



16 November 2010.

The General Manager
Business Tax Division
The Treasury
Langton Crescent
Parkes ACT 2600.

By email: nativetitle@treasury.gov.au

Dear Sir/Madam,

Consultation Paper – Native Title, Indigenous Economic Development and Tax

Ahava Energy Pty Ltd wishes to provide the following submission on the issues raised by the Consultation Paper.

Background.

Ahava is a private company exploring for petroleum in the Officer Basin in South Australia.

Ahava has interests in the following Petroleum Exploration Licences (PELs), Petroleum Exploration Licence Applications (PELAs) and Gas Storage Exploration Licence Applications (GSELAs) granted and/or made pursuant to the South Australian *Petroleum and Geothermal Energy Act 2000*. Refer to Attachments 1 and 2 for maps showing the locations.

All of these interests are located in the Officer Basin in South Australia.

- Petroleum Exploration Licences (PELs) 138, 499 and 500;
- Petroleum Exploration Licence Applications (PELAs) 140, 141, 142, 143, 147, 148, 447, 517, 518, 519, 520, 521, 529 and 530;
- Gas Storage Exploration Licence Applications (GSELAs) 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555 and 556.

All of the PELs, PELAs and GSELAs are over land which is subject to either determined or claimed Native Title or is Aboriginal Land under the *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981 (SA)* or the *Maralinga Tjarutja Land Rights Act 1984 (SA)*.

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Definition of Native Title Agreement.

As noted, some agreements relating to access to Aboriginal land owe their existence to legislation other than the *Native Title Act*.

Ahava submits that the Australian Government, in its consideration of tax implications arising from payments pursuant to agreements under the *Native Title Act*, should ensure that the taxation of payments derived from agreements under other legislation (e.g., the South Australian legislation noted in the preceding section and the *Aboriginal Land Rights (Northern Territory) Act 1976*) is included in any eventual policy reforms to avoid any constitutional issues arising regarding unequal taxation between States and/or Territories.

Possible Reforms to the Income Tax System.

Ahava is of the view that it is more appropriate for recipients and potential recipients of payments under agreements relating to access to land to speak to the question of how those payments should be considered in the taxation context.

As an organisation which deals with recipients and potential recipients of payments, its observations may be of assistance to the Australian Government in formulating policy and any consequent reforms.

Most recipients and potential recipients of payments with whom Ahava has had dealings are noticeably under resourced in terms of funding and, consequently, in terms of resources to deal with the demands placed upon them and which result from legislative requirements. This is not to criticise those organisations or the individuals who staff them. On the contrary, Ahava's experience is positive and the observation simply recognises a factual situation.

They depend (and in many cases almost entirely) on government funding to perform their legislative obligations.

Ahava submits that it may be more efficient for the Australian Government to adopt an income tax exemption for all payments received under agreements relating to access to land because:

- It would relieve the recipients of an additional administrative burden, particularly in the early exploration stages when the payments are not particularly significant;
- It has zero compliance costs for both the recipients of payments and for the Australian Government;
- It will provide additional funding and resources to recipients which otherwise would be forthcoming from government sources and at an increased administrative cost to government;

- It avoids additional complexity and administrative burdens on both recipients and the Australian Government which will result from the alternative approaches canvassed by the Consultation Paper and continues the principle of simplifying the taxation system;
- Application of the Mining Withholding Tax in its present form to payments to Native Title holders/claimants carries considerable uncertainty;
- The revenue forgone will not be significant in terms of total Australian Government revenue.

Implications for Business.

Because of the legislative structures (including Commonwealth, State and Territory) relating to access to Aboriginal land (whether under Native Title or other forms), all payments made to Native Title holders/claimants or to the proprietors of Aboriginal land are “necessarily incurred in carrying on business”.

Ahava submits that, irrespective of the treatment of those payments in the recipients’ hands, they must continue to be an allowable deduction for the paying entity for income and all other tax purposes.

Indigenous Economic Development.

In Ahava’s view, it is unlikely that payments under agreements relating to access to land will support indigenous economic development in the vast majority of cases. Whilst it is possible that a very few recipients of payments will be able to utilise production related payments to support the creation of new business ventures and thus employment opportunities, the success rates of exploration projects which result in commercial production demonstrate that this would occur only in isolated instances and should not be relied on as a major contributor to this objective.

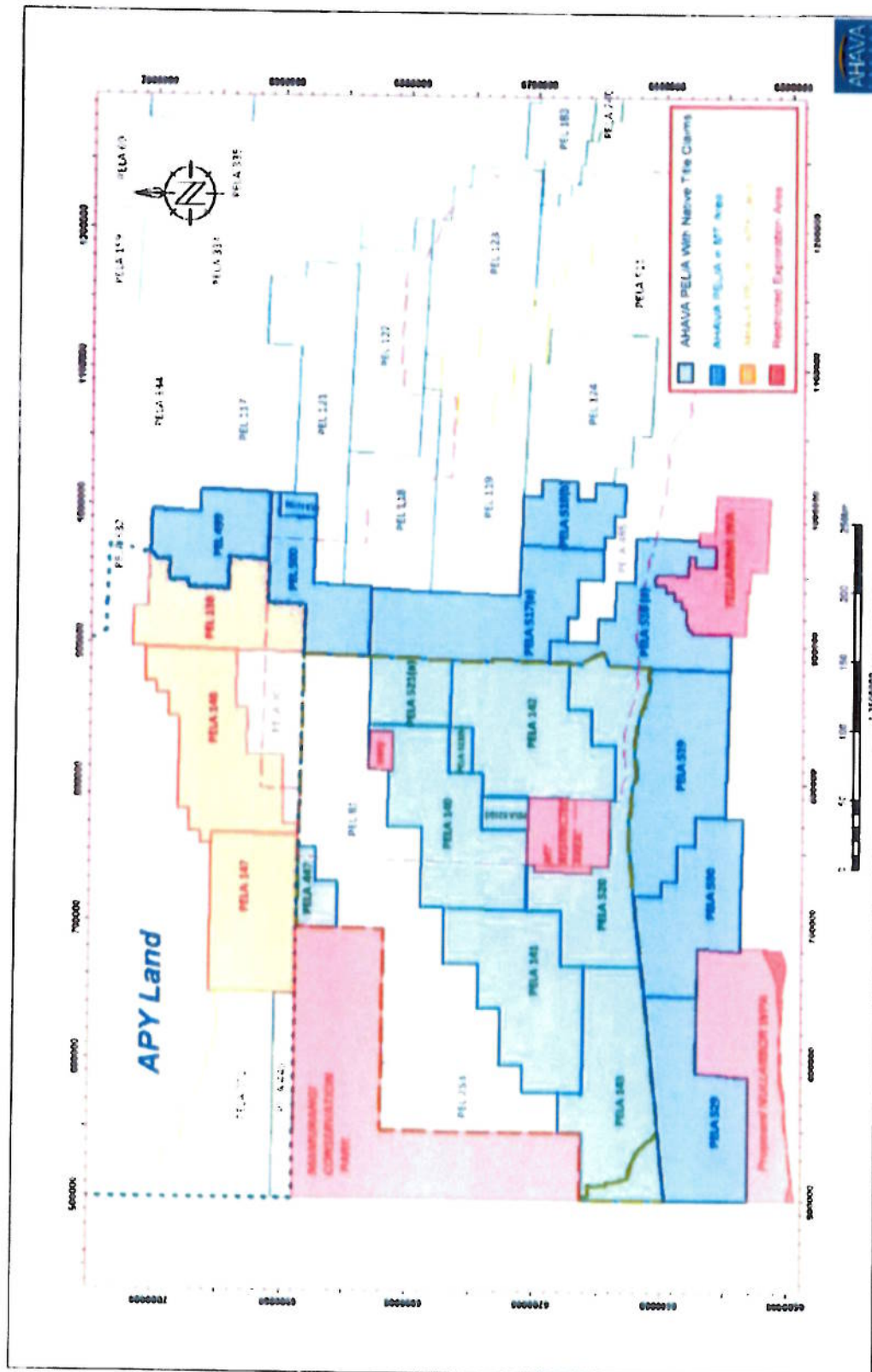
Notwithstanding the above, **Ahava submits** that providing/maintaining deductible gift recipient categories may encourage explorers to make additional expenditures in communities in which they operate for “social” purposes and thereby alleviate some of the funding issues previously identified.

Ahava is available to discuss any aspect of the above or to provide any additional information which may assist the Australian Government or the Treasury in its considerations. Should this be required please contact Mr G Witham of our company in the first instance.

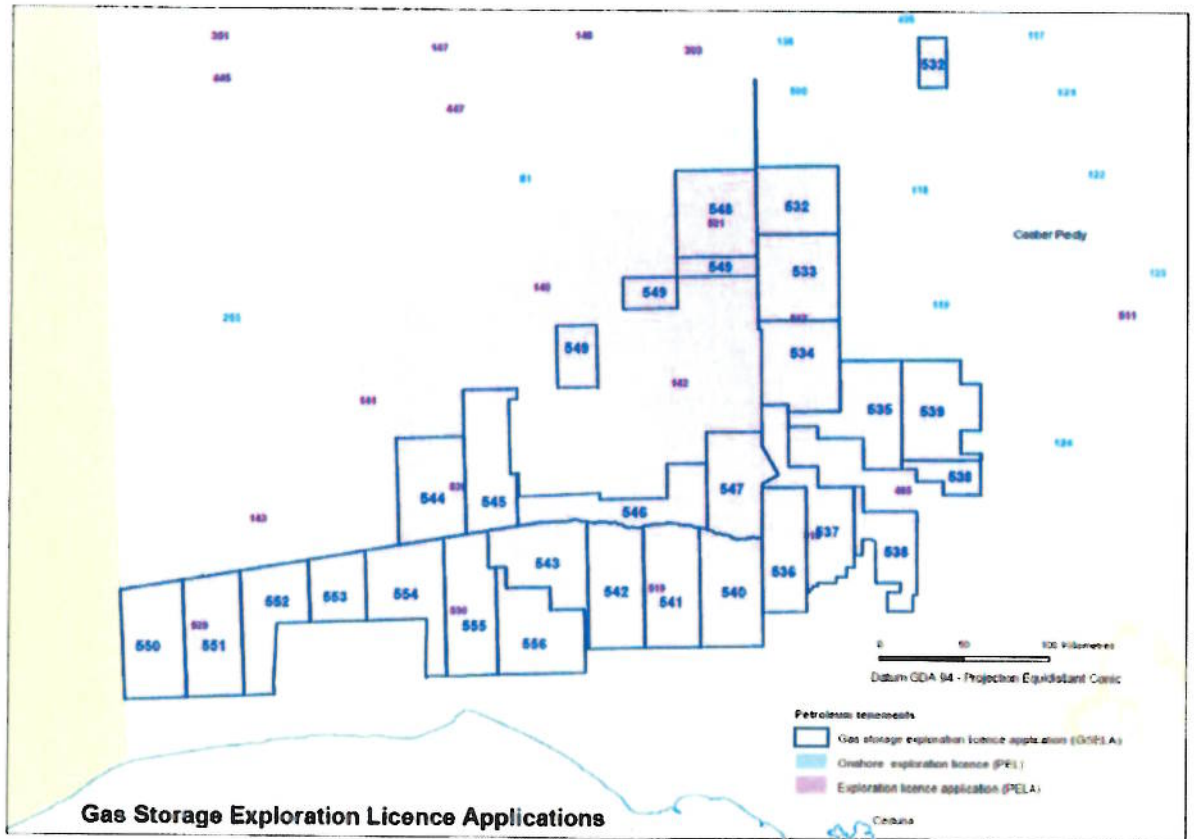
Yours faithfully



Alex Sutiono
Managing Director and CEO
Ahava Energy Pty Ltd



Map of PEL's and PELA's



Map of GSELA's