

Replacing the applicant under s. 66B

Mills v Queensland [2009] FCA 1431

Greenwood J, 2 December 2009

Issue

The issue before the Federal Court was whether to make an order under s. 66B of the *Native Title Act 1993* (Cwlth) (NTA) replacing Alfred Mills (the now-deceased applicant for the claimant application brought on behalf of the Naghir People) with Phillip Mills. The matter was adjourned to allow for the resolution of a conflict with an overlapping claim group.

Background

The Naghir People's application covered an area that was also subject (in whole or part) to a claimant application made by the Mualgal People, who were respondents to the Naghir People's application. The court was also aware that Kevin Billy Snr asserted that Naghir Island, which was subject to the Naghir People's application, was his family's island.

The solicitor for the Naghir People conceded that, in addition to replacing the applicant, the application (which was made in 1996) would have to be amended to ensure that the description of the native title claim group reflected the claim group as described in a statement of facts and contentions filed in 2008. The respondents said Mr Mills' affidavit in support of the s. 66B application described the Naghir People as the descendants of ancestors not reflected in the statement of facts and contentions and that there was doubt as to whether Mr Mills was duly authorised. The respondents also had concerns that it did not provide information as to the conduct of the authorisation meeting. The proceedings were adjourned and Mr Mills filed a further affidavit. However, the respondents argued this introduced confusion as to who comprised the claim group and, therefore, who must authorise the applicant.

The Torres Strait Regional Authority (TSRA, the representative body for the area concerned) appeared with leave and submitted that the competing native title claims should be resolved by mediation after further anthropological work was done. In the circumstances, Justice Greenwood held that the s. 66B application should be adjourned generally to enable matters to be progressed in the manner submitted by the TSRA—at [31].

Decision

The matter was adjourned to allow for further research and mediation facilitated and funded by the TSRA.