

Strike out — old Act application

Dieri People v South Australia [2002] FCA 187

Mansfield J, 31 March 2003

Issues

This decision deals with whether:

- the filing of particulars of claim amounts to an amendment of an old Act application; and
- a statement that the application is made 'on behalf of the Dieri People' alone satisfies the requirement of Reg 5(1)(a) of the *Native Title (Tribunal) Regulations 1993* (Cwlth), i.e. did it sufficiently describe the persons, other than the applicants, who claimed to hold native title.

Background

A motion was brought pursuant to s. 84C of the *Native Title Act 1993* (Cwlth) (NTA) to strike out the native title determination application made by eight people (referred to as the Dieri Mitha group) because it did not comply with s. 61 of the NTA or, alternatively, pursuant to O 20 r 2(1) of the Federal Court Rules.

It was made by a group (referred to as the as the Edward Landers Dieri group) who were native applicants in a claimant application entirely within the area covered by the claimant application of the Dieri Mitha People. A similar notice of motion was brought by the Dieri Mitha People in relation to the Edward Landers Dieri People determination application: see summary of *Landers v South Australia* [2003] FCA 264 in *Native Title Hot Spots* [Issue 5](#).

Had the old Act application been amended?

On 2 June 1999, the Dieri Mitha People filed a document entitled particulars of claim. This document was filed in response to directions of 14 December 1998, that the applicants provide information so as to comply with s. 61 and other sections of the NTA. In addition, pursuant to an order of the court made on 25 October 2000 the applicants filed a further document entitled amended particulars of claim.

The particulars of claim and the subsequent amended particulars of claim (referred to together as the particulars of claim) were meant to contain all the particulars of the applicant group, include a list of all identified persons in the applicant group and those ancestors who are claimed to have held traditional interest in the land or waters at the time of sovereignty, as well as details of the rights and interests claimed and connection with the claim area. It was clear from the particulars of claim that the Edward Landers Dieri group and the Dieri Mitha People application shared ancestors.

It was contended by the Edward Landers Dieri People that the filing of these particulars of claim amounted to an amendment of the application.

Justice Mansfield held that the particulars of claim did not amount to an amendment of the native title determination application. His Honour's reasons were extensive but included that:

- that the particulars of claim did not accord with or follow the form prescribed in the 1998 Regulations nor state that they amount to an application for a determination of native title; and
- no party suggested that the particulars of claim generated the obligation to send to the Native title Registrar a copy of the particulars of claim as, or as part of, an amended application by virtue of s. 64(4) of the NTA, or that the Native Title Registrar should give notice under s. 66A of the NTA in relation to the particulars of claim, or that the Native Title Registrar re-address the issue of registration under s. 190(3) of the NT Act, and no procedures for amendment of the native title determination were adopted—at [25] to [31] and [45].

In obiter, Mansfield J considered whether the application might be struck out if the particulars of claim had amounted to an amendment of the application. His Honour concluded that the evidence indicated that the native title claim group was a sub-group of the Dieri people. In addition, it was apparent that the authorisation granted to the applicant was granted by a group of persons who are a smaller group than the native title claim group and that consequently the necessary authorisation prescribed by s. 251B of the NTA was not given—at [55] and [56].

Having concluded that the determination application had not been amended, Mansfield J held that the native title determination application did not satisfy the requirements of regulation 5(1)(a) of the Regulations pre amendment. The statement that the application is made 'on behalf of the Dieri people' was not a sufficient description of the persons other than the applicant who hold the claimed native title. His Honour held that there must be some actual description or means of identification of who the other people are—at [60], referring to *Korewal People — Longbottom v NSW Minister for Land and Water Conservation (No.2)* [2000] FCA 1237 at [11].

Decision

The Dieri Mitha group's claimant application was dismissed.