

Cessation of mediation sought

Walker v Queensland [2003] FCA 960

Allsop J, 9 September 2003

Issue

The issue for the court was whether to continue a long running mediation, either in whole or in part, in circumstances where some parties who wished to withdraw from the mediation were urging the court to act under s. 86C of the *Native Title Act 1993* (Cwlth) to order that mediation cease or, at least, cease insofar as it affected those parties.

Background

This matter was allocated substantively to Justice Allsop's docket in June 2002 and then referred to mediation under s. 86B. By June 2003, it appeared that mediation was unlikely to be successful if not concluded by September 2003. Some of the parties urged the court to order the mediation to cease, either in whole or part. The applicant and some other parties (including the state) wanted the matter to remain in mediation until a directions hearing in December 2003. His Honour noted the conflicting policy considerations:

There comes a point in the disposition of matters filed in court when the public interest and the confidence in the due and timely administration of justice requires that matters be brought to finalisation and resolution. It goes without saying that to the extent that parties can mediate and resolve their disputes without the expensive intervention of the cumbersome dispute resolution mechanism of the traditional courts, such resolution is to be encouraged. However, the allowing of a matter to drift in mediation against the wishes of some of the parties is not in the public interest and militates against the confident administration of justice—at [7].

Decision

Allsop J stood the matter over until directions in December 2003, when he will hear argument as to the procedural steps to be taken to bring this matter on for hearing in June 2004, with parties that do not wish to appear and who will abide by any order of the court as to the conduct of the matter, to indicate this beforehand. His Honour observed this would permit some further time to allow mediation to continue to a 'fruitful' conclusion, should this be possible—at [8].