

Expedited procedure is not exceptional

Parry/Falconbridge (Australia) Pty Ltd/Northern Territory [2002] NNTTA 239

Member Sosso, 22 November 2002

Issue

The main issue before the National Native Title Tribunal was whether the expedited procedure was an exception to the right to negotiate process.

Background

The native title party submitted that the expedited procedure should be interpreted as an exception to the right to negotiate and read down in the context of the legislative scheme of the *Native Title Act 1993* (Cwlth) (NTA). The government party referred to the decision of Justice Carr in *Ward v Western Australia* (1996) 69 FCR 208 at 231 rejecting a similar argument.

Decision

The Tribunal concurred with the decision of Carr J that it is not correct to view the expedited procedure as a limited exception or as somehow extraordinary. The Tribunal found that Parliament had provided for two sets of circumstances with two different procedures that are to apply, depending upon the factual circumstances. In undertaking a predictive risk assessment, the Tribunal does, in appropriate circumstances, give the objectors the benefit of the doubt. However, there is no basis for assuming that the expedited procedure is exceptional and assessing the s. 237 criteria in such a manner — at [55].