

Evidence — utility of preservation hearing

Bolton v Western Australia [2002] FCA 1087

Conti J, 2 September 2002

Issue

In this case, directions were sought for the preservation of evidence in advance of the substantive hearing of the relevant claimant applications. One of the issues was whether the directions should require the applicants to file points of claim prior to the taking of preservation evidence.

Submissions of the parties

The applicants' representative submitted that;

- there was little utility in an order for points of claim at this stage because these may change 'dramatically' once further tenure information became available;
- alternatively, a summary was all that should be required prior to the preservation testimonies.

It was submitted for the respondents that preservation evidence had to be given in the context of the identified issues in dispute between the parties if it was to be of any use.

Decision

Justice Conti postponed the further hearing of these interlocutory proceedings until:

[T]he applicants are in a position to be more precise as to the ambit of the taking of the proposed preservation evidence, and as to the whereabouts of so doing, so that the final terms of the orders as to the giving of preservation evidence in chief can be settled. Those orders should be in principle substantially along the lines of the orders for the taking of evidence in the *Wongatha* proceedings [see *Harrington-Smith v Western Australia* [2002] FCA 632]... . In the meantime the State of Western Australia should expedite preparation of some form of catalogue of the freehold and leasehold interests located within the claim areas—at [13].