

# Replacing the applicant, claim group amendment

## *Dodd v Queensland (No 2)* [2009] FCA 1180

Dowsett J, 10 August 2009

### Issue

The issues before the Federal Court were whether to make an order to replace the applicant for the Wulli Wulli People's claimant application and whether an earlier decision to allow an amendment to the native title claim group description should be affirmed.

### Background

This proceeding arises out of the same facts as that described in *Dodd v Queensland* [2009] FCA 793 (*Dodd No 1*), summarised in *Native Title Hot Spots* Issue 31. In short, at a meeting of the claim group in February 2009, resolutions to make changes to the claim group description and the group of persons constituting the applicant were proposed and purportedly passed. When application to amend in this way was made, the court's District Registrar allowed the first but declined to make the second. When the matter first came before Justice Dowsett:

It was not clear ... that the amendment to the claim group description [allowed by the registrar] had been voted on separately by the claim group, as previously constituted, and by the claim group, as it was to be constituted. I have previously held that such procedure is necessary. Proceedings were adjourned ... to enable the applicant to clarify that matter. ... . This possible irregularity had not been raised before the registrar ... , and there had been no formal application for review of that decision, or for me to reconsider it—at [3].

### Rejection of specific nominations to join applicant group

This issue was considered in *Dodd No 1*, where the court had been unable to act because no evidence was provided to support the contentions made. Dowsett J had entertained the provision of further evidence to support these contentions but, since he was not persuaded by it, was satisfied there was no substantial irregularity in connection with the conduct of the meeting insofar as concerned nominations to be a member of the group constituting the applicant—at [13] and see s. 61(2) of the *Native Title Act 1993* (Cwlth), which provides that if more than one person is authorised by the claim group to make the application, then they are jointly 'the applicant'.

### Invalidation of meeting

The main question here was whether the meeting should be 'invalidated by virtue of the failure to have separate meetings of the claim group as previously constituted, and as it is proposed that it be constituted'. Dowsett J considered the evidence provided as to the

numbers of people attending the meeting from both the current claim group and the proposed claim group, as well as the number of abstentions from the vote. His Honour concluded that, even if all the abstentions were from the original claim group, the resolution was still passed by 55 valid votes to four. Under these circumstances, the resolution passed at the meeting was valid. In reaching this conclusion, his Honour effectively reviewed and affirmed the earlier decision to allow the amendment to the claim group made by the court's Registrar – at [14].

### **Decision**

In the circumstances, Dowsett J decided to make an order to replace the applicant as sought, presumably pursuant to s. 66B of the NTA, although there is no reference to that provision in the reasons for judgment or the subsequent orders.