

# NATIONAL NATIVE TITLE TRIBUNAL

*Western Desert Lands Aboriginal Corporation (Jamukurnu Yapalikunu) v JML Resources*  
[2014] NNTTA 111 (3 December 2014)

**Application No:** WO2013/1140

**IN THE MATTER of the *Native Title Act 1993* (Cth)**

-and-

**IN THE MATTER of an inquiry into an expedited procedure objection application**

**Western Desert Lands Aboriginal Corporation (WCD2002/002) (native title party)**

-and-

**The State of Western Australia (Government party)**

-and-

**Rumble Paterson Range Pty Ltd/JML Resources Pty Ltd (grantee party)**

## DECISION TO DISMISS OBJECTION APPLICATION

**Tribunal:** Member Helen Shurven

**Place:** Perth

**Date of dismissal:** 3 December 2014

**Date of reasons:** 3 December 2014

**Catchwords:** Native title – future act – proposed grant of prospecting licence – expedited procedure objection application – failure to comply with directions – objection application dismissed.

**Legislation:** *Native Title Act 1993* (Cth) ss 29, 148(b)

**Cases:** *Teelow v Page* (2001) 166 FLR 266

**Representative of the native title party:** Mr Matthew Kinder, Western Desert Lands Aboriginal Corporation

**Representative of the Government party:** Ms Bethany Conway, Department of Mines and Petroleum

**Representative of the grantee party:** Ms Sara Winton, McMahon Mining Title Services Pty Ltd

## **REASONS FOR DECISION TO DISMISS OBJECTION APPLICATION**

### **Background**

- [1] On 25 September 2013, the Government party gave notice under s 29 of the *Native Title Act 1993* (Cth) ('the Act') of its intention to grant exploration licence E45/4186 ('the proposed licence') to Rumble Paterson Range Pty Ltd/JML Resources Pty Ltd ('the grantee party') and included in the notice a statement that it considered that the grant attracted the expedited procedure.
- [2] On 12 November 2013, the Western Desert Lands Aboriginal Corporation (WCD2002/002) determined from 27 September 2002 ('the native title party') made an expedited procedure objection application to the National Native Title Tribunal ('the Tribunal') – this application was accepted by the Tribunal as a valid objection.

### **Relevant facts**

- [3] The first preliminary conference for this matter was held on 11 February 2014. Following advice from the grantee party that they were awaiting a draft agreement, the matter was adjourned to the status conference to allow negotiations to occur.
- [4] On 11 and 25 June 2014, 16 July 2014 and 6 August 2014, short adjournments were agreed to by all parties as the Tribunal was advised an agreement was close. On 20 August 2014, with no agreement finalised, the Tribunal set dates for the matter to proceed to inquiry. Directions were made and sent to all parties on 20 August 2014 requiring all parties to produce contentions and evidence for the conduct of the inquiry, to determine whether or not the expedited procedure was attracted. The native title party was to provide a statement of contentions, documentary evidence and witness statements, verified where possible by affidavits, on or before 1 October 2014. The directions contained a statement that an objection may be dismissed pursuant to s 148(b) of the Act if the objector failed within a reasonable time to proceed with the application or to comply with a direction of the Tribunal.
- [5] Neither contentions nor evidence were received from the native title party by the due date of 1 October 2014. On 3 October 2014 the Government party requested the matter be dismissed under s 148(a) as the native title party had failed to comply with directions. The native title party requested an extension to the directions, which was

not opposed. The native title party compliance date was changed to 17 November 2014 accordingly.

- [6] On 26 November 2014, the Government party wrote to the Tribunal and all parties, noting the native title party had again missed the compliance date in this matter. On the same day, the Tribunal contacted all parties to inquire whether there was any reason why the objection should not be dismissed. There was no response from any party, including the native title party,

### **Decision**

- [7] In *Teelow v Page* (at [13]) the Tribunal set out the principles applicable when considering dismissal of an objection application under s 148(b) of the Act, which I have had regard to in this matter. In particular, the Tribunal is required to proceed as expeditiously as possible when conducting an inquiry into an expedited procedure application.
- [8] The native title party has known that the matter was proceeding to inquiry since 20 August 2014. It is the native title party's responsibility to ensure that contentions and evidence are submitted in a timely manner and in accordance with the Tribunal's directions. On two occasions the State made an application for the objection to be dismissed under s 148(b) of the *Native Title Act 1993* (Cth). An extension was granted to the native title party on the first occasion, and no response was received from the native title party on the second occasion. No contentions or evidence have been received from the native title party.
- [9] As such, I conclude the native title party have been informed of the possible consequences of a failure to comply with the directions of the Tribunal, and have been so aware since the directions were set on 20 August 2014. As at the date of this determination, no reasons for non compliance have been received from the native title party.

[10] In the circumstances, the native title party has been given sufficient opportunity to comply with the directions of the Tribunal and it would be unfair to prejudice the other parties with further delays.

### **Decision**

[11] As the native title party has failed to comply with directions made by the Tribunal on 20 August and 27 October 2014, the objection application WO2013/1140 is dismissed pursuant to s 148(b) of the *Native Title Act 1993* (Cth).

**Helen Shurven**  
**Member**