Competing claims for same claim group — mediation on authorisation ordered

Wharton v Queensland [2002] FCA 1112

Emmett J, 28 August 2002

Issue
In this case, the Federal Court considered what course to take in circumstances where two claimant applications over the same area were brought by different applicants on behalf of the same native title claim group.

Background
Justice Emmett noted that: 'It is clearly undesirable that two proceedings remain on foot in relation to the same land purportedly brought on behalf of the same Native Title Claim Group'. His Honour found that, if the matter could not be resolved by mediation, the appropriate course was to endeavour to bring the conflict to a head for resolution. To achieve this, each applicant was joined as a respondent to the proceedings in relation to the other's application. According to his Honour, an application for an order to either replace the applicant under s. 66B(1) or strike out one or other of the claims pursuant to s. 84C(1) of the *Native Title Act 1993* (Cwlth) could then be brought in order to establish which of the applicants has authority to bring a claim on behalf of the Kooma People—at [1] to [3].

Counsel appearing indicated that mediation was unlikely to resolve the issue of authorisation. While Emmett J was reluctant to impose any additional burden on the parties that was unlikely to achieve resolution:

> [A] direction for mediation, even if it does not resolve the question of authority, would at least serve to isolate the issues that are likely to be raised for determination by the Court as to the question of authority—at [5].

Decision
The applicants were referred to the Tribunal for mediation on the question of who has authority to bring a claim on behalf of the Kooma People in relation to the area covered by these two claims.