Expedited procedure – speaking for country, major disturbance

Rosas/BHP Billiton Minerals Pty Ltd/Northern Territory [2002] NNTTA 113

Member Sosso, 25 June 2002

Issues
The Northern Territory (the government party) queried whether the deponents were authorised to speak on behalf of the native title claim group or sub-group, relying on *Little v Western Australia* [2001] FCA 1706. The native title party raised concerns in relation to major disturbance under s. 237(c) because the proposed exploration would affect a national park.

Community and social activities – s. 237(a)
The National Native Title Tribunal considered the regulatory regime in the *Mining Act* (NT) and in particular the conditions mandated by s. 24A (the Second Schedule conditions). The Tribunal noted the lynchpin of the regulatory scheme is the requirement found in clause 18 for licensees to give notice and convene a meeting with registered native title claimants or holders to explain the exploration activities. Clause 20 provides for government action following a written complaint that exploration is adversely affecting native title rights and interests. The Tribunal found on the facts that there was likely to be an intersection between the exploration activity and the community and social activities of the objectors but that there was no real chance of any significant interference—at [69] to [71].

Sites of particular significance, speaking for country - s. 237(b)
The Tribunal found the deponents did not explicitly deal with their qualifications to speak for the native title claim group with respect to various sites. However, the Stokes Range Land Claim Report (No 36) and the Nguliwurru/Nungali Land Claim Report provided the Tribunal with helpful findings identifying the deponents and the areas for which they had authority to speak—at [16] to [24] and [78] to [79].

In relation to s. 237(b), the Tribunal noted that:

> When a native title holder says he/she is speaking for country or for particular areas or sites, then they should specify in their witness statement or affidavit whether they are a member of the relevant native title claim group, on what basis they can speak for the country or site, the significance of the country or site, and such other information which allows the Tribunal to ascertain that what is deposed to, is a proper reflection of the traditions of the claim group—at [28].

Major disturbance – s. 237(c)
In relation to s. 237(c), the Tribunal confirmed the starting point and pre-condition is evidence of proposed physical disturbance of land and waters. However, in

assessing whether the impact will be 'major', physical impact on customs and traditions may be considered. The Tribunal found the regulatory regime is a key element in ascertaining the real risk of a major disturbance. After considering the regulatory regime in the *Mining Act* (NT) and the *Mining Amendment Act 2001* (NT) the Tribunal was satisfied the objectors' cultural concerns could be accommodated without any real risk of a major disturbance—at [84] and [88] to [92].

In respect of the native title party's concerns about exploration in Gregory National Park, the Tribunal accepted the relevance to a s. 237(c) inquiry of the fact that the proposed tenement included national park land. The Tribunal noted that:

- the Territory Parks and Wildlife Conservation Act seemed to allow a policy permitting multiple uses of parks and reserves;
- the fact that land was in a national park did not, of itself, raise a presumption that the area in question exhibited special circumstances such that it was more likely that a major disturbance would occur;
- section 176A of the Mining Act included special provisions for appropriate consideration and review of mining in national parks;
- no evidence was presented indicating that the previous exploration activity had resulted in disturbances—at [95] and [98] to [100].

Determination

The Tribunal determined that that the act attracted the expedited procedure.