

Native Title – Notification and Advertising guideline

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

July 2021

This publication has been compiled by Regulatory Support and Performance of Georesources Division, Department of Resources.

© State of Queensland, 2021

The Queensland Government supports and encourages the dissemination and exchange of its information. The copyright in this publication is licensed under a Creative Commons Attribution 4.0 International (CC BY 4.0) licence.



Under this licence you are free, without having to seek our permission, to use this publication in accordance with the licence terms. You must keep intact the copyright notice and attribute the State of Queensland as the source of the publication.

Note: Some content in this publication may have different licence terms as indicated.

For more information on this licence, visit <https://creativecommons.org/licenses/by/4.0/>.

The information contained herein is subject to change without notice. The Queensland Government shall not be liable for technical or other errors or omissions contained herein. The reader/user accepts all risks and responsibility for losses, damages, costs and other consequences resulting directly or indirectly from using this information.

Interpreter statement:

The Queensland Government is committed to providing accessible services to Queenslanders from all culturally and linguistically diverse backgrounds. If you have difficulty in understanding this document, you can contact us within Australia on 13QGOV (13 74 68) and we will arrange an interpreter to effectively communicate the report to you.



Contents

1	About this Guideline	1
2	Background	1
3	Notice Requirements	2
4	The advertising process in Queensland	3
4.1	Ensures compliance with the NTA	3
4.2	Ensures consistency across all notices.....	3
4.3	Prevents the grant process stalling from advertising delays.....	3
4.4	Discount for batched advertising	3
5	Determined land	3
6	Document information	4

1 About this Guideline

This guideline sets 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 party 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.

2 Background

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.

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).

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.

To notify the public in the determined way means give notice in the way determined, by legislative instrument, by the Commonwealth Minister¹. The advertising process is determined under the Native Title (Notices) Determination 2011 (No 1) (the instrument).

The instrument states any notice under a provision of the NTA must be published:

¹ See s.252 of the *Native Title Act 1993*

- 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
- in a relevant special-interest publication.

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.

3 Notice Requirements

Native title is defined as the rights and interests that are possessed under the traditional laws acknowledged and the traditional customs observed, by the Aboriginal and Torres Strait Islander peoples. Those laws and customs, have a connection with the land or waters and are recognised by common law of Australia.

Native title rights and interests may include rights to:

- Camp and live on the land,
- access the area for traditional purposes such as conducting ceremonies,
- visit cultural places and sites to maintain and protect,
- hunt, fish and gather food or traditional resources such as water, wood and ochre; and
- teach traditional law and customs on country.

For a native title claim group to have their native title rights and interested recognised by the common law of Australia, a native title determination application is made to the Federal Court of Australia under the NTA.

A native title determination application must be made by or on behalf of a claim group and pass the registration test which was introduced in 2007 for new applications to be accepted and entered on the Register of Native Title Claims. The registration test consists of 12 conditions (see sections 190B and 190C of the NTA).

The Federal Court of Australia or High Court of Australia determines the validity of the claim for native title by hearing evidence presented in the application, which is gathered and compiled by the claimants (referred to in this document as the Native Title Party). A decision is then made decision based on this evidence which is called a native title determination.

A registered claim affords the native title party certain procedural rights, such as the 'right to negotiate' with others in relation to the grant of most mining or petroleum permits in relation to the area covered by the native title claim.

Where native title has been determined to exist, the determined Native Title holder may be granted the same or different rights as land owners depending on whether the determination confers 'exclusive' or 'non-exclusive' native title rights and interests.

Not all land is subject to native title, there are sections within the NTA that outline acts which have extinguished native title. Such as previous exclusive possession acts which include the grant or vesting of land tenures such as freehold estates or leases or the construction of public works. Refer to section 23B of the NTA (additionally see Schedule 1 Part 3 Clause 21 of the NTA)

For more detailed information on native title, visit the NNTT website: www.nntt.gov.au

4 The advertising process in Queensland

The department manages the public notice advertising 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:

4.1 Ensures compliance with the NTA

- The department can nominate the notification day which ensures that all notices have a 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.
- The department ensures that notifications are provided to all the relevant parties.

4.2 Ensures consistency across all notices

- The department uses templates for both the ss. 29(2) and 29(3) notices and templates that 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.

4.3 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 further expedites the advertising process. The department maintains a database of contact details for the parties which enables an efficient notification process.

4.4 Discount for batched advertising

- 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%.

5 Determined land

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.

6 Document information

Availability: External

Location: Business Industry Portal

Owner and approver: Deputy Director-General, Georesources Division

Review date: June 2023

Related documents:

Contacts: For help and information about this policy, please use the following contacts
Mineral Assessment Hub on (07) 4447 9230 or email mineralhub@resources.qld.gov.au,
Coal Assessment Hub on (07) 4936 0169 or email coalhub@resources.qld.gov.au,
Petroleum Assessment Hub on (07) 3199 8118 or email
PetroleumHub@resources.qld.gov.au.

For help with MyMinesOnline please contact the MyMinesOnline Helpdesk on (07) 3199 8133 or email minesonline@resources.qld.gov.au.