

# Change of solicitor and discontinuance

## *Ankamuthi People v Queensland* [2002] FCA 897

Drummond J, 17 July 2002

### Issue

The Cape York Land Council (CYLC), the representative body for the area covered by this application, filed a notice of change of solicitor in relation to this claimant application and then filed a notice of discontinuance. The question for the Federal Court was whether or not these were effective, given that the CYLC did not have instructions from the applicant to file these documents.

### Background

The evidence indicated that:

- none of the five persons named as the applicant in the proceedings gave instructions to change their solicitors and none of those persons gave instructions to discontinue the claim;
- a large majority of the native title claim group were unhappy with the way the claim was being conducted by the applicants and their legal representative.

### Decision

While Justice Drummond was satisfied that CYLC was acting on the instructions of a large majority of the Ankamuthi People, he held that there was a procedure laid down in s. 66B the *Native Title Act 1993* (Cwlth) to deal with the dissension that had developed within the Ankamuthi People. If the applicant no longer had the authority of the Ankamuthi People to run this action on their behalf, the applicant could be replaced by a new applicant. However, his Honour noted that this could only be done by the court on notice to all the parties.

Drummond J found that a claimant application is a representative proceeding and that, pursuant to ss. 61(2) and 62A, only the named applicant has control of the litigation. The other members of the native title claim group have no authority to take any step in the proceedings. His Honour noted that, as these were representative proceedings, they could not be discontinued without the leave of the Court pursuant to O 22 r 2(2) the Federal Court Rules.