

Claims must be actively progressed

Naghir People 1 v Queensland [2008] FCA 192

Greenwood J, 21 February 2008

Issue

The issue before the Federal Court in this case was, essentially, the protracted nature of the proceeding and what should be done to expedite its resolution.

Background

The court considered a work plan adopted by the parties to a claimant application made under the *Native Title Act* 1993 (Cwlth) on behalf of the Naghir People, which indicated that after further anthropological research and site inspections were conducted, 'further negotiations' with an overlapping claim group would commence. While the court was willing to allow the work plan to 'proceed according to its own timeframe', his Honour Justice Greenwood wanted to 'inject some other elements into the matter' because:

- the Naghir People's claimant application was filed almost 12 years ago, the registration test was applied in 1999 and, apparently, very little had happened since then;
- the claim had been in 'external' mediation (i.e. with the National Native Title Tribunal) for at least 12 years and so had been 'a long time in progressing';
- the days of native title mediations, or 'the progression of native title claims over horizons of 12 years are over. They are finished. It is no more' — at [2] to [5].

Decision

Greenwood J decided that, while the work plan could proceed as agreed by the parties, the applicant must file and serve a notice of facts and contentions by 30 May 2008 to include (among other things):

- a description of the persons on whose behalf the claimant application was made;
- a description of the native title holding society at the time of sovereignty (the original society) and a description of the society to which the members of the claim group belong (the current society);
- the identification of the connection between the original society and the current society from the time of sovereignty to the present;
- a list of the rights and interests claimed and what they conferred;
- an outline of the facts relied upon to prove connection — at [8] to [19].

These were seen as the imposition of some steps in the progression of the matter with which the parties would 'just have to do the best they can' — at [6].

The applicant for a claimant application that entirely overlapped the Naghir People's application was ordered to file a notice of facts and contentions along the same lines — at [21] to [25].

The solicitor for the overlapping claim group indicated that assistance was being sought from the relevant representative body for the purposes of the preservation of evidence. His Honour noted that:

What is really critical in these kind of matters is that the interests of the claimant groups be protected by advancing these matters to conclusion within timeframes that enable rational people, who are not infirmed but are old, to be able to formulate and give their evidence. So this is the very dilemma that arises when matters linger on for 12 years – at [28].