

Vacation of trial dates refused — Perth claims

Wilkes v Western Australia [2003] FCA 142

Beaumont J, 5 March 2003

Issue

This case concerned an application by the South West Aboriginal Land & Sea Council Aboriginal Corporation (SWALSC) on behalf of the applicant to vacate the hearing of native title claims over the Perth metropolitan area. The trial was scheduled to commence five days after the application to vacate was made.

Background

Since 1999, trial dates had been vacated on four occasions. There was some history of disharmony and disagreement within the native title claim group: see *Wilkes v Western Australia* [2002] FCA 1416. The evidence to support this application to vacate was that:

- certain disaffected members of the Noongar Land Council (the former representative body for the area) continued to assert that SWALSC was not the properly appointed representative body for this claim;
- difficulties had arisen in mediation from May 2002;
- moves were afoot to consolidate many of the applications in the region into a single claim brought on behalf of all Noongar people;
- the State of Western Australia, through Deputy Premier Eric Ripper, had issued a media statement that evidenced an intention to mediate claims in the South West region.

It was noted that the state had not reached any agreement with SWALSC regarding the matters raised in the media statement and that it opposed the motion to vacate.

Decision

Justice Beaumont refused to vacate the dates because the interests of justice required the case to proceed rather than be deferred once more. The matter had been lodged many years ago, had been subject to long periods of unsuccessful mediation and SWALSC had failed to explain, to the court's satisfaction, the reasons for the long delays in progressing the claim. One elderly applicant in an overlapping claimant application, who was unrepresented and in ill health, had submitted all of his evidence (including anthropological reports). He was, therefore, entitled to ask the court to adjudicate on the matter—at [16] to [17].