



National
Native Title
Tribunal



Fast tracking the grant of some mining tenements

Exploration and prospecting are early stages in mining activity, when miners study the land or water to ensure mining is feasible.

The grants of these tenements can be **future acts** under the *Native Title Act 1993* (Cwlth).

A future act is a proposed act relating to land or waters, such as granting mining, prospecting or exploration tenements, which will affect native title.

The Native Title Act provides for **registered native title claimants** and **registered native title bodies corporate** to be given certain procedural rights relating to different types of future acts.

Sometimes future acts can be done without any legal obligation to give notice or negotiate. At other times, registered native title claimants and registered native title bodies corporate have a right to be notified and consulted, or the **right to negotiate**.

Proposed future acts, which would ordinarily attract the right to negotiate but appear to have minimal impact on native title rights and interests, may qualify for a fast-tracking process known as the **expedited procedure**. This process enables most minimal-impact tenement applications to be granted without major delays.

Why does fast-tracking only apply to some acts?

Fast-tracking only applies to granting mining tenements that are unlikely to:

- interfere directly with the community and social activities of native title holders
- interfere with areas important to native title holders' traditions
- involve major disturbance to land or waters or create rights involving major disturbance to any of the land or waters concerned.

The expedited procedure does not apply to the grant of certain tenements such as mining leases. These are likely to have more impact on native title rights and interests and must therefore involve negotiation between the government, miners and registered native title claimants or registered native title bodies corporate for the land or waters affected by the proposed grant.

These formal negotiations are referred to as the right to negotiate.

What happens when a tenement application is lodged?

When a tenement application is lodged, the relevant state or territory government body (such as Western Australia's Department of Mines and Petroleum or Queensland's Department of Mines and Energy) publishes a notice in major newspapers, indicating its intention to grant a tenement in that area.

This is called a 'section 29 notice' because section 29 of the Native Title Act sets out what must be done in relation to the notice.

In the notice, the government will indicate whether it considers that the expedited procedure applies to the grant.

The state or territory government will also give a section 29 notice to any native title parties in the affected area. This includes native title claimants who have a claim registered on the **Register of Native Title Claims** or any registered native title bodies corporate, if there has been a determination that native title exists in any part of the area.



Mining companies will seek grants for exploration or prospecting tenements early in the mining process. Under certain conditions, granting these tenements may be fast-tracked.



If an objection to a fast-tracked tenement arises, National Native Title Tribunal staff will organise a preliminary conference to set timelines for the objection to be resolved.

What is an objection to the expedited procedure?

If any of the native title parties think the expedited procedure should not apply to the grant of the tenement, they can lodge an objection.

Any objection must be lodged within four months of the **notification day** stated in the section 29 notice. This is not an objection to the tenement being granted; it is an objection to the tenement application being fast-tracked.

If there is no application for a native title determination over the area, people claiming to hold native title can file an application in the Federal Court. This must be done within three months of the notification day specified in the section 29 notice.

The claim must then satisfy the conditions of the registration test and be registered within four months of the notification day. New claimants must also lodge their objection to the expedited procedure applying within the same period.

If no new native title application is filed and registered or no objection is lodged within the necessary timeframe, the tenement can be granted without delay.

Negotiations

If, at the end of the notification period there are valid objections to the expedited procedure applying, the party wanting the government to do the act and the native title parties are encouraged to reach agreement.

The National Native Title Tribunal will organise a preliminary conference to set timelines for the resolution of the objection.

This will include some time being set aside for the parties to negotiate about the objection.

At any time during negotiations:

- the government can withdraw its statement that it considers that the expedited procedure applies by giving written notice to the negotiation parties. If that occurs, the proposed tenement grant moves directly into the right to negotiate stream

- the native title party or parties can withdraw their objection to the expedited procedure applying. Agreement may be reached on the basis of, for example, a heritage protection agreement.

If all objections are withdrawn the government may proceed with the grant of the tenement.

Determination

If no agreement is reached and any objections are not withdrawn, the Tribunal will hold a formal inquiry.

The parties may provide evidence and submissions to support their case.

If the Tribunal determines that the expedited procedure applies, the tenement can be granted. If the Tribunal determines that it does not apply, the proposed tenement grant will move into the **right to negotiate** process.

Right to negotiate

The right to negotiate applies to acts which are likely to have a higher impact on native title rights and interests. This includes the grant of mining leases.

Under this process all the parties must negotiate in good faith.

If parties decide to start formal negotiations under the right to negotiate process they can do so at any time on the basis that the expedited procedure will not apply.

This fact sheet focuses on exploration and prospecting tenement applications affected by the Native Title Act.

States and territories can establish their own alternate schemes to handle certain right to negotiate matters.

Currently, only South Australia operates an alternate scheme through the Environment, Resources and Development Court.

The Tribunal, however, is still the arbitral body in relation to petroleum tenement grants in that state.



Want to know more? Visit the Tribunal's website to access more information on native title. Hard copies of Tribunal publications can also be ordered from the website: www.nntt.gov.au

List of terms

Expedited procedure

The fast-tracking process for future acts normally attracting the right to negotiate that are anticipated to have minimal impact on native title rights and interests. Examples include the grant of some exploration and prospecting licenses. If this procedure is used, and no valid objections are lodged, the future act can be done.

Exploration

The first step in establishing a mining venture. There are a number of types of exploration methods – some are ground-disturbing, some are not.

Exploration methods that are not ground disturbing include:

literature searches: looking at history, reports and maps

geological mapping: beginning with regional and local maps, followed by maps showing vegetation and location of rock types

geochemical sampling: locating a particular mineral deposit by chemical analysis of rocks, stream sediment soils, water, gas or vegetation

geophysical exploration: collecting information about the physical properties of a mineral deposit on the ground or from the air (remote sensing).

Exploration methods that are ground disturbing:

rotary air blast and aircore drilling: drilling a small hole (less than 100mm) through soil and loose rock. This tells the geologist if minerals are present

reverse circulation and diamond drilling: drilling a deeper, larger hole (usually 140mm or more) through undisturbed or deep rock. This tells the geologist how much mineral is present.

Future act

A proposal to do something that will affect native title by extinguishing it or creating interests that are inconsistent with the continued existence, enjoyment or exercise of native title. Examples of future acts include the grant of mining or exploration tenements.

The Native Title Act gives native title holders and registered native title claimants procedural rights in relation to certain future acts. Depending on the type of future act these rights range from being notified, being given an opportunity to comment, through to the right to negotiate.

For some future acts, for example the renewal of certain interests over the same area on the same terms, there are no procedural rights.

National Native Title Register

A register, established under the Native Title Act, containing details of determinations of native title made by the High Court, the Federal Court or a recognised body.

Notification day

The day identified in the notice of various applications under the Native Title Act as the day from which the notification period will often be calculated. A notification day is included in most of the notices given by the Native Title Registrar and those issued under section 29 of the Act by the relevant state or territory government.

Registered native title claimants

A person or persons whose name(s) appear on the Register of Native Title Claims as 'the applicant' in relation to a claim to hold native title in the area.

Registered native title bodies corporate

Once a determination that native title exists has been made the native title holders must nominate, and the court must determine, a prescribed body corporate (PBC) to manage their native title rights and interests. The PBC is then entered on the National Native Title Register as a registered native title body corporate.

Register of Native Title Claims

A register established under the Native Title Act that contains information about all claimant applications that have passed the registration test.

For more information about native title and the Tribunal's services please contact the National Native Title Tribunal, GPO Box 9973 in your capital city or **Freecall 1800 640 501**. A wide range of information is also available online at: www.nntt.gov.au. The Tribunal welcomes feedback on whether this information was useful. Email Public Affairs with your comments and suggestions to enquiries@nntt.gov.au or telephone (08) 9268 7495.

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