

## Validity of s. 29 notice — clear description

### *Williams v Minister for Land & Water Conservation (NSW)* [2003] FCA 360

Wilcox J, 2 May 2003

#### Issue

The question in this case was whether a notice given by a government party under s. 29 of the *Native Title Act 1993* (Cwlth) (NTA) in respect of the grant of a mining lease needed to include reference to off-site infrastructure works. It was found it did not.

#### Background

Identical notices of motion challenging the validity of a s. 29 notice published in New South Wales government in respect of the proposed grant of a mining lease were filed in two separate proceedings seeking a determination of native title in relation to the same area of land. The boundaries of the claimed area of land were identical to the boundaries of the area of land that was the subject of the relevant mining lease application (MLA).

The validity of the notice was challenged on the basis that it did not contain ‘a clear description of the area that may be affected by the act’ as required by the Native Title (Notices) Determination 1998 (Notices Determination). It was argued that the notice should have referred to the extent or location of off-site electricity and water supply infrastructure works that were essential to the mining project but located outside the boundaries of the MLA (the off-site infrastructure details). It was argued that the absence of these details defeated the purpose of giving a s. 29 notice, i.e. the facilitation of negotiations in respect of a project.

Justice Wilcox had regard to the definition of a ‘future act’ found in ss. 226, 227 and 233 of the NTA and found that the relevant ‘act’ for the purposes of s. 29(1) and the Notices Determination was the grant of the proposed mining lease over the MLA. His Honour distinguished the grant of a lease by the government party from the development and operation of the mine by the lessee pursuant to the lease—at [21].

It was noted that, while s. 29 is concerned to facilitate negotiations between a government party and a native title party, the NTA does not contemplate that the negotiations are at large. They may include activities that will occur beyond the boundaries of the proposed lease area but that possibility cannot enlarge the legal requirements in relation to the content of the s. 29 notice or the extent of the obligation imposed by s. 30(1)(b), which requires that the negotiation parties negotiate in good faith with a view to obtaining the agreement of each of the native title parties to ‘the doing of the act’—at [20] and [22] to [26].

#### Decision

The notice was found to be valid. Both motions were dismissed with costs—at [27].