CITATION:	*Wiso Oil Pty Ltd & Blue Energy (Wiso) Pty Ltd v Hughes Investments* [2025] NTSC 2
PARTIES:	WISO OIL PTY LTD And BLUE ENERGY (WISO) PTY LTD v HUGHES INVESTMENTS
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT exercising Territory jurisdiction
FILE NO:	2024-02368-SC
DELIVERED:	17 January 2025
HEARING DATES:	28 October 2024
JUDGMENT OF:	Blokland J

CATCHWORDS:

Petroleum exploration permit – process for negotiating an approved access agreement – whether consensus reached an access agreement – whether execution of agreement delayed for lack of agreement on costs contrary to the *Petroleum Act 1984* (NT) and *Petroleum Regulations 2020* (NT) – relief granted.

Statutes:
Northern Territory Civil and Administrative Tribunal ('NTCAT'), regs 17, 28
Petroleum Act 1984 and *Petroleum Regulations 2020* (NT), regs 15, 17(4), 29
Meagher, Gummow & Lehane's Equity: *Doctrines and Remedies*, 5th Ed (2015), by J Heydon, M Leeming and P Turner: Chapter 21 (Injunctions), Part D (Injunctions in Aid of Statutory Rights) at [21]-[170], at 728-730.

King v Goussetis (1986) 5 NSWLR 89; *Masters v Cameron* (1954) 91 CLR 353; *Rallen Australia Pty Ltd v Sweetpea Petroleum Pty Ltd* (2023) 376 FLR 239; *State of Western Australia v Taylor, National Native Title Tribunal, the Hon C.J. Sumner, 7 August 1996*, referred to.

REPRESENTATION:

Counsel:

Plaintiffs:	H Baddeley SC
Defendant:	E Morzone KC

Solicitors:

Plaintiffs:	Ward Keller Solicitors
Defendant:	Maher Raumteen Solicitors

Judgment category classification:	B
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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Wiso Oil Pty Ltd & Blue Energy (Wiso) Pty Ltd v Hughes Investments [2025] NTSC 2
No.2024-02368-SC

BETWEEN:

WISO OIL PTY LTD
First Plaintiff

AND:

BLUE ENERGY (WISO) PTY LTD
Second Plaintiff

AND:

HUGHES INVESTMENTS
Defendant

CORAM: BLOKLAND J

REASONS FOR JUDGMENT

(Delivered 17 January 2025)

Introduction

[1] Wiso Oil Pty Ltd and Blue Energy (Wiso) Pty Ltd ('the plaintiffs') filed an originating motion and summons seeking relief which they contend is available as a result of the operation of the *Petroleum Act 1984* (NT) ('the Act') and *Petroleum Regulations 2020* (NT) ('the Regulations'). Hughes Holdings and Investments No.600 Pty Ltd ('the defendant') is the lessee of a pastoral lease which extends over both the Inverway and Riveren Stations.

[2] The plaintiffs have been engaged in a process under the Act and Regulations to attempt to secure access for the purposes of conducting regulated operations under a petroleum exploration permit which was issued under the *Act* to Wiso Oil Pty Ltd ('the first plaintiff'). That permit is EP200.The history of the correspondence between the parties of their attempt to come to consensus on an access agreement under the Act is set out in the affidavits including annexures of Bradly Torgan.[1]

[3] Blue Energy ('the second plaintiff') is the authorised operator of EP200 and is authorised to negotiate an 'approved access agreement'. EP200 extends over both Inverway and Riveren Stations. Approval of two access agreements has been sought by the plaintiffs, one on each station. It is common ground that EP 200 extends over parts of both Inverway and Riveren.

[4] The circumstances in which exploration may take place are highly regulated under the Act and Regulations. Even at first blush the way the Act and Regulations operate appear to favour a process which enables an 'interest holder', here the first plaintiff, to obtain an 'approved access agreement' with a lessee such as the defendant, a holder of a pastoral lease, without the defendant necessarily approving every final collateral arrangement in a manner that would be akin to negotiating the final terms of a contract. The Act and Regulations appear to override in part, at least some elements of

1 Affidavit, Bradly Torgan, promised 11 July 2024; Affidavit, Bradly Torgan, promised 12 September 2024.

what might commonly be expected in the conclusion of a negotiated agreement.

[5] In *Rallen Australia Pty Ltd v Sweetpea Petroleum Pty Ltd*,[2] on a different question, but involving a pastoral lease lessee, Barr J held the legal framework of the Act anticipates some interference with an occupier's pre-existing rights or activities. That framework displaces to some degree previously held positions and assumptions over land use and access.

[6] In brief, the plaintiffs submit the terms of an 'approved access agreement' as defined in Reg 3(1), have been agreed through negotiation save for some final negotiating over costs for which there is some contention. The defendant maintains its costs of the negotiation should be paid unconditionally and that given the issue of costs of the negotiation has not been determined, the defendant is within its rights to withhold finalisation or the final steps necessary in the process of concluding the access agreements. The plaintiffs contend that all steps have been taken in relation to obtaining the two 'approved access agreements' with the defendant, but the defendant is refusing to exchange or be bound unless the plaintiffs unreservedly pay the defendant $49,500, suggested as the negotiation costs for Inverway and $16,500 for costs for negotiating Riveren. The plaintiffs have now offered to pay those costs subject to any later *Northern Territory*

2 (2023) 376 FLR 239.

Civil and Administrative Tribunal ('NTCAT') determination under the Regulations.

[7] The defendant contends that the parties have not reached any concluded negotiated access agreement, or fully executed and exchanged either of the negotiated access agreements. The defendant says its execution and any communication or delivery of any offer or deed was qualified and conditional and was not intended to unilaterally bind the defendant at all, until such time as the condition (being the commitment and payment of the defendant's costs pursuant to Regs 17 and 28 of the Regulations) was satisfied.

[8] The defendant argues that the relief sought impermissibly seeks to attempt to exclude the defendant from its statutory right to continue to negotiate an access agreement, including if necessary, by utilising alternative dispute resolution processes[3] in the absence of a negotiated outcome, or to have an access agreement determined by NTCAT.[4]

[9] The defendant contends the operation of the statutory scheme favours the defendant withholding agreement until its reasonable negotiation costs are satisfied unconditionally and until agreements are executed, exchanged, or there is other explicit indication of an intention to be bound.

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3 *Petroleum Regulations* 2020 (NT), Reg 15.

4 *Petroleum Regulations* 2020 (NT), Reg 29.

[10] Additionally it is said there is no concluded agreement which could bind the defendant on a contractual basis and that any communication or delivery of any offer or deed by the defendant was qualified, conditional and not intended to be binding unless the condition, here, the costs of negotiations, was satisfied unconditionally. On the defendant's argument, execution of the documents was to be treated as a condition precedent to a binding contract. This, it was argued, should be regarded as falling within the third scenario identified by the High Court in the following passage from *Masters v Cameron*:[5]

> Where parties who have been in negotiation reach agreement upon the terms of a contractual nature and also agree that the matter of their negotiation shall be dealt with by a formal contract, the case may belong to any of three cases. It may be one in which the parties have reached finality in arranging all the terms of their bargain and intend to be immediately bound to the performance of those terms, but at the same time propose to have the terms restated in a form which will be fuller or more precise but not different in effect. Or, secondly it may be a case in which the parties have completely agreed upon all the terms of their bargain and intend no departure from or addition to that which their agreed terms express or implied, but nevertheless have made performance of one or more of the terms conditional upon the execution of the formal document. *Or, thirdly, the case may be one in which the intention of the parties is not to make a concluded bargain at all, unless and until they execute a formal contract.*
>
> (Emphasis added)

[11] After consideration of the statutory scheme and regulatory framework, it is concluded here that the Act and Regulations displace in large part, the third scenario outlined in *Masters v Cameron* when the facts and circumstances

5 (1954) 91 CLR 353 at 360.

fall within the Act and Regulations. It is acknowledged here that such a conclusion is contrary to ingrained, long held principles applied to the formation and conclusion of binding contracts. However, that appears to be how the Act and Regulations are intended to operate in a narrow set of circumstances.

[12] In order for the plaintiffs to commence 'regulated operations' under EP 200, the first plaintiff as an 'interest holder' must obtain an 'approved access agreement' with the defendant Hughes. An 'interest holder' means the 'holder of a petroleum interest' under Reg 3. An 'approved access agreement' under the Regulations means an access agreement 'that has been approved, or that is taken to be approved, under Part 4 or 6'. It is not disputed the first plaintiff is an 'interest holder' within the meaning of the Regulations. The defendant Hughes is clearly a 'designated person' in respect of land, within the meaning of Reg 3.

[13] The Act anticipates a process whereby an access agreement can be provided to the relevant Minister for approval under Reg 31. To obtain ministerial approval requires that the access agreement be entered into between the interest holder and a designated person.

[14] The plaintiffs submit relief should be granted as the defendant's refusal to exchange or indicate its intention to be bound when all relevant matters have effectively been agreed, including an agreement by the plaintiffs to pay costs on a provisional basis, such costs to be adjusted if NTCAT determine a

different amount, shows the defendant has abused the statutory scheme, or has not acted in good faith.

The Act and Regulations

[15] The objects of the Act are provided in s3:

3 Objective

(1) The objective of this Act is to provide a legal framework that:

(a) encourages persons to undertake effective exploration for petroleum and to develop petroleum production so that the optimal value of the resource is returned to the Territory; and

(b) provides protection to the environment of the Territory; and

(c) promotes principles of ecologically sustainable development.

(2) The legal framework provides for the following:

(a) the granting of petroleum interests to persons for exploration, production and ancillary activities associated with exploiting petroleum, and the renewal or transfer of those interests;

(b) clear statements about the role of government following the grant of petroleum interests;

(c) the promotion of active exploration for petroleum, and of the development of petroleum production if commercially viable, by persons granted petroleum interests;

(d) the assessment of proposed technical works programmes for the exploration, appraisal, recovery or production of petroleum and of the financial capacity of persons proposing to carry out those programmes;

(e) resource management, activity and infrastructure plans to support and enhance well and surface infrastructure integrity and the strategic

management of petroleum production consistent with achieving optimum long-term recovery of the resource;

(f) the reduction of risk or potential risk of environmental harm by ensuring that activities associated with exploration for, or production of, petroleum are carried out in a manner in which the environmental impacts and risks of the activities are reduced to a level that is:

(i) as low as reasonably practicable; and

(ii) acceptable;

(g) the collection of information about petroleum exploration and production and the dissemination of that information;

(h) the efficient administration of this Act;

(i) other matters in connection with exploration for and production of petroleum.

[16] Although not the sole objective, the Act seeks to encourage exploration and provides the mechanisms through which such exploration can take place. Use of the words 'encourages persons' would seem to make that clear. Simultaneously the Act seeks to provide protection of the environment and promote principles of ecologically sustainable development. Nevertheless, the Act is drafted in such a way which strongly encourages exploration. This is demonstrated elsewhere in the Act.

[17] The legal framework under s 3(2)(c), provides for the 'promotion of active exploration' for petroleum. Section 15A(1)(h) provides that a person who applies for an exploration permit must demonstrate to the Minister a financial capacity to comply with the obligations of the permit. Section

16(3)(e) is also directed to the requirement that an applicant for a permit be able to demonstrate both the technical and financial capacity to carry out the proposed technical works and to comply with the Act. Section 20(4) provides the Minister must notify an applicant of any conditions the exploration permit will be subject to, if the permit is granted. The applicant then has an opportunity to accept any conditions within a specified time period, in which case the Minister 'must' under s 20(5) grant the exploration permit subject to those conditions. Under s 30, if the Minister is satisfied that commercially exploitable accumulation of petroleum may occur in the permit area, the Minister may require the holder of the permit to show cause why they should not apply for a 'production licence'. Section 118(1) is the Regulation making power and authorises the Administrator to make regulations, as might be expected, not inconsistent with the Act. Specifically, regulations may be made in respect of land access agreements under reg 118(pa).

[18] The Act and Regulations should be applied in a manner consistent with the Act's objective to encourage exploration, rather than an approach which seeks to emphasise or value obstruction of the process. That is not to say that various restrictions on exploration under the Act or elsewhere as provided by law are not to be respected, plainly they must be. At the early stages of the process involving negotiating an approved access agreement, an approach which is not inconsistent with encouragement of exploration is in keeping with the intention of the Act.

[19] The encouragement of exploration is further illustrated by Reg 2A(a) which provides:

> The objects of these Regulations are:
>
> (a) To provide for land access agreements between interest holders and the owners or occupiers of land covered by petroleum interests, whether negotiated or determined by the Tribunal.[6]

[20] Part of the Regulations govern 'Access Agreements'. Reg 10(1) makes it clear that there is an obligation on both the 'interest holder' and a 'designated person' to negotiate on the agreement and participate in any other process under Part 4 of the Regulations, 'in good faith'. Reg 10(2) directs both parties take reasonable steps to provide reports or advice about issues in the negotiation in a finalised form. There is clearly an obligation to participate in the process even against the wishes of either the interest holder or the designated person. To that extent, cherished commercial or contractual freedoms generally enjoyed are somewhat restricted by this part of the Act and Regulations.

[21] Regulation 16 provides that the interest holder and the designated person must take all reasonable steps to negotiate an access agreement. As well as an obligation to act in good faith in terms of negotiation, there must also be the taking of 'reasonable steps to negotiate an access agreement'.

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6 'Tribunal' under the Act means the 'NTCAT'.

[22] Regulation 17 provides that an interest holder must pay the reasonable costs of the designated person in participating in a negotiation for an access agreement. Regulation 17(1)(A) provides reasonable costs include reasonable legal accounting costs necessarily incurred by the designated person in connection with participating in the negotiation. Regulation 17(2) provides such costs must be paid within 30 days after a request for payment.

[23] Under reg 17(3), the request for costs must be in writing and provide reasonable details and evidence of the costs being claimed. Regulation 17(4) provides regs 17(2) and (3) apply 'subject to the commencement of any proceedings before the Tribunal because of a dispute about the costs'. When such a dispute takes place, the period for payment is suspended pending the outcome of the proceedings before NTCAT. Currently, proceedings are on foot in NTCAT between the parties as the costs claimed are challenged by the plaintiffs. By the operation of reg 17(4), the costs of negotiation are currently suspended.

[24] If the parties have failed to reach agreement through an ADR process, reg 29 grants jurisdiction to NTCAT to determine the provisions that should form the contents of an access agreement. If that occurs, reg 29(4) provides that the provisions determined by NTCAT have the effect as if they were embodied in an access agreement which has been signed by the parties. The indications are that this provision is only intended to be used if the parties have not reached agreement on the terms of access. While the defendant submits the plaintiffs may have resort to NTCAT under s 29(4), there would

be no point resorting to NTCAT in the circumstances of this case. If the parties have reached agreement on the terms, but for the costs issue, there would be no point in the terms of the approved access agreement effectively being made by NTCAT when in reality there had been agreement between the parties, subject to an outstanding issue of costs.

[25] The defendant claims it cannot be forced to be bound by the terms of an unexecuted agreement. However, under the Act, an approved access agreement will not be binding without ministerial approval.

[26] Even in circumstances where the parties have come to an agreement on the terms, reg 31 still requires the Minister to approve the access agreement. The stage that the parties have reached in this matter, is that there has been a successful negotiation on the provisions of the access agreement, save the costs. However the matter resolves in the end, it is yet to be approved by the Minister. There is no binding agreement until ministerial approval is achieved. There are a number of stages yet to be completed before the parties will be bound. The relief sought does not force the defendant to be bound.

[27] The plaintiffs have sought relief in this Court as reg 40, which grants NTCAT jurisdiction over a number of matters, only permits NTCAT to determine disputes between a party to an approved access agreement. Regulation 40(1)(a)-(e) grants jurisdiction to determine various disputes in relation to the operation of the agreement or an alleged breach of the

agreement or to determine whether the costs claimed by a designated person were reasonable or necessarily incurred. NTCAT does not have jurisdiction to enforce requirements to take steps or to negotiate in good faith in the lead up to obtaining an approved access agreement. As mentioned, the costs jurisdiction of NTCAT is currently enlivened. However, costs are suspended until NTCAT determines the dispute.[7] The plaintiffs cannot progress their application towards ministerial approval if the defendant uses the costs issue to stop taking steps to formally conclude the agreement.

[28] The regulatory regime overall does not support the arbitrary withholding of the execution of an approved access agreement by the designated person when consensus has been reached. Here the provisions and content are agreed. There are disputed costs but the plaintiffs have agreed to pay them in any event subject to adjustment should NTCAT determine a different amount. To withhold agreement until costs are paid unconditionally, circumvents the statutory regime in an impermissible manner or at least in a way which does not accord with how the Act and Regulations are intended to operate.

Is there consensus on the provisions or content of the agreement?

[29] The defendant contends there is no agreement as there is no consensus about either of the two land access agreements. Although there have been negotiations and exchanges of correspondence indicative of consensus,

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7 *Petroleum Regulations* 2020 (NT), Reg 17(4).

agreement is denied. It is suggested that the Court is being asked to order the defendant to make an offer or a particular exchange of a document which at present it has elected not to do other than on a particular condition, namely the costs issue. The defendant says it is entitled to assert such a condition.

[30] Following the line of case from *Masters v Cameron*, conditional agreements do not come into force unless those conditions are fulfilled. It is acknowledged here that the Act does not force an entity who refuses a particular position to sign an agreement. The defendant says that where an agreement cannot be reached, the parties go to NTCAT who will impose the relevant conditions. The defendant argues the plaintiffs should have made an application to NTCAT to have NTCAT set out the terms of the agreement, or alternatively to negotiate. The defendant asserts it is entitled to negotiate until there is an agreement. The application before the Court does not, on the defendant's case enforce a private right. The defendant points out that the fact an agreement has been signed, does not make it an agreement. The defendant says the current status is that the parties are currently in negotiation and the agreement should only be considered as a draft agreement for which it is intended to be executed by the parties, but it is not executed as yet. The parties are not yet bound by the agreement. The defendant submits the draft agreements fall into classic cases where the parties intend that their final binding agreement be in a document signed by both of them. The documents here, it is argued, are not yet at that stage. The

plaintiffs, it is argued can continue to negotiate, or go through the ADR process or go to NTCAT.

[31] The defendant submits it cannot be the case that negotiating in good faith requires capitulation or compromise of one's own interests. The circumstances simply require negotiation. The plaintiffs do not want to pay the costs and have gone to NTCAT to rectify that. No further relief is required. The defendant submits that it is inappropriate to ask the question of whether it is reasonable that the plaintiffs have said they will pay costs subject to a determination by NTCAT. On the defendant's case, questions of the reasonableness of its position are not relevant, there is simply no agreement without agreement as to the reasonableness of the costs. The defendant will not finalise the agreement without costs being paid now, to avoid more costs or to have to go through an assessment. The defendant submits this action is premature. That the communications between the parties do not show an agreement and the defendant is perfectly within its rights to take the position it has taken on costs. The defendant relies on *State of Western Australia v Taylor*,[8] which makes the point that the concept of good faith does not require a party to capitulate, accept the other side's position, insist that a negotiated agreement be reached, or an obligation to disregard or ignore a matter which is in its view determinative or fatal to the 'other side'.

8 National Native Title Tribunal, the Hon C.J. Sumner, 7 August 1996.

[32] The context here is of some relevance, although I accept broadly what is said by the Hon C.J. Sumner in *Taylor* of the concept of good faith, this matter is about compliance with the statute, and compliance with the statutory process, 'taking steps' in good faith.

[33] It has been made abundantly clear in the correspondence and NTCAT material that the plaintiffs acknowledge their obligation to pay the defendant's reasonably incurred costs of the negotiation. At an earlier time there was dispute about the obligation when the details of the costs were not provided. The correspondence overall points to consensus reached on the provisions and content of the access agreements. Although it is true that the plaintiffs have not executed the agreements, the correspondence clearly indicates that agreement has been reached and senior counsel for the plaintiffs told the Court of their willingness to sign and exchange in the current form.

[34] Not all of the correspondence is before the Court but the material provided gives a clear indication consensus was reached on the provisions of land access agreements.

[35] On 2 May 2023 the plaintiffs' solicitor wrote to the defendant's solicitor attaching a Form 15 'negotiation notice' about a proposed access agreement for Inverway Station.[9]

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9 Affidavit, Bradly Torgen, promised 12 September 2024, annexure BT 14.

[36] On 12 September 2023, the plaintiffs' solicitor provided the defendant's solicitor with a revised proposed access agreement for Inverway Station and advised of a wish to negotiate over Riveren Station.[10]

[37] On 25 and 29 September 2023 the plaintiffs' solicitor wrote follow-up emails to the defendant's solicitor to ascertain the status of the access agreements.[11]

[38] On 29 September 2023 the defendant's solicitor informed the plaintiffs' solicitor that he is waiting for instructions on both Inverway and Riveren access agreements.[12]

[39] On 9 October 2023 the plaintiffs' solicitor followed up the status of the access agreements with the defendant's solicitor.[13] On 10 October 2023 the defendant's solicitor advised the plaintiffs' solicitor that the Inverway access agreement has been provided to their client and they were awaiting provision of an executed copy and will then revert to the plaintiffs for full execution. They also advise they are waiting for instructions from their client on an access agreement with Riveren.[14] There is no indication of any disagreement with the terms for Inverway.

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10 Affidavit, Bradly Torgen, promised 11 July 2024, annexure BT 2.

11 Affidavit, Bradly Torgen, promised 11 July 2024, annexure BT 3.

12 Affidavit, Bradly Torgen, promised 11 July 2024, annexure BT 3.

13 Affidavit, Bradly Torgen, promised 11 July 2024, annexure BT 3.

14 Affidavit, Bradly Torgen, promised 11 July 2024, annexure BT 4.

[40] On 23 October the plaintiffs' solicitor sought a response from the defendant's solicitor.[15] On 24 October 2023 the defendant's solicitor advised he is waiting for the defendant's execution of the Inverway access agreement counterpart and on instructions about the Riveren agreement.[16]

[41] On 6 November 2023, an email from the plaintiffs' solicitor refers to some correspondence from the defendant's solicitor on 10 October 2023 and notes the only conclusion to reach is that the defendant agreed to the terms of the Inverway access agreement provided on 12 September 2023. An inference was likely drawn by the plaintiffs that terms were agreed. There is no response indicating disagreement with any of the provisions of the access agreement. The plaintiffs' solicitor indicates delays may leave little choice but to pull the 'statutory trigger', meaning potential negotiation or NTCAT.[17] There was still no indication of any meaningful dispute. On 14 November 2023 the plaintiffs' solicitors provided the defendant's solicitor with a copy of the Riveren access agreement.[18] It is understood from submissions in this matter that it is unknown whether that is the agreement executed by the defendant. It is accepted there are very slight amendments, but clearly the plaintiffs agree with the agreement it provided, even with slight amendments as it was obviously desperate to comply with the various timing constraints under the Act. On 20 November 2023 the

15 Affidavit, Bradly Torgen, promised 11 July 2024, annexure BT 5.

16 Affidavit, Bradly Torgen, promised 11 July 2024, annexure BT 5.

17 Affidavit, Bradly Torgen, promised 11 July 2024, annexure BT 6.

18 Affidavit, Bradly Torgen, promised 11 July 2024, annexure BT 7.

defendant's solicitor advised he was awaiting receipt of the executed documents, included the 'slightly amended' Land Access Agreement and 'we will come back to you hopefully within the next day'. On 20 November 2023, the plaintiffs' solicitor thanked the defendant's solicitor for the update.[19] There is no indication of any problem with the agreement. On 23 November the plaintiffs' solicitor sought an update from the defendant's solicitor.[20]

[42] Although the parties had already been negotiating on Riveren, the plaintiffs' solicitor provided a 'negotiation notice' for an intention to obtain an access agreement on 1 December 2023.[21]

[43] On 15 January 2024 the defendant's solicitor emailed the plaintiffs' solicitor in relation to Inverway Access Agreement stating he is in receipt of the Inverway Access Agreement counterpart executed by the defendant Hughes; that Hughes requires the plaintiffs' commitment to reimburse its reasonable and necessary legal costs incurred prior to exchanging the executed Inverway Access Agreement Counterpart. A tax invoice for $49,500 was attached. The defendant advised he requires reimbursement of the tax invoice prior to exchanging the executed Inverway Access Agreement. Essentially after payment, Hughes would be in a position to revert with their executed access agreement counterpart for full execution by

19 Affidavit, Bradly Torgen, promised 11 July 2024, annexure BT 8.

20 Affidavit, Bradly Torgen, promised 11 July 2024, annexure BT 9.

21 Affidavit, Bradly Torgen, promised 11 July 2024, annexure BT 15.

the plaintiffs. Further, the defendant's solicitor said the defendant reserves its rights and has no intention to be bound by the terms of the Inverway Access Agreement prior to formal execution and exchange.[22] The invoice is vague, refers to 'steps' and 'professional fees' and likely did not comply with the requirement under the Regulations to provide evidence of reasonable costs necessarily incurred. However, the defendant had clearly communicated that the access agreement was executed. An email from the defendant in similar terms was sent regarding Riveren Access Agreements negotiation costs for $16,500.[23]

[44] That correspondence indicates the substantive terms of access were agreed in principle. The only impediments would appear to be the costs and that is the reason for not finalising the land access agreements. The 'slightly amended' agreement for Riveren must be immaterial given no issue worthy of discussion was raised in reference to it. The agreements are ready. The correspondence shows consensus has been reached. I agree with the plaintiffs. In this particular regulatory regime, the defendant's approach undermines the proper operation of the Act and Regulations by withholding agreements which have been concluded.

[45] I will not detail the history of the proceedings in NTCAT over costs. However, in what would seem to initially at least have been an inconsistent case put to NTCAT by the defendants, the defendant responded by

22 Affidavit, Bradly Torgen, promised 11 July 2024, annexure BT 10.

23 Affidavit, Bradly Torgen, promised 11 July 2024, annexure BT 11.

submitting NTCAT does not have the power to order the defendant to provide it execute an agreement. In this Court the defendant submitted the plaintiffs should be in NTCAT.[24]

[46] On 24 May 2024 the plaintiffs offered by letter to pay the full amounts of costs claimed for both Inverway and Riveren, on the conditional basis that if NTCAT determines the defendant is entitled to a different amount, an adjustment will be made.[25] The defendant continued to refuse to exchange the executed access agreements and would only agree to finalise the agreements if the plaintiffs pay its costs in full on an unconditional basis.

[47] The Court was told of deadlines for submission to the Minister in February. Irrespective of when the next phase of the process is, in keeping with the Act and Regulations, the plaintiffs should not be subject to unnecessary delay and costs of a lawful process.

Conclusion

[48] The defendant's conduct undermines the operation of the Act and Regulations to the extent that the only conclusion to be drawn is that it is not taking the steps required in good faith. The conduct appears obstructive. The Act requires all parties to act in good faith. The issue of costs of the negotiation is extraneous to the consensus arrived over the access agreements and costs are treated as such in the Regulations.

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24 Affidavit, Bradly Torgen, promised 12 September 2024, annexures BT 18, 19.

25 Affidavit, Bradly Torgen, promised 12 September 2024, annexures B 12 and B 13.

[49] It is appreciated this is a somewhat novel situation of a court in equity granting relief in aid of statutory rights.[26] Senior Counsel for the plaintiffs has drawn my attention to McHugh JA's comments in *King v Goussetis*[27] which I rely on here:

> The true basis of an individual's right to obtain an injunction to enforce a statutory obligation is no longer a matter of any doubt. In some cases the statute itself either expressly or by necessary inference may confer a private right on the individual to enforce the statutory obligation: Duchess of *Argyll v Duke of Argyll* [1967] Ch 302 at 341; *Onus v Alcoa of Australia Ltd* (1981) 149 CLR 27 at 66-68. With respect, however, the question whether the statute confers a private right of action is not to be answered, as Ungoed-Thomas J indicated in *Duchess of Aroll v Duke of Argyll* (at 341) by asking whether the enactment is for the protection of the public at large or for the benefit of a class of persons of which the plaintiff is a member: see the discussion by Brennan J in *Onus v Alcoa of Australia Ltd* (at 67-68). The grant of a private right by the statute does not depend on whether the statute is for the benefit of a class: *O'Connor v SP Bray Ltd* (1937) 56 CLR 464 at 477-478, 486-487; *Onus v Alcoa of Australia Ltd* (at 68). The answer to the question whether a statute confers a private right depends on "the nature, scope and terms of the statute, including the nature of the evil against which it is directed, the nature of the conduct prescribed, the pre-existing state of the law, and, generally, the whole range of circumstances relevant upon a question of statutory interpretation": *Sovar v Henry Lane Pty Ltd* (1967) 116 CLR 397 at 405 per Kitto J.
>
> …
>
> But even when a statute does not confer any private right on an individual to enforce a statutory obligation, a court of equity in a proper case will lend its aid to the enforcement of the statute at the suit of a person who has "a special interest" in its enforcement: *Australian Conservation Foundation Incorporated v The Commonwealth* (1980) 146 CLR 493 at 526, 527, 547; *Onus vA1coa*

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26 Discussed in *Meagher, Gummow & Lehane's Equity*: *Doctrines and Remedies*, 5th Ed (2015), by J Heydon, M Leeming and P Turner: Chapter 21 (Injunctions), Part D (Injunctions in Aid of Statutory Rights) at [21]-[170], at 728-730.

27 (1986) 5 NSWLR 89 at 93-94.

ofAusfra1ia Ltd (at 36, 41, 43, 44, 63, 69). The special interest must be an interest over and above that held by ordinary members of the public. It is not enough that the plaintiff has a "mere intellectual or emotional concern" in the subject matter: *Australian Conservation Foundation Incorporated v The Commonwealth* (at 530).

[50] The orders will be as follows:

1. Within 7 days, the defendant provide to the plaintiffs a copy of the access agreements it executed and provided to its solicitors sometime on or prior to 15 January 2024 (as referred to in emails the defendant's solicitors sent to the plaintiffs' solicitors on 15 January 2024), regarding the 'Inverway Station' and the 'Riveren Station' (the **Inverway Access Agreement** and the **Riveren Access Agreement** respectively).

2. The defendant does all the things that may be required so that the Inverway Access Agreement and the Riveren Access Agreement are approved and registered so as to constitute an 'approved access agreement' as defined in reg 3(1) of the *Petroleum Regulations 2020* (NT).

3. I will hear the parties on costs at a convenient time.
