

Replacing the applicant under s. 66B - Wajarri Elders

Simpson v Western Australia [2004] FCA 1752

French J, 17 December 2004

Issue

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

Grounds made out

His Honour Justice French was satisfied that that grounds for replacement of an applicant set out in s. 66B of the NTA were satisfied because:

- the application is brought by members of the relevant native title claim group in relation to a claimant application brought on behalf of the Wajarri Elders; and
- the order was sought on the ground that the current applicant is no longer authorised by the claim group to make the application and to deal with matters arising in relation to it insofar as Lena Merritt was included—at [1].

Evidence

The court accepted evidence given of a meeting held on 17 March 2003 at which a number of resolutions were passed by members of the claimant group that demonstrated that Ms Merritt, one of the group named jointly as the applicant, was not authorised to make the application and to deal with matters arising in relation to it—at [2] and see ss. 61(2), 66B(1) and 251B.

The process of notification of the meeting, the anthropological evidence about the discussions that preceded meetings of this kind and the evidence of the 'agreed and conventional nature of the decision-making which took place in this case' satisfied his Honour that:

[T]he resolutions were properly made by or on behalf of the native title claim group and that the replacement applicants who are named in the motion have been authorised by the claim group to make this application to replace the existing applicants pursuant to s 66B—at [3].

Decision

After noting that the court had discretion, even where the 'necessary' conditions identified in s. 66B(2) were established, French J held that:

In this case...the basis for...the removal of Ms Merritt appears to be entirely reasonable. Her delay in signing an important agreement generated concerns within the group about the capacity of the named applicants, if they continued to include Ms Merritt, to respond in a timely way to agreements that might be seen as being for the benefit of the native title claim group and supported by the group as a whole—at [4].

The order sought was made.