



INFORMATION PAPER

The State Government has a policy whereby applicants for exploration licences and prospecting licences will have to sign a Regional Standard Heritage Agreement or prove they have an existing *Alternative Heritage Agreement* before the applications will be submitted to the Native Title Act (NTA) Expedited Procedure. In the absence of proof of such an agreement being offered, the applications will not be processed and could result in refusal action being instigated under s111A of the Mining Act 1978.

Regional Standard Heritage Agreements

From October 2003 when processing applications for exploration licences and prospecting licences, the Government has adopted the policy of submitting exploration titles to the expedited procedure where the applicant signs a Regional Standard Heritage Agreement (RSHA) or has an *Alternative Heritage Agreement* (AHA) in place with the Native Title Representative Body (NTRB) or native title parties are not represented by the NTRB.

RSHA's negotiated between Industry peak bodies and individual NTRB's will be used for the Goldfields (Goldfields Land & Sea Council), Murchison Gascoyne (Yamatji Marlpa Aboriginal Corporation), Pilbara (Pilbara Native Title Service) and South West (South West Aboriginal Land and Sea Council) and Central Desert Area (formerly the Ngaanyatjarra Council Agreement now known as the Central Desert Native Title Service Agreement). Negotiations with the other NTRB are still ongoing. Companies and individuals can use an *Alternative Heritage Agreement* where it exists.

Process:

(a) New Exploration and Prospecting Licence Applications

- When the relevant Mining Registrar returns a copy of the application/s to the applicant for advertising and service of notices (if relevant) the Department of Mines and Petroleum (DMP) information package is provided to the applicant outlining the policy and process together with a copy of the RSHA enclosed.
- Applicant signs RSHA and forwards it to the relevant NTRB or the native title party not represented by NTRB.
- Applicant advises DMP by way of Mining Act affidavit or statutory declaration that RSHA signed and sent to the relevant NTRB or native title party not represented by NTRB. In the case where applicants have not previously forwarded a Mining Act affidavit or statutory declaration DMP will give a 21 day deadline

in the covering letter it sends to applicants when the application is ready for determination under the Mining Act.

- Where an *AHA* is in force or a variation to the RSHA is entered into, the applicant shall provide proof by way of a statutory declaration (provided on DMP website) confirming the existence of the *AHA* and the duration it remains in force.
- DMP will submit the application to the expedited procedure upon receipt of the applicant's evidence.
- Native title claimants who have authorised the NTRB to act on its behalf or native title parties without NTRB representation should not lodge an objection to the application proceeding under the expedited procedure.

(b) Applications with an Existing Objection to the Expedited Procedure

- DMP letter to the applicant outlining the policy and process with a copy of the RSHA enclosed
- Applicant signs RSHA or AHA and forwards it to the relevant NTRB or native title party without NTRB representation.
- Applicant completes a Statutory Declaration, giving evidence that the RSHA is signed and sent to the NTRB or other native title party/s representative. Alternatively the applicant completed a Statutory Declaration giving evidence that an AHA exists. DMP will give a 21 day deadline to provide this evidence in the covering letter that is provided with the information package.
- If the NTRB or the native title party/s sign the RSHA or AHA the objection should be withdrawn and the tenement granted.
- If the agreement is not signed by the native title party, the Government party will argue before the NNTT that the proposed grant of the licence is an act that attracts the expedited procedure.
- If Agreement not signed by the applicant the application will be allowed to run its course within the NNTT process.

(c) Applications in the Right to Negotiate Process

- DMP letter to the applicant outlining the policy and process with a copy of the RSHA enclosed.
- Applicant signs the RSHA or an AHA and forwards it to the relevant NTRB or native title party/s without NTRB representation.

- Applicant completes a Statutory Declaration, giving evidence that the RSHA is signed and sent to the NTRB or other native title party representative. Alternatively the applicant completed a Statutory Declaration giving evidence that an AHA exists. DMP will give a 21 day deadline to provide this evidence in the covering letter that is provided with the information package.
- If the NTRB or the native title party/s sign the RSHA or an AHA, a State Deed signed by all the claimants is also required (See clause 3.3(c) of the SHA). The tenement can then be granted.
- If RSHA or AHA is not signed by the applicant the application will be allowed to run its course within the NNTT process. The applicant is expected to negotiate in good faith with the Government party and the native title party to progress the application to grant. Failure to demonstrate negotiation in good faith on behalf of the applicant may result in the application being refused.

(d) **Tenement Granted – Heritage Survey**

It is highly recommended that licence holders enter into dialogue with the native title party (or NTRB) as soon as possible after entering the agreement to identify:

the likely need for a heritage survey;
the level of survey that may be required; and
timeframe to commence and complete the heritage survey if required.

In doing this it will avoid any delays commencing exploration/mining programs that involve ground disturbing activity.

DMP will consult with all parties to identify tenement holders willing to participate in cooperative regional surveys. This will reduce the cost of surveys and the impact on claimant elders.