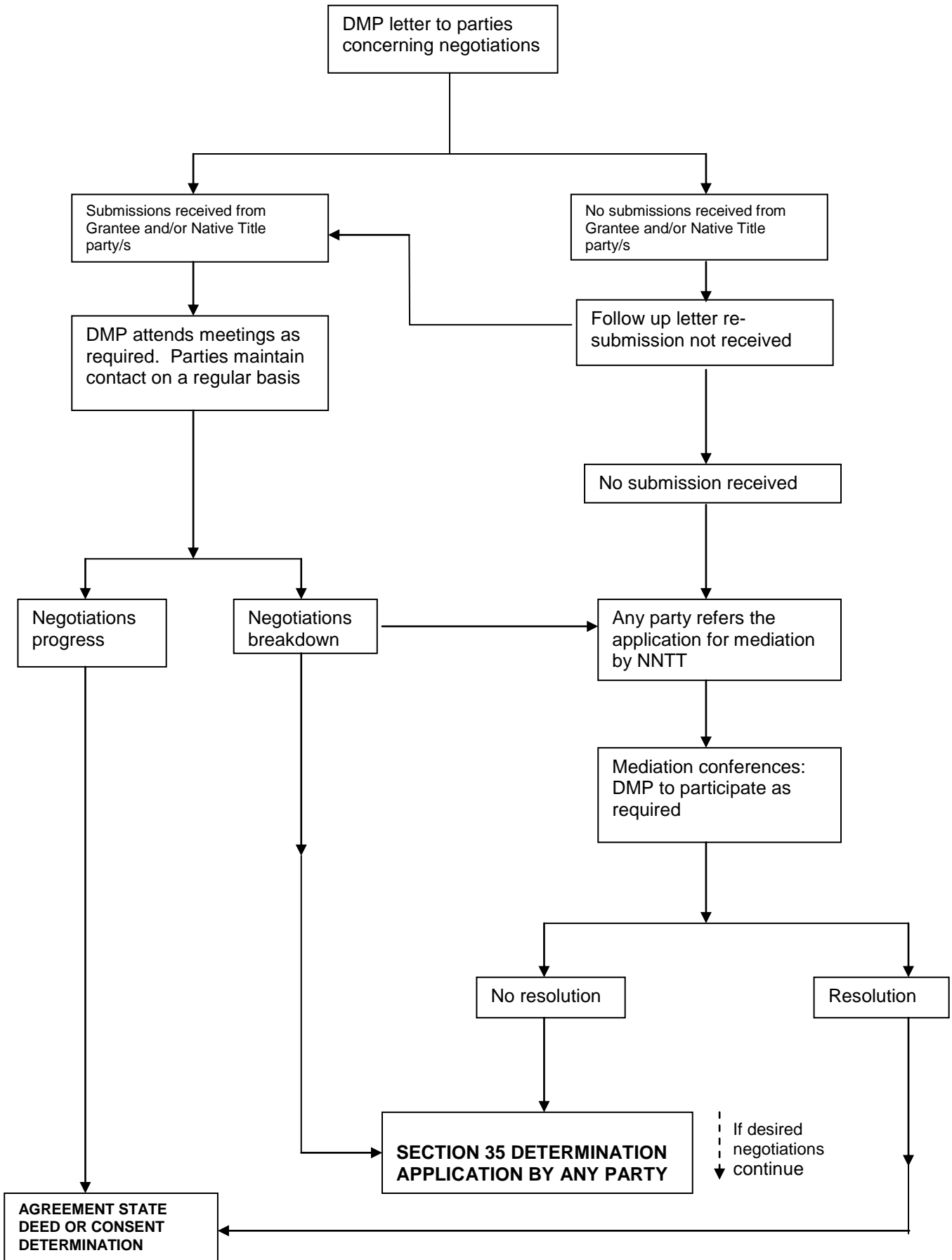


NEGOTIATION PROTOCOL FOR MINERAL TENEMENTS IN THE RIGHT TO NEGOTIATE PROCESS



NEGOTIATION PROTOCOL
FOR MINERAL TENEMENTS IN THE RIGHT TO NEGOTIATE PROCESS

This negotiation protocol contains an explanation of the process shown in the attached flow chart.

The Government party is represented in these procedures by the Tenure and Native Title Branch of the Department of Mines and Petroleum (DMP) as indicated in the flow chart.

DMP letter to parties concerning negotiations

A letter will be issued by DMP to grantee and native title party/s once a tenement has been identified as being subject to the right to negotiate.

The letter will contain:

- Advice as to who the native title party/s are with a “right to negotiate”.
- A copy of the tenement application.
- A TENGRAPH plan of the tenement.
- A topographical plan of the tenement.
- A copy of information from the Register of Aboriginal Sites.
- An extract of section 39 (1) of the Native Title Act 1993.
- Advice stating that all of the negotiation parties have an equal obligation to negotiate in good faith with each other.
- DMP’s proposals in relation to the tenement.
- A request that the grantee party/s provide a submission to the DMP. Parties are requested that any correspondence to be copied to all parties
- A request that the native title party/s provide a submission to the DMP in accordance with section 31(1)(a) of the Native Title Act 1993. Parties are requested that any correspondence to be copied to all parties.
- A summary of how to negotiate in good faith.
- A copy of the State’s Negotiation Protocol.
- Confirmation of contact details for each of the parties.

DMP receives submissions from grantee party/s

The grantee party (tenement applicant) will be asked to provide the following information to assist the native title party/s in making their submission by registered mail within two weeks. A copy will be sent to DMP:

- Outline of proposed work program for the tenement area.
- Annual Report (if available).
- Information regarding any completed or proposed Aboriginal heritage surveys within the tenement area.
- Any company policies or information, which might be relevant to native title claimants.
- A copy of the Project Map (if applicable).

DMP receives submissions from native title party/s

Within **7 weeks** of the DMP’s initial letter concerning negotiations, the Department will expect a submission from the native title party/s, with a copy provided to the grantee party.

No submissions received from grantee or native title party/s

DMP does not receive any submissions from one or more of the grantee or native title parties.

Follow up letter re-submission

Where no submission is received from a grantee or native title party within the 2 or 7 week timeframe of the DMP’s initial letter concerning negotiations, the Department will forward a reminder letter to that grantee or native title party, copied to the other affected party/s. The letter will advise that if no submission is received within 2 weeks of the date of that letter, any party may refer the case to the National Native Title Tribunal (NNTT) for mediation assistance.

Any party refers the application for mediation by the NNTT

If, at any stage, one or more of the parties is unwilling to negotiate, or difficulties are being experienced in negotiations, then any party may request the NNTT to mediate in relation to those parties.

Submission received

DMP receives submission/s from the grantee/native title party/s relating to issues they would like addressed in the context of negotiations, with a copy provided to the other affected party/s.

DMP attends meetings as required. Parties maintain contact on a regular basis

Where meetings are organised (by the other parties or where required by DMP) and parties wish for DMP representatives to attend we will do so. It may not be necessary for the Department to attend all meetings. Parties should continue to copy all correspondence to all other parties. It would be desirable that regular contact be maintained by the negotiation parties as agreed by those parties.

Negotiations progress

Regular negotiation meetings/discussions continue between the parties as required. DMP either attends as required or monitors.

Negotiations breakdown

If any of the parties believe that negotiations are not proceeding toward agreement or have broken down, then they have the option of referring the matter to the NNTT for mediation assistance or submitting a section 35 application (see below)

Mediation conferences: DMP to participate as required

The NNTT will arrange mediation conferences between all of the parties referred. DMP will participate unless the other mediation parties deem it to be unnecessary.

No resolution

Mediation fails to resolve differences. Parties do not reach agreement.

Resolution

Parties reach agreement that the title may be granted.

Section 35 Determination application by any party

Any party may refer the case to the NNTT for Determination under section 35 of the Native Title Act 1993. An application can be made any time after the statutory six month period from the date of the s29 notice. The "negotiations in good faith" requirements of the Act need to be recognised.

Agreement - State Deed

At any stage during the process, even up to the point of a determination by the NNTT, the parties may reach agreement. The tenement cannot be granted unless all the parties sign a tripartite agreement, which must be lodged with the Tribunal or consent to the grant of the tenement application/s by means of a consent determination being made by the NNTT. An ancillary agreement may be reached between the grantee party and the native title party/s. The ancillary agreement may include other matters not dealt with in the tripartite agreement and this document will not be signed by the DMP.