

Expedited procedure — evidence required

Freddie/Western Australia/Adelaide Prospecting Pty Ltd [2003] NNTTA 120

Franklyn DP, 27 November 2003

Issue

The National Native Title Tribunal made comments about the level of evidence required from the native title party to support an objection to the application of the expedited procedure.

Background

This inquiry related to the grant of an exploration licence to Adelaide Prospecting Pty Ltd. The government party considered that the act attracted the expedited procedure. The native title party objected to the inclusion of that statement in the s. 29 notice.

The directions made by the Tribunal for the conduct of the inquiry required the native title party to provide, amongst other things, a statement of the community or social activities said to be likely to be interfered with as well as the nature and location of any area or site of significance, together with evidence identifying the relevant ‘particular significance’ — at [9].

Native title party’s evidence — at s. 237 conditions

The Tribunal noted that likelihood of interference ‘directly with the carrying on of community or social activities of the persons who are the holders of native title’ (s. 237(a)) or of the likelihood of interference ‘with areas or sites of particular significance in accordance with their traditions’ to such persons (s. 237(b)) only arises for consideration if there is evidence of the carrying on of the activities and/or of the existence of any such area or site — at [14].

The Tribunal found that the native title party did not comply with the directions as:

- it did not provide any evidence whatsoever of the community or social activities of the native title claimants of the nature referred to in s. 237(a). Rather, the evidence presented referred to obligations in respect of the land and of ‘Dreaming Tracks’ which criss-cross it, which the Tribunal found did not translate into a community or social ‘activity’ of the claimant group; and
- there was inadequate evidence of the nature and location of relevant sites — at [12] to [13].

Such particulars are relevant to the issue of ‘likelihood’: see *Laphorn/Western Australia/Global Stone* [2002] NNTTA 231.

As to the condition in s. 237(c), the Tribunal found that the question whether there is a likelihood of major disturbance is to be determined from the viewpoint of the general community but taking into account the concerns of the local community as disclosed by the evidence. The mere assertion by the native title party that exploration activities are likely to involve major disturbance is not enough—at [15].

Decision

The Tribunal concluded that the grant of the exploration licence was not likely to involve a major disturbance or create rights of the nature referred to in s. 237(c) NTA and determined that the grant was one attracting the expedited procedure—at [15].