

# Replacing deceased applicant - s. 66B

## *JED (Deceased) v Western Australia* [2008] FCA 1684

Siopis J, 23 October 2008

### Issue

The issue before the Federal Court was whether to make an order to replace the two people named as the current applicant with a group of six people, pursuant to s. 66B of the *Native Title Act 1993* (Cwlth).

### Background

Both of the people named as the applicant in the Esperance Nyungar claimant application were deceased. The six persons who were proposed to replace them were all members of the native title claim group.

An application to replace of the current applicant may be made pursuant to s. 66B(1)(a)(ii) if the current applicant, or one or more of the persons comprising the current applicant, has died or become incapacitated. Pursuant to s. 66B(1)(b), those bringing the application for replacement must be authorised by the claim group to do so.

Despite concerns raised by the State of Western Australia and some other respondents, the court was satisfied on the evidence that sufficient notice was given of the meeting to authorise the six people proposed as the replacement applicant. The court was also satisfied that the proper decision-making process was followed to give authority to those comprising the proposed replacement applicant—at [7] to [8].

### Decision

His Honour Justice Siopis made an order under s. 66B(1) that the current applicant be replaced. The applicant was also granted leave to amend the application—at [9] to [10].