by QSNTS.

12.1.2 Whether or not an external legal consultant will be engaged is at the discretion of the Principal Legal Officer.

12.1.3 Where the Principal Legal Officer approves the engagement of an external legal consultant, the consultant will be selected from the register of external legal consultants referred to in paragraph 12(i).

12.1.4 The Principal Legal Officer will instruct the external legal consultant and approve the external legal consultant's services and fees.

## **12.2 ALL OTHER CONSULTANTS**

12.2.1 Whether or not an external consultant will be engaged to assist in future act negotiations is at the discretion of the Principal Legal Officer or Chief Executive Officer.

12.2.2 In considering whether or not to engage an external consultant, the Principal Legal Officer will take into account whether or not the costs will be reimbursed by the person proposing to do the future act.

## **COSTS ASSOCIATED WITH FUTURE ACT NEGOTIATIONS**

13.1 QSNTS does not pay any costs associated with members of the claim group attending future act negotiations.

13.2 Where it is appropriate to do so, QSNTS will seek to have any costs associated with the legal representative attending negotiations reimbursed by the proponent.

13.3 QSNTS will not pay travel, accommodation, sitting fees or any other costs associated with members of the claim group attending future act negotiations.

13.4 In the event that members of the claim group are involved in future act negotiations, QSNTS will seek to have travel costs reimbursed by the proponent in accordance with the rates determined by the Australian Tax Office. Where the proponent refuses to pay costs, members of the claim group will need to meet their own costs of attending.