

Expedited procedure — right to speak for country

Griffiths/BHP Billiton Minerals Pty Ltd/Northern Territory [2002] **NNTTA 131**

Member Sosso, 5 July 2002

Issue

The government party challenged the reliability and weight that could be given to affidavit evidence when:

- the deponent did not depose to his authority to speak for the claim group and the affidavit did not identify the deponent as either a claimant or an elder for the claim group;
- there was no independent evidence of the deponent's authority to speak.

Relevant factors

The National Native Title Tribunal set out a number of factors that are relevant in determining whether a native title holder has the requisite authority to speak on behalf of areas or sites said to be of particular significance, including:

- Is the deponent an applicant or objector or identified in the claimant application as a member of the native title claim group?
- Has the native title party lodged other affidavits, witness statements or primary evidence that substantiate the assertions made by the deponent or is there any secondary evidence that substantiates the qualifications of the deponent to speak on about areas or sites of significance e.g. independent research material?
- Is there any corroborating primary material in other court or tribunal proceedings which would assist in determining the status of the deponent?
- Is there evidence that the deponent, by their actions, has demonstrated a right to speak for sites e.g. instituted court proceedings to protect sites?
- Is anyone contesting the deponent's authority to speak or is the evidence of the deponent cast into doubt by any other material submitted to the Tribunal?—at [15].

The Tribunal noted that expedited procedure inquiries were, by their nature, designed to be conducted in an informal, quick and less costly manner for the parties and the commonsense approach applied to these proceedings required that some leeway be given to parties in relation to their capacity to prepare material for the consideration of the Tribunal.

Decision

The Tribunal drew an inference that, on the material before it, the deponent had the requisite authority to speak only in regard to certain sites. There was insufficient material to find the deponent had the requisite authority for the other sites mentioned—at [21].