

# Expedited procedure — Form 4 acceptance issues

## ***Brown/Queensland/Midas Resources Ltd* [2005] NNTTA 3**

Sosso M, 4 February 2005

### **Issues**

The main issues in this matter were:

- whether the Tribunal could accept an objection to the application of the expedited procedure that was not lodged 'within the period of four months after the 'notification day' — see s. 32(3) of the *Native Title Act 1993* (Cwlth) (NTA.);
- whether the Tribunal could accept an expedited procedure objection application where, on its face, it was not apparent that the native title party as a whole had knowledge of the objection being lodged.

### **Background**

The expedited procedure objection application (Form 4) was made in the name of only one of the eleven persons who are collectively the applicant for the relevant registered claimant application and lacked any statement that the other persons who comprised the applicant had knowledge of, or acquiesced in, the lodging of the objection.

### **Calculation of time for acceptance of Form 4**

The Tribunal accepted the Form 4 lodged outside the four-month period from the notification date specified in s. 32(3) of the NTA, referring to authority on the interpretation of 'within' in that subsection to exclude the day of the act in question. Further, the s. 36(2) of the *Acts Interpretation Act 1901* (Cwlth ) provides for additional time when the four-month period for lodging an objection application expires on a weekend, as it did in this matter—at [5] to [7].

### **Did the objector act with the knowledge of others?**

The Tribunal convened a conference to determine if the objector was acting unilaterally or with authority. The Tribunal referred to s. 61(2)(c), which requires the persons who jointly comprise the applicant to act collectively, not individually. Any one of the persons who are collectively the applicant has no individual authority to lodge a Form 4. Such a Form 4 could not be accepted as it had no legal status and consequently the Tribunal would lack the jurisdiction to conduct an inquiry—at [23] to [25].

Two remedies were proposed by the objector's legal representative: amendment of the Form 4; and receipt by the Tribunal of further information to explain the circumstances of the Form 4.

The Tribunal considered the Form 4 requirements and noted that various Federal Court decisions have made it clear that the NTA, where possible, is to be given a beneficial interpretation (*Kanak v NNTT* (1995) 61 FCR 103 at 124).

The Tribunal confirmed the power implied by s. 109 to allow amendments to the Form 4 which are designed to cure technical or typographical error but that substantive amendment would not be allowed—at [29] referring to *Evans/Western Australia/Australian Gold Resources Ltd* [2000] NNTTA 84.

Leave of the Tribunal is required to amend the Form 4 after the closing date. The proposal to amend the objection to make it clear it was lodged collectively was not granted. The Tribunal held that to allow an amendment after the closing date which is intended to grant to the Tribunal a jurisdiction which it otherwise lacks is inappropriate and unsustainable—at [30].

Before deciding whether to accept a Form 4, the Tribunal may grant leave to any party to provide information or make submissions, the object being not to amend or supplement the Form 4, but to explain it. The Tribunal heard the objector's submissions that the objector was not acting unilaterally and had acted with the full knowledge and support of the persons who comprised the applicant—at [31] to [32].

### **Decision**

The Tribunal held that the Form 4 complied with the requirements of s. 76 of the NTA and the Tribunal had jurisdiction to conduct an inquiry into the expedited procedure objection application.