

Appeal proceedings referred to Full Court

Edwards v Santos Limited [2010] FCA 34

Collier J, 4 February 2010

Issue

The issues before the Federal Court were whether to make directions that an application for leave to appeal be referred to a Full Court and whether, subject to any contrary direction of the Full Court, the application should be heard concurrently with, or immediately before, the appeal. It was found this was a case where such directions were appropriate.

Background

An application by the registered native title claimant seeking declaratory orders and an injunction in relation to a dispute about the effect of the future act provisions of the *Native Title Act 1993* (Cwlth) was dismissed in *Edwards v Santos Limited* [2009] FCA 1532 (summarised in *Native Title Hot Spots Issue 32*). An application for leave to appeal was subsequently filed. If leave were to be granted, it would be argued that the trial judge erred in finding the Full Court decision in *Lardil Peoples v Queensland* (2001) 108 FCR 453; [2001] FCA 414 (*Lardil*) was not distinguishable from the case before him. Directions were sought that the application for leave be heard by a Full Court and that the application for leave be heard concurrently with or immediately before the appeal.

Application worthy of referral

Justice Collier noted that there must be ‘grounds justifying a departure from the prima facie position that applications for leave to appeal are to be heard and determined by a single Judge’. In this case:

- there was some merit in the submissions concerning the application of the decision in *Lardil* by the trial judge;
- the proceedings did not involve a ‘minor interlocutory squabble’ but, rather, resulted in an order with important consequences for the parties;
- the case raised issues of public importance;
- on its face, the application for leave was not a hopeless case;
- there appeared to be issues suitable for consideration by the Full Court—at [10] and [13] to [14].

Decision – application referred

The court made the following directions:

- under Order 52 rule 2AA(A) of the Federal Court Rules that an application for leave to appeal be referred to a Full Court; and
- subject to any contrary direction of the Full Court, the application for leave to appeal be heard concurrently with or immediately before the appeal.