

# Overview of the Expedited Procedure under the Native Title Act 1993 (Cth)

## Information Bulletin

Under the Commonwealth's *Native Title Act 1993* (Cth) certain "future acts" (acts affecting native title rights and interests), for example, the grant of an exploration licence, may be fast-tracked or expedited if the government agency responsible for the future act considers will have minimal impact on native title rights and interests. This procedure is known as the "expedited procedure" and is defined at s237 of the *Native Title Act* as follows:

### *Act attracting the expedited procedure*

A future act is an act attracting the expedited procedure if:

- (a) the act is not likely to interfere directly with the carrying on of the community or social activities of the persons who are the holders (disregarding any trust created under Division 6 of Part 2) of native title in relation to the land or waters concerned; and
- (b) the act is not likely to interfere with areas or sites of particular significance, in accordance with their traditions, to the persons who are the holders (disregarding any trust created under Division 6 of Part 2) of the native title in relation to the land or waters concerned; and
- (c) the act is not likely to involve major disturbance to any land or waters concerned or create rights whose exercise is likely to involve major disturbance to any land or waters concerned.

If the government party believes the expedited procedure applies, it must include a statement to that effect when it gives public notification of the proposed intention to grant an exploration licence.

Any registered native title claimant or prescribed body corporate (on behalf of native title holders) for the application area of the proposed exploration licence may exercise its procedural right and object to the expedited procedure being applied, once they receive notice of the government party's intention to grant the tenement.

If a native title party wishes to object, they can lodge an application with the National Native Title Tribunal, the arbitral body established under the *Native Title Act*. Once the Tribunal receives an objection from a native title party, it must conduct an inquiry into the proposed grant and determine whether the expedited procedure should apply.

However, while it is not a legal requirement, an objection may be resolved by agreement between the native title party and the grantee party.

If the Tribunal determines that the expedited procedure applies, the tenement can proceed to grant without an agreement with the native title party.

If the Tribunal determines that the expedited procedure does not apply, the proposed grant defaults to the "right to negotiate" process under the *Native Title Act*. The right to negotiate requires the government party, the grantee party and the native title party to negotiate in good faith with a view to obtaining the agreement of the native title party to the doing of the act (ie the grant of the exploration licence) or the doing of the act subject to conditions to be complied with by any of the parties.

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The government party cannot lawfully grant an exploration licence unless and until the arbitral body makes a determination as to whether the expedited procedure applies, the objection is withdrawn or otherwise resolved by agreement.