



Government of **Western Australia**
Department of **Mines, Industry Regulation and Safety**

GUIDELINES

Expedited Procedure Case Management Guidelines

Expedited Procedure

Version 1.0

1 June 2022

Related Documents

Document Title	Link
Expedited Procedure Reforms	http://www.dmp.wa.gov.au/Minerals/Expedited-Procedure-Reforms-30446.aspx

Version History

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PURPOSE

To provide guidance on the expedited procedure case management process commencing 1 June 2022.

BACKGROUND

The Department of Mines, Industry Regulation and Safety (DMIRS) must give notice in accordance with section 29 of the Native Title Act 1993 (NTA) of its intention to do future acts. These notices may include a statement, made under section 29(7) of the NTA, that DMIRS considers that the proposed future act attracts the expedited procedure (the expedited statement). DMIRS uses the expedited statement for future acts that are the proposed grant of exploratory titles (exploration licences, retention licences and prospecting licences).

Prior to 2022, State policy on the inclusion of the expedited statement in notices issued under section 29 of the NTA applied a 'blanket approach' to the application of the expedited statement to particular kinds of tenements, namely prospecting and exploration licenses. However, reforms adopted in 2022 allow DMIRS greater discretion in the application of the expedited statement to such tenements.

The new expedited procedure process involves:

- a. The introduction of a new early risk assessment and triage process to identify applications for tenements that are at a high risk of a determination by the National Native Title Tribunal (NNTT) that the expedited procedure does not apply should an objection to the assertion of the expedited procedure statement be lodged with the Tribunal;
- b. Implementation of a case management approach as soon as possible after the receipt of applications to encourage applicants and native title parties (NTPs) to achieve early agreement making;
- c. Clear engagement protocols for applicants and NTPs to promote early engagement and agreement making between industry and NTPs;
- d. Ongoing discussions with the NNTT regarding the operation of the expedited procedure process; Ongoing discussions with the Chief Magistrate regarding matters to be resolved in the Warden's Court; and
- e. Education and engagement about the reforms also available.

OBJECTIVES

To provide advice to industry, NTPs, and the wider community about:

- The procedure DMIRS will follow when progressing an application through the expedited procedure process.
- What is expected from applicants and NTPs to facilitate engagement.

SCOPE

This guideline specifically relates to exploratory title assessment and the application of the expedited statement pursuant to the NTA.

This document does not relate to normal negotiation procedures under section 31 of the NTA (the Right to Negotiate process).

GUIDELINES

When an application for an exploration, prospecting or retention licence (exploratory title) is lodged, DMIRS will commence a case management process.

Assessment

After an application for an exploratory title is lodged online or in person at DMIRS, DMIRS will undertake a preliminary assessment of the application. The purpose of the assessment is to identify whether the application attracts the expedited procedure. See “Guidelines for Assessing Hot Spots for Exploratory Titles”.

If any known risk factors to the application of the expedited procedure to the application are identified, DMIRS will conduct a comprehensive assessment and correspond with the applicant seeking further information on:

1. Whether there is an existing Heritage Protection Agreement between the applicant and the relevant Native Title Party (NTP).
2. Any planned or previous negotiations between the applicant and any relevant NTP.
3. How the applicant intends to mitigate the likelihood of an adverse finding should the application proceed to a National Native Title Tribunal (NNTT) Inquiry.

The applicant will also be required to sign and agree to the engagement protocols set out in the “Engagement Protocols” document. The protocols encourage applicants to engage with the relevant NTPs as early as possible to facilitate early agreement making and build a positive relationship between the parties.

If the applicant fails to respond to DMIRS’ request for information within 28 days, DMIRS may notify the application pursuant to section 29 of the NTA without the inclusion of the expedited statement (meaning the application proceeds in accord with the full Right to Negotiate under the NTA) or initiate a process whereby the Minister for Mines may refuse the application under section 111A of the Mining Act 1978.

Notification

Once the assessment of the application has been completed and the required information has been received from the applicant, DMIRS will determine whether the application should be notified pursuant to section 29 of the NTA with the expedited statement included, or in accordance with the full Right to Negotiate.

Expedited Statement

If DMIRS concludes that the application can be notified with the expedited procedure statement, DMIRS will notify the application with the expedited statement included. Native title parties objecting to the inclusion of the expedited statement may do so within four (4) months of the notification date specified in the relevant notice.

If an objection to the inclusion of the expedited statement in the notice is lodged with the NNTT within the objection period, DMIRS will monitor and case manage the application until:

1. The objection is withdrawn by the objecting party;
2. The objection is dismissed pursuant to section 148(b) of the NTA by the NNTT;
3. The objection proceeds to Determination by the NNTT;
4. The tenement is withdrawn by the applicant; or
5. DMIRS withdraws the expedited statement.

Depending on the outcome of the objection, DMIRS will proceed to clear the application for grant or proceed with the application in accordance with the full Right to Negotiate process under the NTA. DMIRS will only proceed to clear the application for grant if it has fully complied with the future act requirements of the NTA. This includes if:

- No objection was lodged within the specified objection period;
- The objection is withdrawn by the objecting party; or
- The NNTT determines the objection is dismissed.

Right to Negotiate

Section 31 of the NTA provides that unless a notice given pursuant to section 29 of the NTA includes the expedited statement, an application must not be granted unless, in short, the Right to negotiate provided for under the NTA is complied with. Hence, the Right to negotiate is relevant to applications for exploratory titles if:

1. After assessment, the application is notified without the inclusion of the expedited statement included;
2. After consideration, DMIRS withdraws the expedited statement attached to the notification and refers the application to the full right to negotiate regime; or
3. The NNTT determines that an objection made during expedited statement objection period is upheld.

The expedited statement may be withdrawn if the applicant does not respond to requests for information by DMIRS or does not actively engage with the NTP and/or actively participate in any objection lodged with the NNTT.

Government of Western Australia

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