

Vacation of trial dates — funding issues, opportunity to mediate

***Bullen v Western Australia* [2002] FCA 992**

Gyles J, 8 August 2002

Issue

The issue for the Federal Court in this case was whether to accede to an application made behalf of two applicants and the State of Western Australia to vacate trial dates and otherwise significantly alter the timetable for preparation for trial. It was opposed by several of the respondents. The application was based upon the interplay between a lack of resources available to the applicant and the opportunity for meaningful mediation by the National Native Title Tribunal.

Mediation v preparation for trial

Justice Gyles commented that there was particular force in the submission that there was no necessary inconsistency between preparation for trial, on the one hand, and mediation on the other. It is:

[N]aïve to think that there can be effective mediation without a proper understanding of the basis of the claims and some real understanding as to the evidence which is available to support it—at [9].

Decision

After expressing some misgivings, his Honour held that the combined effect of the following factors warranted the vacation of the trial dates:

- that both the financial and human resources of the Goldfields Land and Sea Council, being representative for the first and third applicants, were consumed in the litigation of another matter;
- the acceptance by all parties that mediation was to be encouraged and pursuit of the litigation in accordance with the timetable would be contrary to that objective; and
- unresolved issues concerning the representation of one applicant would be an impediment to the preparation of that claim for trial—at [9].