

NTRB Legal Precedents Database

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A reminder for all lawyers, negotiators and agreement implementers at participating Native Title Representative Bodies ('NTRB'): The NTRB Legal Precedents Database is a resource produced by NTRBs for NTRBs. It is jointly funded by FaHCSIA and NTRBs themselves. It is here to make your work faster and easier, and to improve outcomes for your clients.

Please take the time to log on and familiarise yourself with the content.

If there is content that you think the database should have but does not, let the project manager Nick Duff know.

What's on the database?

- Agreement-making resources for infrastructure, heritage, mining, exploration, etc.
- NTRB agreement-making resources – consultancy contracts, costs agreements, etc.
- Court documents – including pleadings, affidavits, consent determination materials, etc.
- Tribunal documents – including expedited procedure objections, submissions, etc.
- Trust, corporation, Prescribed Bodies Corporate documents – including selected rulebooks with notes, trust deeds, etc.
- Useful links and resources for agreement-making.
- Online forum and comment function for particular clauses or documents.

Please speak to your Principal Legal Officer or other Database contact person about the contributions you can make to the Database. **Its quality and usefulness depends on your contributions of content.**

If you need the login information, or have any other questions, please contact the project manager Nick Duff: nick.duff@aiatsis.gov.au, 02 6246 1160.

The NTRB Legal Precedents Database can be found at: www.ntrbprecedents.org.au

What's new?

Recent cases

WF (Deceased) & Ors on behalf of the Wiluna Native Title Claimants/ Western Australia/ Emergent Resources Ltd [2012] NNTTA 1
23 February 2012

Expedited procedure objection

National Native Title Tribunal of Australia-Perth Daniel O'Dea JM

In this case the Tribunal decided that the proposed grant of an exploration licence was a future act attracting the expedited procedure under s237 of the *Native Title Act 1993* (Cth) ('NTA'), meaning that the native title party did not have the statutory right to negotiate.

The State of Western Australia (the State') had given notice of its intention to grant an exploration licence to Emergent Resources Ltd over an area of 30 square kilometres, situated entirely within the Wiluna native title claim area. The State indicated that it considered that the grant would attract the expedited procedure. WF (deceased) and others, on behalf of the Wiluna native title claimants, lodged an expedited procedure objection.

The Tribunal had to consider in this case whether the proposed licence satisfied s237(b) of the NTA. This section states that the expedited procedure cannot apply unless the relevant future act is not likely to interfere with sites of particular significance to native title holders. The native title party sought confidentiality orders pursuant to s155 of the NTA to restrict the publication of three of their four affidavits on the basis that they contained culturally sensitive material. The Tribunal was not prepared to make such orders, but did modify Tribunal practice by not setting out the affidavits in full in the Tribunal's written judgment.

The Tribunal accepted that three of the deponents – initiated men and senior members of the Wiluna claimants – had the authority to speak on behalf of the native title party. The Tribunal accepted the evidence of the fourth deponent on the basis that he was a qualified anthropologist who had conducted research for the Central Desert Native Title Services ('CDNTS'). The State challenged the reliability of the evidence provided by the Wiluna deponents on the basis that was not detailed enough and did not contain sufficient material to establish that granting the exploration licence would interfere with significant sites.

There were no registered Aboriginal Sites or Heritage Places under the *Aboriginal Heritage Act 1972* (WA) within the proposed license area, though two sites within the area were registered as 'Other