

# **Native Title guideline – Notification and advertising process**

A guide about the native title notification and advertising process for resource authorities

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Contents

**About this guideline**..... 4

1. Background ..... 4

2. Notice requirements ..... 5

3. The advertising process in Queensland ..... 5

## About this guideline

The purpose of this guideline is to provide and set out the principles to be followed in relation to the notification and advertising procedure for native title. This guideline is written to:

- provide guidance and clarity to applicants, native title parties and departmental officers.
- promote consistency of permit administration and regulation
- promote the purpose and objectives of the resource legislation
- balance the department's objectives with the requirements under the *Native Title Act 1993 (Cth)* (NTA) and native title holder interests.

The information provided in this guideline **does not limit the exercising of discretion** nor does it override legislative requirements however it reflects current practices within the department which may change from time to time. All changes will be published through a revised version of this guideline.

This document should be read in conjunction with the Native Title Process Guide.

## 1. Background

- 1.1 The grant of a right to mine (e.g. a production or exploration permit for minerals and coal or petroleum and gas) over land where native title may continue to exist is considered a **future act** under the provisions of the NTA. Actions taken by the holder or the department that may change the conditions of grant (e.g. addition of excluded land or addition of minerals) may also be considered a future act.
- 1.2 Before a future act is undertaken, it is a requirement of s.29 (2) of the NTA that the relevant Government party must give notice to:
- any registered native title body corporate in relation to any of the land or waters that will be affected by the act;
  - any registered native title claimant;
  - any representative Aboriginal/Torres Strait Islander body;
  - the person who has applied for the doing of the future act, grantee party; and
  - the registrar or other proper officer of the arbitral body in relation to the act (in this case, the National Native Title Tribunal).
- 1.3 Furthermore under s.29(3) of the NTA, the Government party or grantee party must also notify the public in the **determined way**, unless there is a registered native title body corporate in relation to all of the land or waters that will be affected by the act.
- 1.4 To notify the public in the determined way means give notice in the way determined, by legislative instrument, by the Commonwealth Minister<sup>1</sup>. The advertising process is determined under the Native Title (Notices) Determination 2011 (No 1) (the instrument).
- 1.5 The instrument states any notice under a provision of the NTA must be published:
- by advertisement in one or more newspapers that circulate generally throughout the area to which the notice relates; or
  - if the area is an offshore place, the geographical area closest to it that is an onshore place, and

<sup>1</sup> See s.252 of the *Native Title Act 1993*

- in a relevant special-interest publication.
- 1.6 In addition, the instrument states that the notice placed in a publication must be published in a print size at least as large as that used for most of the editorial content of the publication.

## 2. Notice requirements

- 2.1 The granting of an exploration or production permit i.e. a right to mine, which may affect native title, is generally defined as a future act under a s.233 of the NTA, however the grant of a DAA is not considered a future act under s.233 of the NTA, as the holder does not have a right to explore or produce resources within the area of the DAA.
- 2.2 Notices, under ss.29 (2) and 29(3) of the NTA, must:
- specify a day as the notification day for the act;
  - contain a statement to the effect that the persons have 3 months after the notification day to take certain steps to become native title parties in relation to the notice, and
  - be accompanied by any prescribed documents and include any prescribed information.
- 2.3 Additionally, under s.29 (3) of the NTA notices must include:
- a clear description of the area to which the act mentioned in the notice relates;
  - a description of the nature of the act;
  - the name and postal address of the person by whom the act would be done, and
  - a statement of how further information about the act can be obtained.
- 2.4 Each notice in relation to the future act must specify the same day as the notification day<sup>2</sup>, and the notification day must be a day by which, in the Government party's opinion, it is reasonable to assume that all notices in relation to the act will have been received by, or will otherwise have come to the attention of, the persons who must be notified<sup>3</sup>. The permit holder will be required to meet any notice or compensation obligations that may apply under the legislation to an owner of the land in the area of DAA, for example Access notice and compensation provisions.

## 3. The advertising process in Queensland

- 3.1 The department manages the public notice process under s. 29(3) of the NTA in conjunction with the notification process under s. 29(2) of the NTA. The grounds for managing the advertising process for the s.29 (3) public notice are outlined as follows:

### 3.1.1 Ensures compliance with the NTA

- The department can nominate the notification day which ensures that all notices have the same specified notification day pursuant to s. 29(5) of the NTA.
- As the Government party is required pursuant to s. 29(6) of the NTA to select a notification day that is reasonable for all persons to be notified, the department can select a date which will coincide with notices under s. 29(2) of the NTA being given and the advertising date.
- The department can include the statement that the act attracts expedited procedure if applicable.

<sup>2</sup> See s.29 (5) of the *Native Title Act 1993*

<sup>3</sup> See s.29 (6) of the *Native Title Act 1993*

### 3.1.2 Ensures consistency across all notices

- The department uses templates for both the ss. 29(2) and 29(3) notices and templates meet the requirements for the content under the NTA and the instrument.
- The department can apply a consistent approach to which newspapers are used for particular areas.
- The department can apply a consistent approach to which special-interest publication is used.

### 3.1.3 Prevents the grant process stalling from advertising delays

- Payment for advertising may now be collected with application fees to prevent delays caused by requesting money, which will further expedite the advertising process.

### 3.1.4 Provides a significant discount on the cost of advertising to grantee parties by batching advertisements and through the Government bulk advertising discount

- Discount may be up to 40%.

3.2 If there is a registered native title body corporate in relation to all of the land or waters (in the area of the proposed permit) then there is no requirement to advertise in newspapers. The notification is sent directly to the permit applicant, native title party (through their prescribed body corporate) and the National Native Title Tribunal. The department notifies these parties directly on behalf of the resource applicant; the department will refund the advertising amount.

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<b>Contact:</b>	<p>For help and information contact Native Title Services:</p> <p>Phone: (07) 4936 0128  Email: <a href="mailto:Nativetitleservices@dnrme.qld.gov.au">Nativetitleservices@dnrme.qld.gov.au</a></p> <p>8.30am – 4.30pm (AEST) Monday to Friday on Queensland business days.</p>