# Expedited procedure objection application not accepted

## *Edwards/Queensland/Gellard Enterprises Pty Ltd* [2010] NNTTA 20

**DP Sosso, 16 February 2010**

**Issues**
An expedited procedure objection application was made but subsequently withdrawn. The question was whether it could be used to cure defects in another non-compliant objection application lodged pursuant to s. 75 of the *Native Title Act 1993* (Cwlth) in relation to the same proposed future act by the same native title party. The Tribunal found that it could not.

**Background**
Two different legal representatives acting for the same native title party lodged expedited procedure objection applications in relation to an exploration permit. The Tribunal made inquiries of the legal representatives and, as a result, the first objection application was withdrawn prior to the inquiry commencing. However, the remaining application was defective, particularly in relation to paragraph 7 which said that 'Attachment B' included a statement as to why the native title party asserted that the proposed act did not attract expedited procedure when, in fact, there was no Attachment B. There was no other document addressing paragraph 7.

The Tribunal rejected the contention that the first (withdrawn) objection application should be used to cure the defects because:

- that objection application was not before the Tribunal; and
- while the Tribunal looks at an application as a whole in assessing compliance, it cannot go beyond the actual application—at [14] and [16].

**Form for making an objection application**
In examining an objection application, the National Native Title Tribunal's approach is to:

> [L]ook at the totality of the material before it and be ... careful not to deprive a native title party of its right to object unless it is clear that the objection application is manifestly defective in a key area—at [9].

The Tribunal reiterated its view that paragraph 7 of the application form is central to the objection inquiry because it puts the other parties on notice of substantive concerns of the native title party, noting that:

> The completion of a Form 4 [objection application] is not a mechanistic exercise designed to comply with an arid bureaucratic requirement. It puts the government and grantee parties on notice of a native title party's concerns. Failure to properly

complete a Form 4 should be seen not just as an oversight, but as a possible impediment to a consensual outcome—at [12].

**Decision**

The Tribunal found it was 'unable to accept' the expedited procedure objection application because it did not contain any substantive information as to why the 'native title party believed that the proposed future act was not an act that would attract the expedited procedure'—at [17] to [18].

**Appeal**

The native title party has filed an appeal under s. 169 of the NTA and an application for review of the Tribunal's decision under the *Administrative Decisions (Judicial Review) Act 1977* (Cwlth) in the Federal Court.