Expedited procedure — when is application lodged?

Neowarra/Western Australia/Thundelarra [2004] NNTTA 102

Sumner DP, 5 November 2004

Issue
Can the National Native Title Tribunal accept an objection to the application of the expedited procedure that was not lodged 'within the period of 4 months after the notification day': see s. 32(3) of the *Native Title Act 1993* (Cwlth) (NTA)?

Background
The native title party asserted that, in response to a s. 29 notice which included a statement that the government party considered that the act being notified was one that attracted the expedited procedure, they had posted an objection application within the four-month period specified in s. 32(3). The period ended on 10 July 2004. The Tribunal records indicated the native title party's letter enclosing the objection application was not received until 22 July 2004—at [8] to [13].

When is an application 'lodged'?
The Tribunal considered the ordinary meaning of the word 'lodge', as discussed by the Full Court of the Federal Court in *Angus Fire Armour Australia Pty Ltd v Collector of Customs* (NSW) (1998) 19 FCR 447 at 488. The Tribunal concluded that an objection application is lodged when it is received by post and processed by officers of the Tribunal. The Tribunal found the date of posting could not be said to be the date of lodgement. Therefore, the objection application was not lodged within the prescribed time—at [16] to [17].

The Tribunal confirmed it is the native title party's responsibility to ensure an application is lodged with the Tribunal on time—at [18].

Does the Tribunal have the power to extend the time of lodgement?
The Tribunal held that:

- it has no inherent power to exercise its discretion in this way and even if it did have such a power, it could not do so if it contravened the terms of a statute;
- the words of s. 32(3) of the NTA are clear, import a time limit on the lodgement of objection applications and create a condition precedent to the Tribunal's jurisdiction to conduct an inquiry;
- further, if an objection application lodged out of time was accepted, the Tribunal would be obliged to dismiss the application under s. 148(a) on the basis that the Tribunal was not entitled to deal with it—at [20] to [21]

This interpretation was said to accord with the intention of Parliament and the purpose of the right to negotiate provisions of the NTA:

> The Tribunal has accepted that Parliament intended that proposals to do future acts subject to the right to negotiate provisions should be dealt with in a timely manner...It also accepts that in a procedural sense objection applications are to be dealt with expeditiously (... *Western Australia v Ward & Ors* (1996) 70 FCR 265 at 278 ... ; *Little v Western Australia* [2001] FCA 1706 ... at [84]—[85] ...)
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> These policy considerations, reflected in the Act generally, support the interpretation that the time limit imposed by s 32(3) is strict; something which is in any event plain from the ordinary words of the Act and the lack of any power or specified circumstances under which the time may be extended—at [22] to [23].

Decision

The application was not accepted.