

Summons – use by the Tribunal for medical records

Victoria Diamond Exploration/Western Australia/Councillor **[2004] NNTTA 38**

Franklyn DP, 10 June 2004

Issue

The point of interest in this determination is the consideration of the use of a summons by the Tribunal to obtain information for the purposes of a consent determination when not all those constituting the registered native title claimant were able to sign a proposed consent determination.

Background

A proposed consent determination was reached in regard to a petroleum exploration permit after a s. 35 application was filed with the Tribunal. Difficulties in signing the requisite documents arose because two of the people named as the group constituting the registered native title claimant had died and a third was incapacitated with dementia—at [6] and see ss. 61(2) and 253 of the *Native Title Act 1993* (Cwlth).

Affidavit evidence from the native title parties' legal representatives confirmed the two deaths and indicated that there was no power of attorney for the allegedly incapacitated person to allow for the release of medical records.

Deputy President Franklyn issued a summons, following a request from the grantee party, requiring the relevant medical officer to give evidence and produce relevant medical records relating to the capacity of the person concerned to the Tribunal. A letter accompanying the summons advised that, if the medical records sought were lodged with the Tribunal, then the medical officer would not be required to appear in person. Subsequently, medical records were lodged that satisfied both the Tribunal and the parties that the person in question was legally incompetent—at [10] to [15].

The Deputy President noted that the issue of a summons to give evidence and produce documents in regard to a claimant's medical state would be used sparingly—at [17].