

***Straits Exploration v The Kokatha Uwankara Native Title Claimants* [2011] SASCF 9**

Doyle CJ, White, Peek JJ, 8 March 2011

Issue

The issue before the Full Court of the Supreme Court of South Australia was whether to grant Straits Exploration (Australia) Pty Ltd (Straits) permission to appeal under s. 30 of the *Environment, Resources and Development Court Act 1993* (SA), which provides that an appeal lies as of right on a question of law and with the permission of the court on a question of fact.

Background

Straits applied for permission to appeal against judgment given by the Environment, Resources and Development Court (ERD Court) in *Straits Exploration (Australia) Pty Ltd v The Kokatha Uwankara Native Title Claimants* [2011] SAERDC 2, summarised in Native Title Hot Spots Issue 34. The only ground for which permission to appeal was sought and granted was Ground 10, which concerned criticisms made by the primary judge as to the conduct of Straits. It was granted because considerable weight appeared to have been given to this issue and it might have ‘tilted the scales’ against Straits. The Full Court was influenced by the primary judge’s finding that Straits was in breach of its exploration licence, a factual finding that might have ‘on-going significance’. It was also held that this finding led the primary judge to conclude that it was ‘difficult to place any confidence in the capacity of the applicants to comply with legal requirements in the future’, another ‘significant [factual] finding’ – at [17].

Decision

Permission to appeal on four grounds (not noted here) was refused. Permission to appeal on Ground 10 was granted.