

Replacing the applicant under s. 66B

Anderson v Western Australia [2002] FCA 1558

French J, 13 December 2002

Issue

The Federal Court considered whether or not to replace the applicant for a claimant application pursuant to s. 66B of the *Native Title Act 1993* (Cwlth) (NTA). It was found that, in its present state, the application for replacement could not succeed.

Background

An application under s. 66B was brought to remove Robin Yarran, one of the people included in the group named as the applicant, and to replace him with another member of the claim group. It was alleged Mr Yarran was being uncooperative in relation to several future act matters. There was also some dispute as to whether or not the representative body, the South West Aboriginal Land & Sea Council Aboriginal Corporation (SWALSC), was representing all of the claimants.

Justice French noted that, as the s. 66B application was brought by ‘the applicants’, it included Mr Yarran. One of the requirements under s. 66B is that the people making the s. 66B application are authorised in accordance with s. 251B of the NTA. Clearly, Mr Yarran was not so authorised. Therefore, the s. 66B application could not satisfy that condition—at [9].

The meeting at which it was decided to remove Mr Yarran was advertised in the classified section of *The West Australian* newspaper. French J commented that:

It is doubtful that a notice of this kind, in fine print appearing among classified advertisements relating to creditors meetings and the like, had any real prospect of coming to the notice of those who might need to know about the meeting—at [11].

Decision

The notice of motion was dismissed. The evidence was insufficient to meet the requirements for an application under s. 66B as set out in *Daniel v Western Australia* [2002] FCA 1147 (summarised in *Native Title Hot Spots Issue 2*). French J was inclined to think that ‘the whole process of authorisation of the s. 66B application and of the replacement applicants should be revisited if it is to be renewed’ and that ‘attention will need to be given to the question of proof of authorisation’. His Honour also commented that SWALSC was the only body with the funding and ‘in my opinion’, the authority to instruct solicitors on behalf of the applicant as a whole—at [21] to [22].