

Replacing the applicant, claim group amendment

Dodd v Queensland [2009] FCA 793

Dowsett J, 11 June 2009

Issue

The Federal Court was asked to make orders to replace the current applicant and amend the description of the native title claim group in claimant application made under the *Native Title Act 1993* (Cwlth) (NTA). The application to amend was opposed on the grounds that the decision-making process used was not valid. The court adjourned the proceedings. Subsequent orders to replace the applicant were made in *Dodd v Queensland (No 2)* [2009] FCA 1180, summarised in *Native Title Hot Spots* Issue 31.

Background

At a meeting in February 2009, resolutions were made to alter the constitution of 'the applicant' (resolution 11) and the native title claim group (resolution 6) in an application brought on behalf of the Wulli Wulli People. A motion to amend was brought to give effect those resolutions. Ms and Mr Lea opposed the motion, arguing that both the resolutions and the meeting at which they were made were invalid because:

- the anthropological evidence upon which the resolutions were based was inadequate;
- the meeting could not be called without the approval of all the persons who comprised 'the applicant' (see s. 61(2) of the NTA);
- the resolutions were complex and required more consideration than could be given in the time available and the voting was a 'shemozzle' or 'dog's breakfast';
- nominations for membership of 'the applicant' by Mr and Ms Lea's family were not accepted.

It was found that:

- concerns about the anthropological evidence should have been addressed by seeking an adjournment of the meeting;
- there was no basis for restricting the capacity of any member of the claim group to call a meeting;
- it was a matter for the meeting as to whether more time should be made available for consideration of the resolutions;
- the court was unable to act upon the Leas' contentions because there was no evidence to support them – at [3] to [6].

Decision

Justice Dowsett adjourned the application because it seemed members of the claim group as then constituted, as well as those who were to become members of the claim group as a result of the adoption of resolution 6, had voted. The adjournment was given to allow an investigation into whether ‘the outcome was affected by the inclusion of votes by people who were not, themselves, members of the claim group’ — at [7].