

# Amendment of a claimant application

## *Wiri People No 2 v Queensland* [2006] FCA 804

Dowsett J, 19 June 2006

### Issue

The issue before the Federal Court was whether filing a notice of motion seeking leave to amend Wiri People #2 claimant application satisfied an order of 6 October 2005 requiring that the applicant file and serve an amended application.

### Background

On 6 October 2005, Justice Dowsett ordered the applicant file and serve an amended application on or before 14 October 2005. In default thereof, the application would stand dismissed. The matters of primary concern to the court at the time were the constitution of the claim group and the authorisation of the claim. On 14 October 2005, the applicant filed a notice of motion seeking leave to amend the application.

### Non-compliance with the order

Dowsett J held that:

- a party who applies for leave to deliver an amended document does not thereby commit themselves to that document;
- by filing an application for leave to amend rather than an amended application, the applicant further deferred the time at which they committed themselves to a final form of application;
- the applicant therefore failed to advance the proceedings in a way contemplated in the order—at [6].

### Extension of time

His Honour held that, if the applicant was in a position to commit bona fide to an amended application which complied with the *Native Title Act 1993* (Cwlth), it would be appropriate to extend time notwithstanding the failure to comply with the earlier order—at [7] to [10].

### Leave to appeal the self-executing order for dismissal

Dowsett J refused leave to appeal from the order made on 6 October 2005 because:

- the applicant did not object to the order being made at the time;
- it would seriously undermine the case management system, in particular management of this case, if leave were granted to appeal at this stage; and
- there had been a delay since the making of the original order—at [7] and [8].

### Decision

His Honour made the following orders:

- the self-executing order of 6 October 2005 had taken effect and the Wiri People #2 stands dismissed;
- leave to appeal the self-executing order of 6 October 2005 was refused;

an extension of time for compliance with the order made on 6 October 2005 was refused. Leave to appeal from this order was granted.

### **Appeal proceedings**

The applicant sought stay of the orders pending an appeal to the Full Court of the Federal Court from Dowsett's J's judgment: see *Wiri People # 2 v Queensland* [2006] FCA 1069, summarised in *Native Title Hot Spots Issue 21*.