

Expedited procedure – adoption of evidence & findings in earlier matter

Page/Northern Territory/Teelow [2003] NNTTA 9

Member Sosso, 26 February 2003

Issues

This determination sets out the approach taken by the Tribunal when faced with an objection application relating to a future act which is virtually identical (same land and parties) to one where the Tribunal had previously determined that the expedited procedure applied. The Tribunal reviewed factors which are relevant to the exercise of its discretion to adopt the evidence and findings in other proceedings—see s. 146 of the *Native Title Act 1993* (Cwlth) (NTA).

Background

This application relates to the grant of an exploration licence over the same area as reported in *Page v Teelow* (2002) 169 FLR 62; [2002] NNTTA 17 (*Page No 1*), in which it was determined that the act was an act which attracted the expedited procedure. That grant was not made. The grantee party made submissions, prior to contentions being lodged, that the objection should be dismissed under s. 147 or, if not dismissed, shortened directions should be made in place of the standard directions. The government party submitted the Tribunal should use its power under s. 146(b) and adopt the determination in *Page No 1* for the purposes of the inquiry in this matter. The native title party objected to dismissal under s. 147 in respect of a subsequent future act, even where the area and parties are the same. The native title party contended it should be allowed to adduce evidence of relevant actions of a grantee party that have occurred since the grant or evidence of previous actions that have subsequently come to light.

Section 147

The Tribunal refused to dismiss the application pursuant to s. 147, referring to *Dixon v Northern Territory* (2002) 169 FLR 103 at [106]. The Tribunal found the objection application over the same land and waters by the same native title party, involving the same grantee party, provided no prima facie basis for a dismissal pursuant to s. 147. Once the native title party has lodged its contentions, a proper basis for a dismissal could be made out if no new material is produced by the native title party. At this stage in the inquiry, the application to dismiss was premature—at [15].

Discretion under s. 146(b)

The Tribunal determined that, in exercising its discretion under s. 146(b), it needs to take into account the attitude of the parties, the relevance and impact of receiving into evidence the material in question and the potential savings of time and resources, bearing in mind the potential consequences for the ultimate determination—at [20].

The Tribunal was not minded to adopt the findings in *Page No 1* in toto at this early stage of the inquiry, as it would limit the course of the inquiry. Instead, the earlier directions were vacated and the native title party was directed to file material supplementary to the material lodged in the previous inquiry. The native title party gave notice that no further evidence would be lodged and did not comply with the new directions.

Decision

The objection was dismissed pursuant to s. 148(b), on application of the grantee party, for failure of the native title party to comply with the amended directions.