

# Future act determination — ‘native title decision’ under PBC Regs

## *Western Australia/Jidi Jidi Aboriginal Corporation/Paladin Resources Ltd* [2002] NNTTA 114

DP Sumner, 26 June 2002

### **Issues**

The National Native Title Tribunal considered what was required for a Registered Native Title Body Corporate (RNTBC) to enter into a future act agreement and whether this involved making a ‘native title decision’ under the Native Title (Prescribed Body Corporate) Regulations 1999. Consideration was also given to where a decision by a RNTBC not to tender evidence in a future act determination application inquiry was a ‘native title decision’.

### **Background**

Jidi Jidi Aboriginal Corporation (the corporation) was the first RNTBC to be involved in an future act determination application made pursuant to s. 35 of the *Native Title Act 1993* (Cwlth) (NTA). It had reached agreement with the grantee party for exploration licences to be granted subject to conditions to protect the native title holders’ cultural heritage. The parties sought a consent determination from the Tribunal as they had been unable to execute a s. 31(1)(b) agreement. A letter to the Tribunal from the representative body set out the circumstances of corporation meetings in regard to an agreement in principle, a contract for services in relation to the exploration and instructions from the corporation to make the application under s. 35 for a consent determination.

Reg 8(2) of the *Native Title (Prescribed Bodies Corporate) Regulations 1999* (the regulations) specifies the steps a prescribed body corporate must take to consult with, and obtain the consent of, the common law holders of native title before making a native title decision. A ‘native title decision’ is defined in Reg 8 as a decision to surrender native title or to mean a decision to do, or agree to do, any other act that would affect the native title rights or interests of the common law holders. Reg 9 sets out how the process of consultation and consent may be evidenced.

The parties agreed that a decision to consent to the determination that the exploration licences could be granted was a native title decision. The Tribunal found the regulations had not been followed, and, for this reason, the corporation (as the native title party) could not consent to a determination that the exploration licences be granted. The government party made an application pursuant to s. 35 of the NTA. The corporation, as the native title party, did not tender any evidence—at [11].

### **Decision**

The Tribunal held that a decision not to tender evidence was not a native title decision as defined in the regulations and then determined that the future act could be done.