

Separate question on s. 47B rejected — Adelaide River

***Kenyon v Northern Territory* [2003] FCA 1178**

Mansfield J, 31 October 2003

Issue

The Northern Territory sought an order under Order 29 rule 2 of the Federal Court Rules (FCR) to have a preliminary question be determined before the hearing and determination of the substantive application. As in *Griffiths v Northern Territory* [2003] FCA 1177 (*Griffiths*), summarised in *Native Title Hot Spots* **Issue 7**, the question was whether or not s. 47B applied to the land subject of the substantive application.

Background

The facts and circumstances of this case are, in relevant respects, the same as in *Griffiths*. The claimant application in this case was made over land in the town of Adelaide River that had purportedly been compulsorily acquired by a notice of acquisition given under the *Lands Acquisition Act (NT)* (LAA). Counsel for the Northern Territory acknowledged that, subject to Justice Angel's decision in *Griffiths v Lands and Mining Tribunal* [2003] NTSC 86 being reversed by the Full Court of the Supreme Court of the Territory, it applied to the purported acquisition in this case.

Section 47B

The question sought to be separately tried was whether the proclamation of the town of Adelaide River in 1975 was a proclamation made by the Crown under which the whole of the land is to be used for public purposes or for a particular purpose. If it was, then s. 47B would not apply.

Decision

Justice Mansfield declined to allow the separate question to be determined, essentially for many of the same reasons to those given in *Griffiths*. However, in this case, there was ongoing mediation between the applicants and the respondent through the Tribunal. While it was not clear how that mediation is progressing, his Honour was of the view that:

[I]t may be undesirable for the Court to take steps to have issues determined which may adversely impact upon the prospects of resolution of such a mediation, at least where resolution of such issues may itself be a prolonged process including appeal processes—at [9].