

Replacing the applicant under s. 66B - Wiradjuri Wellington

Wiradjuri Wellington v Minister for Land and Water Conservation NSW [2004] FCA 1127

Madgwick J, 2 July 2004

Issue

The question was whether the court should exercise its discretion to make an order under s. 66B(2) of the *Native Title Act 1993* (Cwlth) (NTA) to replace the applicant in a claimant application.

Background

This was a case where one of the people named as one of the group of people that jointly constituted 'the applicant' (the applicant group) in a claimant application was seen by other members of the claim group as being a 'dissident', particularly as a result of her opposition to the registration of an indigenous land use agreement. In making her objection, she contended that other members of the claim group had not acted in accordance with traditional laws and customs in making the agreement—see s. 61(2) and [4] to [6].

Claim group coextensive with corporation

According to his Honour Justice Madgwick, the 'critical' point in this case was the fact that the evidence established that the native title claim group was coextensive with an organisation known as the Wiradjuri Wellington Aboriginal Town Common (Aboriginal Corporation) (the corporation)—at [7].

Madgwick J was satisfied that, in acting to remove the 'dissident', the proper procedures according to the rules of the corporation had been observed and it was therefore open to the court to exercise the discretion available under s. 66B(2) to remove her from the applicant group—at [8].

His Honour commented that:

It is not for me to enter into the debate as to which sub-group or groups within the claim group are or are not authentically acting in accordance with traditional custom or in the best interests of the claim group as a whole. The claim group have chosen to regulate their affairs in relation to this application by their membership of the corporation and by proceeding according to the rules of the corporation. Where, as appears to be the case here, those rules have been apparently obeyed and validly acted on, respect should ordinarily be given by a court to the decisions arrived—at [16].

Decision

The applicant was replaced so as to remove the dissident member. Madgwick J was of the opinion that 'so far as possible, named applicants on behalf of the claim group

should be speaking with one voice and not be divided between themselves' — at [17] to [19].