Case management of claims in South West WA

Anderson v Western Australia [2003] FCA 1058

French J, 2 October 2003

Issue

This case reflects the Federal Court's intention to develop a process for the more orderly management of a number of claimant applications filed in respect of the South West region of Western Australia.

Background

Justice French dealt with seven groups of claimant applications which were, for the most part, represented by the South West Aboriginal Land and Sea Council (SWALSC). Prior to the hearing of this matter, a single Noongar claimant application was filed. This provided the impetus to reconsider programming orders made in some of the earlier applications. SWALSC proposed a mediation-based approach to all South West applications, having regard to the filing of a single Noongar claim and the possibility of a comprehensive regional agreement to settle that claim. The State of Western Australia's position was that there had already been a lengthy period of mediation and negotiation in the area without useful outcomes. Any further mediation must be closely supervised by the court. Other non-indigenous respondents broadly supported the state's position—at [16] to [19].

His Honour noted that

> [T]he South West region of Western Australia has been bedevilled for many years with intra-indigenous conflict which has effectively prevented meaningful progress in the mediation of native title determination applications in that area. It is too early to venture any opinion on whether the first Noongar claim, which has now been filed, represents a breakthrough in this regard. ... It... presents an opportunity to give new impetus to the development of a comprehensive resolution of native title issues in the South West of Western Australia—at [24].

Decision

With respect to five small 'polygon' applications, French J expected them to be subsumed in the single Noongar claim. In relation to South West Area 2 (comprised of the Southern Noongar and Wagyl Kaip applications), the applicants were ordered to make applications under s. 64 of the *Native Title Act 1993* (Cwlth) to combine their applications with the single Noongar application to the extent of any geographical overlap. In relation to the remainder, French J ordered the applicants and the state, in conjunction with the National Native Title Tribunal, to prepare a program of negotiation and mediation to commence on 1 January 2004.