

Queensland Government Native Title Work Procedures

Annexure 7.2

Notification and opportunity to comment process for certain future acts

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Annexure 7.2

Notification and opportunity to comment process for certain future acts

1. Introduction

The State is under an obligation to notify relevant native title parties in writing for proposed future acts. The reason and purpose for the notification is to give relevant native title parties an opportunity to comment on a proposed future act.

The notification process set out in this Annexure is only for future acts done under the following sections where **notification and an opportunity to comment** is required to be given to the relevant native title parties -

- s24GB - Module GB
- s24GD - Module GD
- s24GE - Module GE
- s24HA - Module H
- s24ID - Module IB
- s24JB - Module J
- s24MD - Module M&N (excluding compulsory acquisition and s24MD(6B) process).

For future acts falling under other sections or modules or which require different procedural rights to be given to the relevant native title parties, the procedural rights process for those future acts will form part of the relevant module. For example, the section 24KA procedural rights process is contained in Module K as the procedural rights process is different. Similarly, s24JAA which is contained in Module JAA.

2. Process

You are now at the stage where you have carried out a native title assessment in accordance with these Native Title Work Procedures for your proposed future act and completed the native title assessment form (**Annexure 7.1**).

At this stage you should not have made a decision whether you will proceed with the future act as you will need to take any relevant comments provided by the notified native title parties into account in making your decision. Refer to **Annexure 8.5**. Therefore, notification and an opportunity to comment must be given to the relevant native title parties **before** you make the decision whether to proceed with the future act.

The following 10 steps lead you through the notification and opportunity to comment process -

Step 1

Draft the notification in accordance with **Annexure 7.3**.

Step 2

Attach to the native title notification any relevant maps or plans showing the location of the proposed future act.

Step 3

Identify the relevant native title parties. You will need to identify whether there are any Registered Native title Bodies Corporate and any Registered Native Title Claimants with a determination or registered claim over the proposed future act area. Sometimes there will not be any Registered Native Title Bodies Corporate or Registered Native Title Claimants but there will always be a Native Title Representative Body.

- **Registered Native Title Bodies Corporate**

What is a registered native title body corporate?

There will only be a Registered Native Title Body Corporate where there has been a determination of native title that native title exists over a certain area. A Registered Native Title Body Corporate is set up by the determined native title holders and either holds the native title on trust on behalf of the native title group or acts as an agent on behalf of the native title group in relation to the native title rights and interests held by the group.

Does a determination of native title affect the way I provide procedural rights?

A determination of native title over the particular area should make no difference to the giving of procedural rights. You must now provide a notification and an opportunity to comment to the registered native title body corporate.

What if there is a determination of native title and a registered native title body corporate has not yet been established?

If a registered native title body corporate has not yet been established, then the notification should be sent to the determined native title holders, ie. the previous registered native title claimants.

- **Registered Native Title Claimants**

What is a registered native title claimant?

There will only be Registered Native Title Claimants where a native title claim has been lodged and the claim -

- (a) has passed the registration test under the amended *Native Title Act 1993*
- (b) was registered prior to the 1998 amendments to the *Native Title Act 1993* which did not require the registration test to be applied.

A registered native title claimant/s appears as the applicant/s on the Register Extract. For example, Mr Alfred Bird, Mrs Beryl Bird and Ms Hazel Heron appear as the applicants for the Flamingo People's native title claim on the Register Extract. A registered native title claimant makes an application for a determination of native title **on behalf of** the native title claimant group. The native title claimant group authorise the registered native title claimants to make the claim on their behalf.

How do I deal with notifications where there is more than one registered native title claimant?

Each registered native title claimant is entitled to notification of the future act even though they are part of the same native title claimant group. This notification may be provided by a single notification that names all the registered native title claimants **or** by individual notifications to each registered native title claimant.

- **Native Title Representative Body**

NB: Refer to Annexure 8.4 for a definition of native title representative bodies and an explanation of their role and functions.

Step 4

Identify the address for service for each native title party you have identified in Step 3.

- **Registered Native Title Body Corporate**

Notifications for a Registered Native Title Body Corporate must be sent to the name and address that appears on the National Native Title Register. These details can be obtained from the National Native Title Tribunal or by searching the QNTIME database.

- **Registered Native Title Claimant**

Notifications for a Registered Native Title Claimant must be sent to the name and address for service that appears on the Register of Native Title Claims. These details can be obtained from the National Native Title Tribunal or by searching the QNTIME database.

- **Native Title Representative Body**

Notifications for a Native Title Representative Body should be sent to the “*Postal Address for Notifications*” for the relevant representative body - **Annexure 8.4** of Chapter 8.

Step 5

Notify the native title parties you identify in Step 3 by sending the notifications to the address for service you identify in Step 4.

Important

The notification and an opportunity to comment process does not remove the requirement to afford procedural rights to registered native title claimants and native title holders under any relevant State legislation that otherwise applies to the proposed future act. For example, where the legislation states that a notification must be given to occupiers, this will include, where relevant, a registered native title claimant.

Step 6

Wait for the opportunity to comment period to finish.

The notified native title parties have **28 days** from the day they receive the notification in which to provide comments **in writing** to the decision-maker.

During the opportunity to comment period, your department or agency may receive a request for further information from the notified parties. If your department or agency has subsequently responded to a **request to provide additional information**, you must allow an **extra 14 days** from the date that the native title parties receive the additional information so that the native title parties have an opportunity to consider the additional information. When providing the additional information, the department or agency must advise the native title parties that they have an extra 14 days in which to provide comments.

Where the information requested is public information, eg. a request to provide a copy of the section of the Act that gives the authority to grant the permit, then the additional 14 day requirement would not apply to the provision of that additional information.

Step 7

Consider any comments you have received.

After the opportunity to comment period has expired you will either have received comments from the notified native title parties or you will not have received comments from the notified parties.

Where you have **not** received any comments from the native title parties you may proceed to make your decision regarding the proposed future act.

If you have received comments, consideration of those comments **must** be given in accordance with **Annexure 8.5** of Chapter 8 **before** a decision is made whether to proceed with the future act.

Step 8

Make your decision taking into account any relevant comments

Important

It is important that you have considered all of the relevant comments made and to correctly document your decision, as all decisions you make under legislation may be the subject of a request for a Statement of Reasons under s32 of the *Judicial Review Act 1991*.

Step 9

You should advise the notified parties in writing of your decision. Please refer to **Annexure 8.5**.

Step 10

You can now proceed with the future act if your decision was to proceed.