

# Expedited procedure – summary dismissal

## *Hazelbane/Imperial Granite and Minerals Pty Ltd/Northern Territory* [2002] NNTTA 256

Member Williamson, 24 December 2002

### Issue

The government party made application for the summary dismissal of an expedited procedure objection application for ‘want of primary, relevant evidence’. The government party’s application failed and so was dismissed.

### Background

Two native title parties (registered native title claimants) lodged a single Form 4 objection application and relied upon the same evidence in support of the objection to the proposed grant of that an exploration licence which covered land in both their claims. The government party contended one of the applications, DO02/45, should be dismissed for want of any primary relevant evidence i.e. there was no evidence relating directly to the portion of the proposed licence area that fell within the claim area of the objectors in DO02/45.

In response, the native title party argued that:

- the Tribunal’s powers to dismiss an objection application are limited to ss. 147, 148 and 149 of the *Native Title Act 1993* (Cwlth) (NTA);
- the objection application was not frivolous or vexatious; and
- the affidavit material provided in DO02/46 was primary relevant evidence.

Both parties relied upon aspects of an earlier Tribunal decision in *Andrews/Exploration and Resource Development Pty Ltd/ Northern Territory*, [2002] NNTTA 170.

The Tribunal decided that:

- the objectors were not obliged to provide evidence relating to every part of the licence area, as this would be unduly onerous and impractical and, in any case, is not required by the NTA;
- it is normal for evidence to be directed to particular areas within a proposed licence area and, depending upon the nature of the matter in question, its effect may be assessed in context of the licence area as a whole;
- it was sufficient that both objectors could adopt and rely upon the affidavit evidence, even though it was confined to the area within one of the objections;
- it is necessary that an objector have standing as a native title holder with respect to some part of the proposed licence area but it is not necessary that the evidence relied upon by the objector relates to that particular part;
- the proposed future act is one and indivisible and the area with which the s. 29 notice is concerned is also one and indivisible;

- each objector is entitled to rely on any credible evidence that arguably shows that, in some respect, the act fails to attract the expedited procedure when judged by the s. 237 criteria;
- there was some direct, specific and credible evidence put forward by the objectors in DO02/46 and adopted by the objectors in DO02/45 – at [33] to [36].

**Decision**

The government party's application was dismissed.