

Admissibility of evidence – field notes and diary entries, dictionary extracts

Jango v Northern Territory (No 5) [2005] FCA 281

Sackville J, 21 March 2005

Issue

The parties sought rulings on the admissibility of paragraphs in a number of documents tendered as evidence by the Commonwealth in the hearing of a compensation application.

Background

For information on previous decisions by his Honour Justice Sackville on the admissibility of evidence in these proceedings see *Native Title Hot Spots Issue 11*.

Prior inconsistent statement allegations — field notes tendered pursuant to s. 43 of the Evidence Act 1995 (Cwlth).

The Commonwealth sought to tender notes of a conversation recorded by Professor Tomlinson that it contended supported a prior inconsistent statement made by Dr Willis. Justice Sackville found the alleged inconsistency was not made out and the tender of the document was rejected—at [3] and [4].

Consultation notes recording a discussion between Windlass Kunamarra and Mr Allan were alleged to record statements that there were no women's sites in a particular area. Sackville J noted Windlass denied making the statement and the Commonwealth had not referred his Honour to any passages inconsistent with the statement recorded by Mr Allan. Without a reference to such passages the tender of the document was not supported by s. 43 of the *Evidence Act*—at [5] and [6].

Diary notes

Diary notes of Derek Roff were tendered to provide 'further information about the context of admitted facts'. Mr Roff had been cross-examined about observations made in his diary and what he meant by them. Sackville J proposed to reject the tender in the absence of greater specificity as to the relevance of the diary—at [7] and [8].

In contrast, diary notes made by Ian Cawood, a ranger at Ayers Rock (as it was then called) were supported by the questions asked in cross-examination that inaccurately described the recorded information or did not elicit certain information relevant to evaluating the significance of Mr Cawood's evidence. While his Honour thought that Mr Cawood could (and perhaps should) have been asked about these entries he proposed to admit them as they may be relevant to the issues—at [9] and [10].

Dictionary extracts

The applicants objected to the tender of dictionary extracts from Pitjantjatjara/Yankunytjatjara-English dictionaries on the ground the Commonwealth did not refer to the extracts in examination in chief of its witnesses. Sackville J noted the material tendered was all publicly available and some of it was prepared by witnesses called by the Commonwealth. He admitted the exhibits—at [11] and [12].