

Expedited procedure – evidence, sites of particular significance

Huddleston/Northern Territory/NT Gold Pty Ltd [2002] NNTTA 212

Member Sosso, 27 September 2002

Affidavit

The government party challenged the use of a standard form affidavit that did not have the proper objection number, incorrectly described the grantee party, had the wrong date on the bottom of each page and substantially duplicated the content of an affidavit submitted in another objection. The National Native Title Tribunal accepted that the form of the affidavit was in error but that it went only to form and not to substance. The reason for this finding was that the statements were not merely formulaic. They were based, amongst other things, on two similar affidavits relating to objections in the same area, which were both relatively small and over pastoral lease land—at [11] and [12].

Sites of particular significance

The government party also challenged the usefulness of a male deponent identifying a women's site, while expressly acknowledging that men cannot speak for the site. The Tribunal referred to *Little v Western Australia* [2001] FCA 1706 and held it is a condition precedent to a finding that an area or site is of particular significance that the Tribunal have before it evidence of the importance of a given area or site, in accordance with the traditions of the native title holders. The best evidence of such traditions is given by those who have the traditional knowledge and have the traditional authority to speak for the relevant area or site. No evidence was submitted by a properly authorised female native title holder. The Tribunal held mere identification of a site without the presentation of any additional evidence is not sufficient for the Tribunal to make a finding that it is of particular significance for the purpose of s. 237(b)—at [14].

Community of native title holders

The Tribunal was for the view that a party asserting that there is a community of native title holders should properly explain the nature of the community. The Tribunal indicated that information about the number of native title holders residing or visiting the locality, whether it is seasonally or permanently occupied and whether the community is wholly or partially composed of native title holders, would be useful in this context. A bald assertion that there are communities in the locality, without more, is insufficient—at [18].

In this case, there was no primary evidence that any member of the native title claim group resided at either of the named communities. In the absence of any evidence or

any assertion by a native title holder to that effect, the Tribunal was not prepared to assume that either comprised communities of native title holders.