

GUIDE TO CASE MANAGEMENT IN THE NATIONAL NATIVE TITLE TRIBUNAL

1. PURPOSE OF THIS GUIDE

- 1.1 The guide outlines the approach of the National Native Title Tribunal (the Tribunal) in managing objections to the expedited procedure and what it expects from parties.
- 1.2 The aim of the Tribunal's case management approach is to promote the early resolution of objections, identify matters requiring determination by the Tribunal at an early stage, and facilitate the resolution of disputes through active case management and mediation.
- 1.3 To support these aims, parties and their representatives are:
 - (a) encouraged to engage actively with one another as early as possible, including prior to lodgment of an objection, to explore options for resolution and identify matters in dispute; and
 - (b) expected to take a common-sense and co-operative approach to the resolution of objections, whether by agreement or through the inquiry process.
- 1.4 The Tribunal continues to encourage early lodgment of objections where possible.

2. PRELIMINARY CONFERENCES

- 2.1 Once an objection is lodged, the Tribunal Member appointed to hear the objection will convene a Preliminary Conference of the parties.
- 2.2 Parties or their representatives must appear at the Preliminary Conference. If a party is unable to attend the Preliminary Conference, the Tribunal must be notified at the earliest opportunity. Preliminary Conferences are held by telephone.
- 2.3 Before the Preliminary Conference, parties are expected to discuss the objection and how they intend to resolve it. If appropriate, parties should endeavour to exchange draft agreements and related documents prior to the conference.
- 2.4 At the Preliminary Conference, the Tribunal Member will ask parties how they intend to resolve the objection, what they have done so far (including prior to lodgment, if anything), what steps need to be taken by each party, when they expect those steps to be completed and any milestone dates. Parties are expected to attend the Preliminary Conference prepared to address these matters.
- 2.5 If one or more of the parties indicate they do not wish to negotiate a resolution of the objection by agreement, the Tribunal Member may issue directions for inquiry, to commence after the four-month notice period.

- 2.6 If the parties intend to negotiate, the Tribunal Member will refer the matter to Active Case Management. Where appropriate, the Tribunal Member may direct the parties to attend a conference under s 150 of the *Native Title Act 1993* (Cth).

3. CASE MANAGEMENT AND CASE MANAGEMENT CONFERENCES

- 3.1 When an objection is in Active Case Management, the Tribunal officer assigned to the objection will monitor the parties' progress in resolving the objection and the completion of any milestones discussed at the Preliminary Conference.
- 3.2 The Tribunal officer will communicate with the parties by telephone or email. Parties and their representatives are expected to respond promptly to the Tribunal's attempts to communicate with them about an objection, particularly where it relates to the completion of milestones towards agreement.
- 3.3 If the Tribunal officer assigned to the objection forms the view that parties are not making satisfactory progress towards resolving the objection or are not responsive to the Tribunal's enquiries, the Tribunal officer will arrange a Case Management Conference.
- 3.4 Parties or their representatives must appear at the Case Management Conference. If a party is unable to attend the Case Management Conference, the Tribunal must be notified at the earliest opportunity. Case Management Conferences are held by videoconference or telephone, as appropriate.
- 3.5 At the Case Management Conference, parties will be expected to provide an update on their negotiations, describe the steps they have taken to progress the resolution of the objection, and where relevant explain any failure to communicate with the Tribunal.
- 3.6 If the Tribunal officer considers that the parties are not making satisfactory progress, or a party fails to appear at the Case Management Conference, the Tribunal officer may refer the parties to a Directions Hearing before the Tribunal Member.
- 3.7 Where it appears that parties have reached an impasse, or are unlikely to reach agreement without assistance, the Tribunal officer may recommend that the Tribunal Member direct the holding of a conference under s 150 of the *Native Title Act 1993* (Cth).

4. DIRECTIONS HEARINGS

- 4.1 The Tribunal officer assigned to an objection in Active Case Management may refer the parties to a Directions Hearing where it appears to the officer that parties are not making satisfactory progress towards resolving the objection or communicating with the Tribunal, or where a party fails to appear at a Case Management Conference.
- 4.2 Parties or their representatives must appear at the Directions Hearing. If a party is unable to attend the Directions Hearing, the Tribunal must be notified at the earliest opportunity. Directions Hearings are held by telephone.

- 4.3 At the Directions Hearing, the Tribunal Member will ask the parties about the status of the negotiations, the issues in dispute, and the steps that parties have taken to resolve them. If it appears parties are unable to reach agreement, no longer intend to negotiate, or are not taking active steps to resolve the objection, the Tribunal Member will consider submissions on the timing and conduct of the inquiry and issue directions accordingly.

5. SECTION 150 CONFERENCES

- 5.1 At any stage, a party may request the Tribunal to direct the holding of a conference under s 150 of the *Native Title Act 1993* (Cth). Section 150 Conferences are held on a 'without prejudice' basis.
- 5.2 Before writing to the Tribunal to request a Section 150 Conference, the party making the request should confer with the other parties to seek their views on participating in the conference.
- 5.3 Any request to the Tribunal for the holding of Section 150 Conference should be copied to all other parties to the objection and include details of whether the other parties agree to participate in the conference, and any other comments they have provided.
- 5.4 If the Tribunal directs the holding of a Section 150 Conference, a separate Tribunal Member or Tribunal officer will be appointed to convene the conference.
- 5.5 Parties or their representatives must appear at the Section 150 Conference. Section 150 Conferences are held by videoconference or telephone, as appropriate.

6. EXTENSIONS REQUESTS TO COMPLY WITH DIRECTIONS

- 6.1 Any request for an extension of time to comply with directions should be made as soon as it becomes apparent that there is a real likelihood the party seeking the extension will not be able to comply with the direction.
- 6.2 Before writing to the Tribunal to request an extension of time, the party making the request should confer with the other parties to seek their views on the extension.
- 6.3 Any request to the Tribunal for an extension of time should be copied to all other parties to the objection and include details of whether the other parties consent of the request, and any other comments they have provided.
- 6.4 In deciding whether to grant the extension, the Tribunal will consider the efforts that have been made to comply with the direction and the steps that will be taken if an extension is granted. The request should include this information, along with a realistic estimate of the time needed to comply with the direction.
- 6.5 If the parties can demonstrate that they have resumed negotiations and are taking active steps to resolve the objection by agreement, the Tribunal will consider vacating directions.

FIGURE 1: CASEFLOW FOR EXPEDITED PROCEDURE OBJECTIONS

