

Remittal proceedings in Miriuwung & Gajerrong — timetable

Western Australia v Ward [2003] FCAFC 124

North J, 3 June 2003

Issue

This case relates to orders made to settle a new timetable of the steps to be taken prior to hearing, made necessary by a number of unforeseen events, including the need to reconstitute the Full Court bench and an inability of the parties to agree on a timetable.

Background

The decision in *Ward v Western Australia* [1998] FCA 1478 in relation to the Miriuwung and Gajerrong people's claimant application in the Kimberley region of Western Australia was appealed on various grounds to the Full Court of the Federal Court (see *Western Australia v Ward* (2000) 99 FCR 316). Leave was sought, and obtained, to appeal to the High Court against various findings of the Full Court. As part of the decision of the majority of the High Court in *Western Australia v Ward* [2002] HCA 28 (summarised in *Native Title Hot Spots Issue 1*), a number of matters were remitted to the Full Court of the Federal Court.

The remitter has been the subject of a number of directions hearings, during which it became apparent that the proposed date for commencement of the hearing was not achievable. Therefore, Justice North ordered the parties to prepare minutes of proposed orders, attempt to agree on a timetable of dates leading to trial and to consider mediation. However, agreement between the parties could not be reached—at [1] to [7].

Decision

North J made orders based upon the draft proposals filed by the State of Western Australia. His Honour indicated the court will be ready to hear any further evidence and the substance of the appeals in the Northern Territory lands in September/October 2003 and the substance of the appeals in the Western Australian lands, if required, in November 2003 or February 2004. The orders made, which are set out at [8], include separate referrals to a Deputy District Registrar of the Federal Court for mediation in relation to the area in Western Australia affected by the remittal and that in the Northern Territory.