

# Replacing the applicant under s. 66B – decision-making under tradition law & custom

## *Combined Gunggandji Claim v Queensland* [2005] FCA 575

Dowsett J, 31 March 2005

### **Issue**

The issue in this case was whether the applicant to a claimant application (the Combined Gunggandji Claim) could be removed and replaced with a new applicant pursuant to s. 66B of the NTA.

### **Background**

The people who jointly comprised the applicant on the Combined Gunggandji Claim were Leslie Vivian Murgha, Stewart Eric Harris and Frederick (Ricko) Noble. The proposed removal of Mr Noble from that group was considered at a meeting of the native title claim group, where it was allegedly decided, in accordance with traditional law and custom, to refer the matter to the elders for their decision and to abide by that decision. The elders agreed unanimously that Mr Noble should be removed and Leslie Vivian Murgha and Stewart Eric Harris be authorised as the applicant. The claim group adopted this resolution.

### **A traditional process under s. 251B(a)?**

In this case, Mr Noble contended that the decision to remove him as a person who jointly comprised the applicant was not in accordance with traditional law and custom because, in his view, there were two claim groups with different laws and customs.

Justice Dowsett held that:

- if there were no accepted law or custom within the claim group (because there were conflicting practices within that group), then section 251B(b) would apply;
- in effect, the claim group agreed to refer the matter to the elders for decision and chose to abide by the resulting decision—at[2].

### **Decision**

Dowsett J accepted that all the requirements of s. 66B had been satisfied and ordered that the previous applicant be replaced by a new applicant comprised jointly of Leslie Vivian Murgha and Stewart Eric Harris—at [4].