

Future act determination—conditions

Little/Western Australia/Seaprine Holdings Pty Ltd [2003] NNTTA 108

Deputy President Sumner, 24 October 2003

Issue

The question in this case was whether the terms of an agreement referred to in a minute of consent determination but not provided to the National Native Title Tribunal would become conditions of the Tribunal's determination that the future act in question may be done.

Background

The parties submitted a minute in which consent to the future act in question (the grant of a mining lease) was given pursuant to an agreement entitled 'Native Title Deed' (the deed) made between native title party and the grantee party. The Tribunal had no knowledge of the contents of the deed.

The Tribunal noted that its broad power to make determinations under s. 38 of the *Native Title Act 1993* (Cwlth) has express limitations regarding imposing conditions for payments to native title parties based on profits made, income derived or things produced by the grantee party as a result of the doing of the future act. Without knowledge of the contents of the deed there was a possibility that the Tribunal could make a determination which was not within power—at [7], referring to s. 38(2).

The parties agreed to modify the minute of consent by removing reference to the deed. The Tribunal noted that:

- other s. 35 applications had been resolved with the native title party relying on an ancillary agreement with the grantee party that was not mirrored in the Tribunal consent determination; and
- making the terms of an agreement the conditions of a determination would not enhance the rights which a native title party would have under the agreement as a determination subject to conditions has the effect as if the conditions were terms of a contract among the negotiation parties—s. 41(1).

Decision

The Tribunal was satisfied that the native title party consented to the determination and noted that any effect of the future act on native title will be minimized by the provisions of the deed.