

# AMEC REQUIREMENTS IN BRIEF - NATIVE TITLE AND CULTURAL HERITAGE

	Western Australia	New South Wales	South Australia	Queensland	Northern Territory	Victoria	Tasmania
<p><b>Native Title requirements for Exploration Licences (ELs)</b></p>	<p><b>Expedited procedure:</b> ELs attract the expedited procedure of the <i>Native Title Act 1993</i> (S237). For applications in the Central Desert, Goldfields, or Pilbara, State policy requires proof a Regional Standard Heritage Agreement has been offered or alternate agreement finalised with affected native title groups for State to assert the expedited procedure applies.</p> <p>If access is sought within the areas covered by the <a href="#">South West Settlement</a> (extending from Jurien Bay to Ravensthorpe) or the <a href="#">Yamatji Nation Agreement</a> (in the midwest adjacent to Geraldton) then a specific process must be followed.</p>	<p>For ELs where native title may exist applicant must provide evidence of extinguishment of native title or right to negotiate process (RTN). Details available in the <a href="#">Industry Guidelines</a> (revised documents in draft, release due soon).</p>	<p>The holders of an EL must not undertake advanced mining operations that affect native title unless:</p> <ul style="list-style-type: none"> <li>• Operations are authorised by a native title mining agreement under Part 9B of the Mining Act 1971 (SA);</li> <li>• An Indigenous Land Use Agreement registered under the Native Title Act provides that rights to negotiate are not intended to apply to the mining operations; or</li> <li>• a declaration is made under State or Commonwealth legislation that the relevant land is not subject to native title.<sup>1</sup></li> </ul>	<p>On land subject to Native Title, a mineral exploration permit is subject to either:</p> <ul style="list-style-type: none"> <li>• Right to negotiate (RTN);</li> <li>• Expedited procedure; or</li> <li>• Indigenous land use agreements (ILUAs)</li> </ul> <p>Or a combination of the above.<sup>2</sup></p>	<p>Native title processes will depend on if the application is over private land, Aboriginal Freehold or Native Title Affected Land (e.g. pastoral lease).</p> <p><b>Private/Freehold Land:</b> Not affected by native title<sup>3</sup></p> <p><b>Aboriginal Freehold Land:</b> Applications are subject to the <a href="#">Aboriginal Land Rights (Northern Territory) Act 1976</a> process.</p> <p><b>Native Title Affected Land (e.g. Pastoral Lease Land):</b> Applications are subject to the expedited procedure of the <i>Native Title Act 1993</i>. Native title parties have 4 months to become registered and/or lodge an objection.<sup>4</sup> If no objections to the statement are received, the application may be granted. If objection successful, application will be subject to right to negotiate (RTN) procedure.<sup>5</sup></p> <p>Certain procedural rights granted to registered native title claimants. If process is not followed, then the act may be invalid to the extent that native title is affected. On land subject to Native Title, a mineral exploration permit is subject to either:</p> <ul style="list-style-type: none"> <li>• Right to negotiate (RTN); or</li> <li>• Indigenous land use agreements (ILUAs).</li> </ul>	<p>For advanced activities the following may be required:</p> <ul style="list-style-type: none"> <li>• Compliance with provisions of Native Title Act 1993</li> <li>• Approval of Cultural Heritage Management Plan</li> </ul>	<p>A future act (e.g. mining tenement) is invalid to the extent it affects native title unless it complies with certain provisions in the Native Title Act (NTA). Generally, the right to negotiate applies. Where a proposed future act meets the criteria set out in section 237 of the NTA, it may attract an expedited procedure.<sup>6</sup></p>
<p><b>Aboriginal Cultural Heritage requirements for ELs</b></p> <p><b>Note that generally all Aboriginal sites are protected whether or not registered.</b></p>	<p>It is an offence under the <i>Aboriginal Heritage Act 1972</i> to destroy or damage an Aboriginal site without prior authorisation. Land users must exercise due diligence in trying to establish whether their proposed activities may damage or destroy an Aboriginal site.</p> <p>Due diligence may involve:</p> <ul style="list-style-type: none"> <li>• assessing the landscape where an activity is to take place;</li> </ul>	<p>It is an offence under the <i>National Parks and Wildlife Act 1974</i> to destroy or damage an Aboriginal object, whether or not you knew it was an Aboriginal object.</p> <p>'Low Impact Activities'<sup>8</sup>, may be undertaken without the need for due diligence.<sup>9</sup></p> <p>The <a href="#">NSW Minerals Industry Due Diligence Code of Practice for the Protection of Aboriginal Objects</a></p>	<p>It is an offence under the <i>Aboriginal Heritage Act 1988</i> to damage, disturb or interfere with an Aboriginal site, object or remains without authorisation.</p> <p>Due diligence required to avoid damage/interference with an Aboriginal site to include:</p> <ul style="list-style-type: none"> <li>• assessing the landscape where an activity is to take place;</li> </ul>	<p>The cultural heritage duty of care can be met by acting:</p> <ul style="list-style-type: none"> <li>• in compliance with Cultural Heritage Duty of Care Guidelines under an approved Cultural Heritage Management Plan,</li> <li>• under a native title agreement, or another agreement with an Aboriginal or Torres Strait Islander party that addresses cultural heritage</li> </ul>	<p>It is an offence under the <i>Sacred Sites Act (SSA)</i> for an unauthorised person to enter onto or work on a sacred site. The Aboriginal Areas Protection Authority is established under the SSA to, amongst other things, administer and enforce the provisions and maintain a register of Aboriginal sacred sites. Following an Authority Certificate application, the Aboriginal Areas Protection Authority also conducts sacred site surveys and research consulting with Aboriginal</p>	<p>A Cultural Heritage Permit is required for:</p> <ul style="list-style-type: none"> <li>• planning activities that may disturb or excavate land to uncover or discover Aboriginal cultural heritage;</li> <li>• rehabilitate land at an Aboriginal place;</li> <li>• carry out research on an Aboriginal place;</li> <li>• carry out an activity that will, or is likely to, harm Aboriginal cultural heritage etc.</li> </ul>	<p>The steps to complete an Aboriginal Heritage Assessment Process include:</p> <ul style="list-style-type: none"> <li>• Use the Aboriginal Heritage Property Search website to determine if a project activity may impact Aboriginal relics;</li> <li>• If the search resulted in an Aboriginal Heritage Desktop Review then an Aboriginal Heritage Assessment Report may be required;</li> </ul>

<sup>1</sup> [https://energymining.sa.gov.au/minerals/land\\_access/native\\_title\\_and\\_aboriginal\\_land](https://energymining.sa.gov.au/minerals/land_access/native_title_and_aboriginal_land)

<sup>2</sup> <https://www.business.qld.gov.au/industries/mining-energy-water/resources/minerals-coal/authorities-permits/applying/native-title/mining-resources>

<sup>3</sup> <https://nt.gov.au/industry/mining-and-petroleum/land-tenure-and-availability/nt-freehold-land>

<sup>4</sup> S.29 Native Title Act and S.71 MTA; [https://nt.gov.au/\\_data/assets/pdf\\_file/0015/203226/application-grant-el-native-title-affected-land-flowchart.pdf](https://nt.gov.au/_data/assets/pdf_file/0015/203226/application-grant-el-native-title-affected-land-flowchart.pdf)

<sup>5</sup> <https://nt.gov.au/industry/mining-and-petroleum/land-tenure-and-availability/native-title/exploration-and-mining>

<sup>6</sup> <https://aiatsis.gov.au/publication/35050>

<sup>8</sup> As prescribed by the National Parks and Wildlife Amendment Regulation 2010

<sup>9</sup> Clauses 80B (1) (f) and (g) of the Regulation directly relate to activities undertaken by the minerals industry. f

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	<ul style="list-style-type: none"> <li>assessing the proposed activity and the potential impact on the landscape;</li> <li>searching the Register of Aboriginal Sites and the Aboriginal Heritage Inquiry System;</li> <li>consulting with the relevant Aboriginal people;</li> <li>agreeing to an Aboriginal heritage survey; or</li> <li>other heritage management strategies.</li> </ul> <p>Landowners can apply for permission from the Minister for Indigenous Affairs to use areas of land where Aboriginal sites and objects are located.<sup>7</sup></p> <p>Note that the Western Australian Aboriginal Cultural Heritage legislative framework is undergoing comprehensive reform in 2021. The information outlined above may change substantially.</p> <p>AMEC recommends that an explorer undertake and document a cultural heritage clearance over their tenure prior to undertaking any activity.</p>	<p>sets out requirements for the minerals industry to exercise due diligence when carrying out activities. It sets out the reasonable and practicable steps to:</p> <ul style="list-style-type: none"> <li>identify whether or not Aboriginal objects are present or likely to be present in an area;</li> <li>consider whether or not proposed activities are likely to harm Aboriginal objects (if present); and</li> <li>determine whether an Aboriginal Heritage Impact Permit is required.<sup>10</sup></li> </ul> <p>This Code of Practice complies with all the requirements of the Minimum Standards for Codes of Practice for the Protection of Aboriginal Objects in NSW gazetted on 10 September 2010.</p> <p>The NSW Government <a href="#">Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales</a> is also available for reference.</p>	<ul style="list-style-type: none"> <li>assessing the proposed activity and the potential impact on the landscape;</li> <li>searching the Central Archive;</li> <li>consulting with the relevant traditional owners;</li> <li>conducting Aboriginal cultural heritage survey or work area clearance;</li> <li>other heritage management strategies.</li> </ul> <p>For Aboriginal heritage surveys, walking, driving or flying across land with traditional owners to identify areas of cultural significance are considered to be low impact exploration activities.</p> <p>The Premier, as the Minister for Aboriginal Affairs, may permit destruction or disturbance of sites following consultation with the appropriate Aboriginal person(s) or organisations.<sup>11</sup></p>	<ul style="list-style-type: none"> <li>in compliance with native title protection conditions (for low-impact mineral exploration) if the conditions address cultural heritage.<sup>12</sup></li> </ul>	<p>custodians to determine the constraints, if any, imposed on proposed works or use of land by the protection of sacred sites.<sup>13</sup></p>	<p>A cultural heritage permit is required for these activities even if a Cultural Heritage Management Plan (CHMP) is needed.<sup>14</sup> A CHMP is required when high impact activities are planned in an area of cultural heritage sensitivity.<sup>15</sup> In such an area, planning permits, licences and work authorities can't be issued unless a CHMP has been approved for the activity.<sup>16</sup></p>	<ul style="list-style-type: none"> <li>Review of Aboriginal Heritage Assessment Report and advise if permit application allowed;</li> <li>Permit then assessed by Minister.<sup>17</sup></li> </ul>
<b>Government website</b>	<a href="https://www.dmirs.wa.gov.au">https://www.dmirs.wa.gov.au</a>	<a href="https://www.regional.nsw.gov.au/our-work/meg">https://www.regional.nsw.gov.au/our-work/meg</a>	<a href="https://www.energymining.sa.gov.au/minerals">https://www.energymining.sa.gov.au/minerals</a>	<a href="https://www.resources.qld.gov.au/">https://www.resources.qld.gov.au/</a>	<a href="https://industry.nt.gov.au/publications/mining-and-energy">https://industry.nt.gov.au/publications/mining-and-energy</a>	<a href="https://earthresources.vic.gov.au/">https://earthresources.vic.gov.au/</a>	<a href="https://www.mrt.tas.gov.au/home">https://www.mrt.tas.gov.au/home</a>

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<sup>7</sup> <https://www.wa.gov.au/service/aboriginal-affairs/aboriginal-heritage-conservation/land-use-under-the-aboriginal-heritage-act-1972>  
<sup>10</sup> <https://www.environment.nsw.gov.au/research-and-publications/publications-search/due-diligence-code-of-practice-for-the-protection-of-aboriginal-objects-in-new-south-wales>  
<sup>11</sup> [M29 Aboriginal Heritage Act 1988](#) and [Aboriginal Site Avoidance Guidelines](#)  
<sup>12</sup> <https://www.qld.gov.au/firstnations/environment-land-use-native-title/cultural-heritage/cultural-heritage-duty-of-care>  
<sup>13</sup> <https://aiatsis.gov.au/publication/35050>  
<sup>14</sup> <https://www.aboriginalvictoria.vic.gov.au/cultural-heritage-management-plans>  
<sup>15</sup> <https://www.aav.nrms.net.au/aavQuestion1.aspx>  
<sup>16</sup> <https://www.aboriginalvictoria.vic.gov.au/cultural-heritage-management-plans>  
<sup>17</sup> <https://www.aboriginalheritage.tas.gov.au/assessment-process>